THE HIGH COURT
JUDICIAL REVIEW

[2021] IEHC 653
[Record No. 2019/34 JR]

BETWEEN

SEAN CONLAN

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered electronically on the 9th day of September, 2021.

Introduction.

1. The applicant was convicted in the District Court of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997 and an offence contrary to s. 11 of the Firearms and Offensive Weapons Act, 1990. These offences were found to have been perpetrated against one Enda Duffy (hereinafter "the complainant") on 23rd August, 2015, in the public house owned by members of the applicant's family.

2. In effect, the charge was that the applicant had "glassed" the complainant, meaning that he had deliberately broken a glass against the bar counter, or other surface, and thrust the broken glass into the complainant's arm, causing injury.

3. This judicial review arises out of the judgment delivered by the learned Circuit Court judge after hearing the appeal. The applicant makes the case that that judgment was in breach of his right to a fair trial in the following respects:-

   (i) It was submitted that it was clear from her ruling that the judge had applied the wrong legal test;

   (ii) That the judge had not afforded the applicant a fair trial, because she had not appreciated that the appeal was a full rehearing, where the applicant enjoyed the presumption of innocence and where the burden of proof rested on the prosecution to prove all elements of the alleged offence beyond all reasonable doubt;

   (iii) The judgment was in breach of the applicant's right to a fair trial, because the judge had not furnished any, or any adequate, reasons why she had reached the decision that he was guilty as charged, and in particular, because she had not made specific findings of fact that the applicant had deliberately broken the glass and used it to cut the complainant's arm.

4. It was submitted that in light of all these defences, the judgment delivered did not comply with the standard required in the circumstances of this case, where the appeal had been heard over two days; where the accused had been represented by solicitor and senior and junior counsel and where the judge had risen at the conclusion of the hearing for 45 minutes to consider her judgment and where she had delivered the judgment relying on written note drawn up by her.

5. It was submitted that the judgment was not of the type that would normally be handed down in an *ex tempore* fashion in the course of a busy criminal list before the District Court or Circuit Court, but was in effect a considered judgment after a lengthy hearing. For this reason, it was expected to contain more reasons than might otherwise be required after a brief summary hearing.

6. In response, the respondent submitted that while there was an error at the start of the judgment, that was a mere "slip of the tongue" which did not vitiate the remainder of the judgment. It was submitted that when the judgment was read as a whole, it was clear that the judge had recognised that the burden of proof lay on the prosecution; she had considered all the evidence before her and had a reached a conclusion that was rational and had been open to her on the evidence.

7. In relation to the submission that the judge had failed to give adequate reasons; it was submitted that the applicant was not entitled to raise that ground of objection, as that was not pleaded in either his original statement of grounds, or in his amended statement of grounds.

8. Without prejudice to that submission, it was submitted that judges dealing with summary matters did not have to give elaborate judgments. It was sufficient if the judgment clearly set out what conclusion had been reached by the judge and why he or she had reached it. It was submitted that that was more than clear in this case. The judge had set out the evidence relied on by her to reach her verdict. The judgment was comprehensive in its terms and was clear. Accordingly, it was submitted that it could not be impeached.

9. The submissions of the parties will be dealt with in greater detail later in the judgment.

Background.

10. The applicant's appeal against his conviction and sentence in the District Court was heard before Her Honour Judge McDonnell on 23rd and 24th October, 2018. At the conclusion of the hearing of the evidence on the appeal, senior counsel on behalf of the applicant addressed the judge on the law and on the evidence.

11. At approximately 18:00 hours, the judge rose for 45 minutes to consider her judgment. She delivered an *ex tempore* judgment, which was delivered with the aid of a written note that she had drawn up.

Submissions on behalf of the applicant.

12. It was submitted by Mr. O'Higgins SC on behalf of the applicant that it was clear from the terms of her judgment, that the learned Circuit Court judge had applied the wrong test when considering the appeal before her. It was submitted that this was clear from the opening sentences of her judgment, which were in the following terms:-

> *"Thank you. This judgment will be brief. It's an appeal against a finding in the District Court in relation to two charges; one of assault causing harm and the other production of an article in the course of a dispute which was taken into consideration.*

The issue arises out of events which occurred on the 23rd August 2015 at Conlan's Bar in Ballybay, and I need to be satisfied beyond reasonable doubt that the accused is guilty to the required standard if I am to overturn the conviction."

13. Counsel submitted that this incorrect approach was further confirmed at the end of her judgment where the judge stated as follows:-

"I am upholding the conviction in the District Court. And so I am striking out the appeal and I'll affirm the fine as well that was imposed in the District Court as being appropriate in the circumstances."

14. It was submitted that these two statements by the judge, coming at the beginning and at the end of her judgment, showed that she had not appreciated that the appeal before her was a full rehearing of the matter, rather than an appeal in the ordinary way, similar to that which would be heard by the Court of Appeal in relation to a conviction on indictment.

15. Counsel submitted that it was fundamental to the nature of an appeal that was brought pursuant to s. 18 of the Courts of Justice Act, 1928 (as amended), that the appeal was a full rehearing. This meant that the applicant enjoyed the presumption of innocence, notwithstanding that he had been convicted in the court below. It also meant that the prosecution retained the burden of proving all the elements of the offence to the required criminal standard. Counsel submitted that this was a fundamental feature of the appeal to the Circuit Court. It was submitted that in the present case, it was clear from the *dicta* contained in the judgment, that the judge had not been sufficiently conscious of the nature of the rehearing before her by way of an appeal.

16. It was submitted that as the presumption of innocence and the burden of proof resting on the prosecution, was so fundamental to the nature of a fair trial; that if there was any doubt as to whether the judge hearing the appeal may have incorrectly thought that either of those matters did not apply, the verdict would have to be set aside and the matter remitted back to the Circuit Court for a further hearing.

17. Counsel stated that the proposition that the appeal to the Circuit Court was a full rehearing and that the presumption of innocence remains intact for the appellant, was clearly established in the *State (Ahern) v. Cotter* [1982] IR 188: see, in particular, *dicta* of Walsh J. at p. 198.

18. Counsel further submitted that there was a failure to afford the applicant a fair trial, because it was not clear that the Circuit Court judge had applied the correct burden of proof. From the portions quoted, it was arguable that she was of the view that the onus rested on the applicant, as the appellant, to show why the conviction in the District Court should be overturned. That was incorrect and was in clear breach of his right to a fair trial.

19. It was further submitted that the judge never referred to the presumption of innocence in the course of her judgment. It was submitted that this copper fastened the impression that the judge proceeded on the wrong basis, that the appeal before her was similar to an appeal to the Court of Appeal, where the appellant's conviction would stand, unless he could demonstrate that there was something wrong with the conviction obtained in the lower court.

20. It was submitted that that was an incorrect basis on which to proceed, as the appeal provided for under s. 18 of the 1928 Act, provided for a full rehearing, where the accused again enjoyed the presumption of innocence and the prosecution bore the burden of proof in the usual way. It was submitted that where there was any doubt that the appeal may have proceeded on the wrong basis, which may have involved a breach of the fundamental right to a fair trial, it was incumbent on the court to set aside the appeal hearing.

21. As an alternative submission, it was submitted on behalf of the applicant that the judgment was in breach of the applicant's rights to a fair trial, because the judge had failed to give any adequate reasons for her verdict and, in particular, she had failed to make any definitive findings as to the mechanism of injury. She had stated in her judgment that she had placed particular reliance on the evidence of the independent witnesses, a Mr. and Mrs. O'Neill. However, these witnesses had not seen the glass breaking, nor had they witnessed any glass being thrust into the complainant's arm.

22. It was submitted that at the end of her judgment, having recited some of the evidence given in the course of the appeal, the learned judge had merely stated that having heard the evidence, and having reviewed it and having observed the witnesses and taken into account the state in which some of them may have been after weddings and drink, she simply stated:-

> *"I'm upholding the conviction in the District Court. And so I'm striking out the appeal and I'll affirm the fine as well that was imposed in the District Court as being appropriate in the circumstances."*

It was submitted that this fell well short of the level of reasoning that a convicted person should be entitled to at the end of a hearing that lasted two days and involved a significant number of witnesses.

23. In this regard, counsel relied on the decision in *Oates v. Browne* [2016] 1 IR 481; see, in particular, *dicta* of Hardiman J. at paras. 41-50.

24. It was submitted that, as the appeal to the Circuit Court was a final appeal, it was necessary for the judge to give adequate reasons for her verdict, to enable the applicant to know whether he had good grounds for seeking a judicial review of that decision. It was submitted that, in the present case, the judge had failed to give any, or any adequate, reasons for her verdict. Accordingly, the applicant had been placed in an invidious position when considering whether to bring judicial review proceedings. It was

submitted that a lack of reasoning was a basis on which to strike down the judgment of the Circuit Court in this case.

25. Counsel further submitted that the lack of reasons was highlighted by the fact that in a subsequent civil action brought by the complainant, arising out of the same state of affairs, the complainant had been unsuccessful in his action. Thus, there was the paradoxical situation where the injured party had failed to establish his cause of action on the lower civil burden of proof, but the prosecution had been held to have established the necessary matters to the criminal standard of proof. It was submitted that where that was the case, one would have expected relatively elaborate reasons as to why the judge hearing the criminal matter had reached that conclusion.

26. As a further example of the failure to give reasons for the verdict, counsel pointed out that the learned Circuit Court judge had failed in her judgment to deal with the possibility that the injury to the complainant's arm had arisen due to accidental causes. In the course of his evidence, the applicant had stated that the glass may have broken when he fell backwards against the bar counter. The trial judge had not dealt with this matter at all.

27. It was submitted that taking all of these matters into account, the judgment and verdict of the learned Circuit Court judge was unsatisfactory and amounted to a breach of the applicant's rights to a fair hearing. On that basis, it was urged that the judgment and order of the Circuit Court should be set aside.

Submissions on behalf of the respondent

28. Mr. McKenna BL on behalf of the respondent, accepted that there had been any "slip of the tongue" at the beginning of the judgment, where the judge had stated that she needed to be satisfied beyond reasonable doubt that the accused was guilty to the required standard, if she was to overturn the conviction. It was stated that not only was it clear that that was an accidental comment, but it was of no relevance to the judgment, when read as a whole. It was submitted that in approaching this application, the court must have regard to the entire of the judgment, rather than parsing and analysing each word and sentence in the judgment in isolation: see B*alc v. Minister for Justice and Equality* [2018] IECA 76 and *DPP v. MA* [2020] IECA 376.

29. It was submitted that when read as a whole, the judgment made it clear that the judge had been satisfied that the prosecution had proved all elements of the crime to the usual criminal standard of proof. She had given a detailed account of the evidence on which she relied to reach her verdict. In short, it was submitted that this was a mundane assault case, in which the judge had applied the correct legal test and had given an adequate judgment.

30. Turning to the assertion that the judge failed to give any or any adequate reasons for her decision, the respondent submitted that the applicant was not permitted to put forward that ground of challenge to the judgment, as same had not been contained in his original

statement of grounds, or in his amended statement of grounds, and therefore he had not obtained leave to proceed on that ground.

31. Counsel submitted that the provisions of O. 84, r. 20 (3) of the Rules of the Superior Courts, provided that an applicant must state precisely each ground of challenge to a decision and must give particulars where appropriate and identify in respect of each ground the facts and matters relied upon as supporting that ground. It was submitted that in the present case there was no reference to lack of reasons in the statement of grounds submitted on behalf of the applicant. Therefore, he was not entitled to raise that at the substantive hearing.

32. Without prejudice to that assertion, it was submitted that there is no duty on a judge hearing a summary matter to give extensive reasons. It was only necessary that the accused should know what decision has been reached by the court and why it had reached that decision. In this regard, counsel referred to the decisions in *Lyndon v. Judge Collins* [2007] IEHC 487 and *Sisk v. District Judge O'Neill* [2010] IEHC 96.

33. In relation to the two further matters put forward by the applicant, it was submitted that the existence of an unsuccessful civil action having been brought by the complainant, was completely irrelevant to the matters which the court had to consider on this application. The court had no means of knowing what evidence may have been led by the plaintiff in the civil action; nor the reasons as to why the judge hearing that action had reached his or her decision in the matter. To attempt to do so would be entirely speculative. In relation to the failure to deal with the assertion that the injury to the complainant's arm may have arisen accidentally, it was submitted that that was irrelevant to the decision, due to the fact that in the course of his evidence, the applicant had expressly stated that he was not asserting the defence that the injury to the complainant's arm had arisen accidentally.

34. It was submitted that, while many of the participants in the events giving rise to the charges had consumed considerable amounts of alcohol, that was nothing unusual in assault cases that came before the District Court or on appeal to the Circuit Court. The judge had dealt with the matter in a rational and sensible way and had stated the reasons why she had reached the verdict that she had done. It was submitted that in all respects her judgment was unimpeachable.

Conclusions

35. This application concerns the judgment given by the learned Circuit Court judge at the conclusion of the appeal hearing. While the judgment was given ex tempore, it was a considered judgment, as the judge had risen for 45 minutes to consider her verdict. In addition, she had prepared a speaking note to aid her in the delivery of the judgment. The judgment itself was reasonably lengthy by the standards of those delivered at the conclusion of summary proceedings.

36. The first issue which arises is whether the judge demonstrated, by virtue of her remarks at the beginning of the judgment, that she had applied the wrong legal test when determining the outcome of the appeal.

37. By way of preliminary objection, it was submitted by the respondent that as the applicant had failed to raise this issue with the judge when she delivered her judgment, he was precluded from complaining about that matter now. Relying on the decision in *Richards v. O'Donohoe* [2017] 2 IR 157, counsel submitted that there was a relatively informal mechanism for the correction of any perceived errors in summary matters. Furthermore, counsel pointed out that at the conclusion of her judgment, the judge had specifically asked the parties whether there were any matters arising from it, to which they had replied in the negative. It was submitted that in these circumstances, the applicant was precluded from complaining about the wording used by the judge in hr judgment.

38. In response to that assertion, counsel for the applicant submitted that where the judge had delivered a considered judgment, it would not have been appropriate for counsel to attempt to point out perceived errors in the judgment with a view to getting the judge to change his or her mind. When the judge asked as to whether there were any other matters arising, she was clearly referring to any ancillary orders that may be necessary in light of her judgment.

39. The court prefers the submission put forward by the applicant on this issue. The court is satisfied that in this case, the judge had risen for a reasonable period of time and had delivered a lengthy and considered judgment. It would not have been appropriate for counsel appearing for the applicant, to have attempted to point out errors in the judgment once it had been delivered. The court is satisfied that the applicant is not precluded from raising his objections in relation to the matters expressed by the judge at the commencement of her judgment.

40. In deciding this issue, the court is satisfied that an appeal pursuant to s. 18 of the 1928 Act (as amended) is a full re-hearing. While the appellant clearly came before the Circuit Court as a person in respect of whom a conviction had been recorded, when the appeal came to be re-heard, he was once again entitled to the presumption of innocence and the burden of proof lay on the prosecution to prove its case to the usual criminal standard.

41. Notwithstanding certain *dicta* in the case of *Attorney General v. Mallen* [1957] IR 344, as referred to by counsel for the respondent, which may support a contrary conclusion, the court is satisfied that the correct test is that set out in *State (Aherne) v. Cotter*, where Walsh J. stated as follows at p. 198:

> *"An appeal by way of retrial enables a totally different case to be made by either side or both. On the re-hearing the case may appear to be a much more aggravated one than it first appeared, or vice versa. All these matters go to the sentence. The retrial commences on an assumption that the accused is innocent until he is proved guilty on the retrial; it would appear somewhat unusual if the new trial were to start with his sentence being treated as already determined so*

that the only remaining question was whether it should be enforced or not, depending upon conviction. may have a very strong influence on the sentence which is ultimately imposed."

42. Mr. McKenna BL on behalf of the respondent submitted that there was no real conflict between the decisions in *Mallen* and *Cotter*. He accepted that the appeal of a summary conviction before the Circuit Court, was a full re-hearing, where the appellant has the benefit of the presumption of innocence and the prosecution bears the burden of proof of the necessary elements of crime to the usual criminal standard of proof.

43. Counsel submitted that what was involved here, when the judge stated at the outset of her judgment that she needed to be satisfied beyond a reasonable doubt that the accused was guilty to the required standard if she was to overturn the conviction, was a simple "slip of the tongue" by the judge, which was understandable in light of the fact that on an appeal from the District Court, the appellant has already been convicted; he does not have to plead to the charge and at the end of the hearing the circuit judge either dismisses the appeal and affirms the conviction, or allows the appeal and overturns the conviction; or the judge can affirm the conviction, but vary the sentence: see dicta of O'Malley J. in *Richards v. O'Donohoe* at para. 25. Counsel submitted that it was in circumstances where those were the options open to the judge hearing the appeal, that the slip of the tongue came to be made.

44. The court is satisfied that in looking at this issue, the court cannot parse and analyse the judgment through the prism of just one word, or one sentence. There is ample authority for the proposition that when reviewing a charge, or a sentence, handed down by a judge in the course of criminal proceedings, it is not appropriate to engage in such a minute parsing or analysing of the words used: see *DPP v. Solowiow* [2018] 2 IR 280 where McMenamin J. stated:

"The charge, as a whole, was detailed and fair. It is not to be parsed and analysed with a view to finding some small detail or omission which contains a flaw of no significance."

45. Similarly, in *DPP v. Black* [2009] IECCA 91, the former Court of Criminal Appeal stated:

"When reviewing a sentence imposed by a trial Court, which is usually imposed in an ex-tempore manner this Court does not parse every word or examine particular phrases in isolation from the trial judge's decision on sentencing, as counsel for the applicant has in effect sought to do. The Court looks at the sentencing decision in its entirety and in its context for the purpose of determining whether it contains an error in principle raised in the appeal."

46. Similar views were expressed by the Court of Appeal *in Balc v. Minister for Justice and Equality* [2018] IECA 76 and more recently in *DPP v. M.A*. [2020] IECA 367.

47. The court is satisfied that when viewed as a whole, it is clear that the sentence complained of was indeed a "slip of the tongue" by the judge. The sentence itself does not make sense even as it stands, because if the prosecution did prove the necessary elements beyond a reasonable doubt, the judge would affirm the conviction, rather than overturn it. More importantly, the court is satisfied from a reading of the judgement as a whole, that the judge applied the correct test. In her review of the evidence, she clearly indicated that she was applying the correct legal test when she said:

> *"And among all the evidence I have to try and figure out who I believe, am I satisfied beyond reasonable doubt."*

48. The court is satisfied from reading the judgment as a whole, that the judge was aware that she had to consider all the evidence and at the conclusion thereof, she had to be satisfied of the guilt of the appellant beyond all reasonable doubt.

49. That being the case, the court finds that the statement contained in the sentence complained of at the beginning of the judgment, does not indicate that the judge applied the wrong test to the hearing of the appeal. On reading the entirety of the judgment, it is clear that she applied the correct test; holding the prosecution had to establish all elements of the crime and that she had to be satisfied of the accused's guilt beyond a reasonable doubt. Thus, there is no substance to this ground of challenge to the judgment.

50. The applicant further submitted that there was a breach of fair procedures because the judge had not specifically referred to the presumption of innocence in her judgment. The court is satisfied that it is not necessary for such an explicit reference to be contained in a judgment where an experienced judge is dealing with an appeal of a summary criminal matter. The judge is well used to issues such as the presumption of innocence and the burden of proof in criminal matters. It would be absurd to hold that the judge must give herself a specific direction on these matters, as if she were a jury made up of ordinary people, trying their first criminal matter. As long as it is clear from the judgment that the judge did not proceed on an incorrect basis, it is not necessary for the judge to formally "charge" herself as to the applicable legal principles in the course of her judgment.

51. As already stated, the court is satisfied from the content of the judgment as a whole, that the judge did not proceed on the basis that the presumption of innocence did not attach to the applicant; nor did she fail to apply the correct burden of proof, or the correct standard of proof. Accordingly, the court is satisfied that there was no breach of fair procedures in the way that the judge considered the evidence or delivered her verdict thereon.

52. The next issue concerns the alleged lack of reasons in the judgment. The court is of the view that the submission of the respondent is correct, that the applicant is not entitled to raise this ground of objection as it was not pleaded in his original statement of grounds, or in his amended statement of grounds.

53. Order 84, r. 20 (3) of the Rules of the Superior Courts provides:

> *"It shall not be sufficient for an applicant to give as any of his grounds for the purposes of paragraphs (ii) or (iii) of sub-rule (2)(a) an assertion in general terms of the ground concerned, but the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground."*

54. In *A.P. v. DPP* [2011] 1 IR 729 Murray C.J. stated as follows at p. 733:

> *"It is incumbent on the parties to judicial review to assist the High Court, and consequentially this Court on appeal, by ensuring that grounds for judicial review are stated clearly and precisely and that any additional grounds, subsequent to leave being granted, are raised only after an appropriate order has been applied for and obtained."*

55. The decision in *A.P.* was followed in *Daly v. the DPP [*2020] IEHC where Simons J. stated as follows:

> *"The Supreme Court in A.P. v. Director of Public Prosecutions [2011] IESC 2; [2011] 1 I.R. 729 has made it clear that an applicant and the High Court are confined to the grounds as pleaded unless and until an application to amend the statement of grounds has been made and granted.*
>
> *No application to amend has been made, and, accordingly, the case is confined to the grounds as pleaded."*

56. In resisting this objection, counsel for the applicant relied on the dicta of Hardiman J. in the *Oates v. Browne* case at p. 527/528. In the statement of grounds in that case, it had been pleaded that the respondent had not properly determined the application *"in accordance with the principles of natural and constitutional justice*". In the following paragraph it was pleaded "*The hearing conducted by the District judge was unsatisfactory and not in accordance with the principles of natural and constitutional justice*". Hardiman J. noted that the allegation that there had been a failure to give reasons had been fully articulated in the written submissions submitted by the applicant in advance of the hearing in the High Court.

57. Hardiman J. held that while the obligation to give reasons was an aspect of fair procedures, it was desirable that the grounds stated in an application seeking leave to apply for judicial review should be more specific and should identify the specific aspect of fair procedures being relied on. However, he held that having regard to the content of the written submissions of the applicant, there could have been no misapprehension on the part of the respondent, or the notice party, that a specific reference to failure to give reasons was intended. That failure was specifically described in the submissions as amounting to a breach of fair procedures. In those circumstances, he declined to uphold the pleading objection that had been taken on behalf of the respondent.

58. The court is satisfied that the dicta of Hardiman J. in the *Oates* case have to be seen in the context of where there was only a very bald assertion in the statement of grounds that the trial was not held in accordance with fair procedures. It was only in the written submissions that that ground was fleshed out by way of specific assertions as to how the trial judge had acted, so as to breach applicant's right to a fair trial.

59. In this case, in the statement of grounds, both in its original form and as amended, a specific complaint was made of the ways in which it was alleged the trial had been unsatisfactory. There was no mention of a lack of reasons in the judgment. The court is satisfied that if the rules of court are to have any meaning, it is necessary that grounds must be pleaded in a reasonably detailed manner. If an applicant wants to enlarge his grounds, he must make the necessary application to the court to do so and must obtain leave to amend his grounds. Otherwise, one has the situation where an applicant can use a grant of leave on one ground, as a spring board to advance wholly new grounds at the substantive hearing of the matter, without getting leave in that regard. That is not what is provided for in the rules. Accordingly, the court holds that the applicant cannot advance the ground that the judgment was in breach of his right to a fair trial for any alleged lack of reasons therein, as that was not part of his case as set out in his original statement of grounds, or in his amended statement of grounds.

60. However, should the court be wrong in that conclusion, the court would hold that the applicant has not established any breach of his rights due to any alleged lack of reasons in the judgment delivered by the judge in this case.

61. The obligation on a judge to provide reasons when dealing with a summary matter, has been considered in a number of cases. In *Lyndon v. Collins*, where the District Court judge had to consider the question whether the accused had been in charge of the vehicle at the relevant time, the judge had stated as follows: "*I am satisfied that the State has proved its case."* In the course of his judgment, Charleton J. (then sitting as a judge of the High Court) stated as follows at paras. 10 and 11:

> *"… I fundamentally take the view in this case that although the reasoning was short, that there was reasoning and the reasoning was to the effect that I do not accept the case made in testimony, on sworn testimony by the accused, whereas I do accept the case in entirety beyond a reasonable doubt made by the garda officer.*
>
> *11. Now, I do not think that it is necessary, as was said by Mr. Justice Murphy in his Supreme Court judgment in O'Mahony v. Ballagh that it is not essential that district judges give reserved decisions or in every case to giver reasons to a high standard of academic excellence. What is essential, however, is that people know going out of any district criminal court what they have been convicted for and why they have been convicted, and in this instance I think it is clearly implied in what the learned district judge said that she was convicting the accused because of the fact that she completely rejected his testimony and accepted instead the testimony of the prosecution."*

62. In *Sisk v. O'Neill* [2010] IEHC 96, Kearns P. in considering whether there was an obligation on a District Judge to provide detailed reasons, stated as follows:

> *"It seems to me that the answer to that question depends on the nature of the particular criminal proceedings before the court. As was pointed out by O'Neill J. in Kenny v. Coughlan, the issue before the court may be one whereby the District Judge may simply express a preference for one version of events over another. By stating that he is satisfied to convict, the District Judge in the instant case was implicitly stating that he preferred the prosecution evidence to that tendered on behalf of the defence.*
>
> *Were there issues which required some more detailed form of reasoning? Or, to adopt the words of Charleton J. in Lyndon v. Collins, did the accused person leave the courtroom without any idea as to why he had been convicted?*
>
> *I believe the answer to both questions must be in the negative. It was clearly implicit in the remarks of the District Judge that he was rejecting the two legal points which had been raised on behalf of the defendant. I do not believe it was necessary for him, on the facts of the instant case, to offer a view of his own as to what the ideal form of compliance with the statutory requirements might have been or whether they were adequately complied with in the instant case. If he was satisfied that the applicant had failed to raise a reasonable doubt as to the appropriateness of the conduct or steps taken by the Gardaí in the prosecution of this offence he was entitled, without more, to so hold. He could equally, without any injustice to the prosecution, have simply dismissed the case by saying he was not satisfied that he should convict the applicant."*

63. In urging the court that there was a duty on the judge to provide detailed reasons, the applicant relied on the decision in *Oates v. Browne*, and in particular the dicta of Hardiman J. at paras. 46-50. However, the court is of the view that that case is not referable to the general run of cases that are heard in the District Court, or on appeal in the Circuit Court. In that case, there had been a specific application made on behalf of the accused for permission to have his expert examine the intoxilyser equipment. In refusing that application, not only did the District judge refuse to give any reasons, although he had been asked to do so by the applicant's legal representative; he also appeared to reach his decision on the basis of some unidentified case which he alleged had overturned an earlier authority, which had been relied upon by the applicant. However, by the time the matter reached the Supreme Court, it appeared to be agreed by all parties that the relevant authority had not in fact been overturned. It was against that background that the court came to the view that there had been a breach of fair procedures in disposing of the application without providing any reasons at all for that decision.

64. The present case and the authorities referred to by the respondent, are not on all fours with that in the *Oates v. Browne* case. The court is satisfied that not only is there not a duty on judges dealing with summary matters to give extensive judgments; the court is

further satisfied that in this case a detailed and reasoned judgment was in fact given by the judge.

65. The court is satisfied that when one reads the judgment in its entirety, it was clear that the judge looked at the evidence in a fair and rational way. She acknowledged that a lot of drink had been taken by many of the witnesses who gave evidence before her. She placed particular emphasis on the evidence of the independent witnesses, Mr. and Mrs. O'Neill, who had not consumed much alcohol on the night in question.

66. While neither of the independent witnesses saw the breaking of the glass, or the cutting of the complainant's arm, the judge was entitled to rely on the evidence of the complainant; and on the evidence of his brother, Patrick Duffy; and on the evidence of Mr. Keenan and Mr. McEneaney in coming to her conclusion.

67. It is clear that the judge accepted the prosecution evidence as given by these witnesses and did not accept the applicant's evidence. She was entitled to come to that conclusion. It was not necessary for her to rehearse in minute detail their evidence on these matters. She gave an adequate summary of their evidence.

68. The court is satisfied that the judgment in this case more than satisfies the test laid down by Charleton J. in the *Lyndon* case, that at the end of the relevant judgment, the accused should know what offence he has been convicted of and why he has been convicted. The court is satisfied that at the end of the judgment delivered in this case, the applicant was well aware of why he was being convicted of the offences charged and why the judge had reached that conclusion.

69. The applicant complained that the judge did not deal with the issue of the injury to the complainant having possibly occurred accidentally. The court is satisfied that that matter was irrelevant, because the applicant had in his evidence squarely disavowed the defence that the complainant's arm had been cut accidentally. He stated clearly that he was not making that defence. Insofar as he had put forward the defence that the glass had broken accidentally, that had been referred to in the judgment as being part of his evidence; which evidence was clearly not accepted by the judge.

70. The court is satisfied that the applicant has not made out any of the grounds for relief as set out in his amended statement of grounds, or as complained of in his written submissions. The court is satisfied that this was a difficult case to decide, given that it was an assault in circumstances where many of the participants had consumed a considerable amount of alcohol. However, the District Court and the Circuit Court on appeal, deal with such cases on a regular basis. The trial judge considered all the evidence and came to a conclusion that was open to her on that evidence. Her judgment was comprehensive. It did not leave the parties in any doubt as to why she had reached her verdict. The court is satisfied that there are no grounds on which it should set aside the judgment.

71. For completeness, the court notes that the fact that a civil action was unsuccessfully brought by the complainant arising out of the same set of facts, was not relevant to the court's determination herein. The court does not know what evidence was led by the plaintiff in that action; nor the reasons for which the judge dismissed the plaintiff's action. It would be entirely speculative for this court to draw any inference from the fact that the complainant was unsuccessful in his civil action against the applicant. That action was of no relevance to the matters that the court had to decide on this application.

72. For the reasons set out herein, the court refuses all of the reliefs sought by the applicant.

73. As this judgment is being delivered electronically, the parties will have two weeks within which to furnish brief written submissions on the form of the final order and on costs and on any other matters that may arise.

Appendix

Transcript of the judgment delivered by McDonnell J. on 24th October, 2018

This judgment will be brief. It's an appeal against a finding in the District Court in relation to two charges; one of assault causing harm, and the other production of an article in the course of a dispute which was taken into consideration.

The issue arises out of events which occurred on the 23rd August, 2015 at Conlan's Bar in Ballybay, and I need to be satisfied beyond reasonable doubt that the accused is guilty to the required standard if I am to overturn the conviction. A couple of things are worthwhile saying. This all happened very quickly in Conlan's Bar sometime after 9 o'clock in the evening. The second thing is that everyone seemed to have a lot of drink on that night, or nearly everyone; quite a lot of the witnesses for the prosecution had a lot of drink and that was something that was raised by the defence, as they were quite entitled to do, with the exception of one or two witnesses. It should be noted that not only was Mr. Duffy, the complainant, in the GAA bar from about 4.30 that day, Mr. Conlan was also watching the entire of the match in Conlan's Bar and it started at 3.30.

The events, as I say, occurred very quickly in the bar. The complainant, Enda Duffy, was the last man to arrive. His brother and various friends had arrived. I think they'd all been in Smyth's previously. And some stress has been laid on the fact that everything was calm until Enda Duffy arrives, and that seems to be the case. It is clear from the evidence that some issue arose with Mr. Conlan shortly after his arrival. Whether it is to do with Heather Humphreys, or potholes, or water charges, various things have been said.

But it is evident that at some point in time some aggro arose and a lot of the witnesses mentioned the fact that Mr. Conlan in particular seemed to have an issue in trying to find out who Mr. Duffy was and repeated on a number of occasions, "*who are you*?" and as one of the witnesses had said, "*who the fuck are you*", I think was her evidence, and it was in an aggressive tone, and that has been verified by more than one of the witnesses.

That seems to have been followed by evidence given by a number of witnesses that there was not one, but two headbutts on the complainant by Mr. Conlan; that's the evidence given by a number of the witnesses, Mr. McEneaney in particular, and Martina O'Neill.

And they were quite specific on two; the complainant himself didn't describe it as a headbutt, he described it as a tip. Things escalated and a glass was broken, and Mr. Duffy's arm got cut on the glass. The evidence from some of the witnesses is that Mr. Conlan deliberately broke the glass. He had got very angry when he couldn't get an answer to his question, "*who are you?".* Two of the witnesses said that Mr. Duffy at that stage was trying to side step him, but while putting up his hands to defend himself, he got cut. And among all the evidence I have to try and figure out who I believe, am I satisfied beyond reasonable doubt.

One of the witnesses in particular, well a couple of witnesses were interesting, Mr. McNally, who is the barman, a couple of times he said that Enda Duffy was the next man to be served, and he obviously does things in a logical kind of way, and "*I was serving the group*", and then he was going to serve Enda, and he didn't have any issue with the fact that he was going to serve him drink, which suggests that he wasn't unfit to be served a drink. He didn't have any issue with him as a customer in terms of his behaviour.

The other witness, two witnesses in fact, who were disinterested witnesses to the extent that they are not part of the crowd, were Martina O'Neill and her husband, who arrived into the pub at 9 o'clock. She had had one vodka. She heard aggressive questioning by Mr. Conlan as to who are you, and turned around as a result because of the tone of the voice that she heard and witnessed Mr. Duffy being headbutted twice by Mr. Conlan. She heard glass breaking, but did not see how it got broken. A number of the witnesses, Enda Duffy; his brother Patrick Duffy; and Mr. Keenan, all gave evidence that Mr. Conlan deliberately broke the glass and there followed the incident where the injury occurred. Mr. McEneaney saw the broken glass in Mr. Conlan's hand; that was his evidence. Mr. Conlan's evidence is that the glass broke because he fell backwards, and it was in the course of doing this that the glass broke, and he denies the headbutting and says that he in fact was headbutted by Enda Duffy.

In all of these cases, credibility is an important factor. All agree that Enda Duffy was aggressive after the incident. The only person who says he was aggressive prior to the accident [sic] was Mr. Conlan. And Mr. Duffy accepts himself that he was angry after the incident involving the glass and had to be restrained. But insofar as the incident is concerned, the chronology is an issue, whether it's over potholes, or Heather Humphreys; then there is questioning as to who are you, there is headbutting, and then there is a glass broken. And having heard the evidence, having reviewed it, having observed the witnesses, and taking into account even the state in which some of them may have been after weddings and drinks, I am upholding the conviction in the District Court. And so I am striking out the appeal, and I will affirm the fine as well that was imposed in the District Court as being appropriate in the circumstances.