

THE HIGH COURT

Record No. 2015/95CA

ANTHONY DORAN

Plaintiff

– AND –

BUS ÉIREANN/IRISH BUS

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 15th January, 2016.

1. On 28th February of last year, Mr Doran was driving his car across Butt Bridge in Dublin City Centre. His girlfriend was in the car. Just after they crossed the bridge, the car gave out and Mr Doran had to pull into the side of the road. As luck would have it, the place where the car came to a halt was an area where buses belonging to Bus Éireann stop and park. Mr Doran pushed the car back to create the maximum space for any buses pulling in. He then called for a recovery vehicle and waited in the car. His girlfriend, who was hurrying to an appointment, left him around this point. It took 1½ - 2 hours for the recovery vehicle to arrive.
2. During the period that Mr Doran was waiting for the recovery vehicle, a number of buses belonging to Bus Éireann came up behind his car. When they did, Mr Doran waved them on. A couple of bus-drivers may have asked him what was happening; not a lot turns on whether they did or not. For the purposes of this judgment, it suffices to note that Mr Doran waved at a number of bus-drivers to continue on and they did so without any difficulty arising.
3. One driver acted differently. It is his actions that have led to the within proceedings. That driver drove up close behind Mr Doran's car and sounded the bus-horn. There was nothing wrong in this. Mr Doran was parked in a bus-space and the bus-driver told the court in his oral evidence that he had previously been advised by more senior drivers that, if he encountered such a situation, a quick beep on the bus-horn is usually enough to get the parked driver to move on. This chimes with common-sense. However, Mr Doran could not move on. He rolled down his window and gestured at the bus-driver to continue on. When the bus-driver sounded the bus-horn yet again, Mr Doran got out of his car to explain the predicament in which he found himself. However, the driver refused to open the window on the driver-side of the bus and was clearly intent that Mr Doran should move on. Mr Doran gave up trying to explain and got back into his car; he was not a man angling for a fight.
4. If only the bus-driver had waited for a space to clear ahead, nothing more would have come of matters. Instead he got out of the bus, approached Mr Doran's car – the driver-window of the car was open – and indicated tersely that Mr Doran should move on. Mr Doran tried to explain himself again, at which point he was treated to some foul and aggressive language. Perhaps if the language had just been the usual exchange that happens in a thousand heated moments around the city every day that would have been the end of matters. But what seems to have riled Mr Doran – and what would have riled the author of this judgment if, like Mr Doran, he were a black man – is that this foul and aggressive language was not only very coarse; it also made reference to Mr Doran's skin-colour.
5. The bus-driver admits to the foul and aggressive language and, to his credit, is regretful that he used it. But he denies that he used the racial epithet. Having listened carefully to the evidence of Mr Doran and the driver, the court prefers the evidence of Mr Doran in this regard. In giving his testimony, Mr Doran struck the court as a calm gentleman who is soft-spoken and unlikely to be roused quickly to blind temper. Indeed his equanimous nature is such that Mr Doran stated in evidence that he was not even especially put out by the break-down, something that might cause some stress to the best of us. He appears to have viewed it as 'one of those things' and was satisfied to wait for the recovery vehicle after his girlfriend had headed off to her appointment.
6. The bus-driver, by contrast, admits that he used foul and aggressive language; the language does not bear repeating in this judgment but it was very coarse indeed. That said, it is important not to over-state matters: the driver seems a generally decent man; in his evidence it seemed to the court that he rather regrets those actions to which he has admitted. However, the forcefulness and vulgarity of the language he used on the day in question shows that, for whatever reason, he was very 'het up'. It is not difficult to believe that he used a racial epithet when in such a state and the court considers that as a matter of probability he did. The court accepts the driver's evidence that he has no aversion generally against people who are black –and any such aversion would, of course, be utterly objectionable. And, no doubt, if the driver were back again he might have acted differently. But he did what he did, and – the court finds – he said what Mr Doran alleges him to have said.
7. Matters do not end there. As mentioned, when the bus-driver approached Mr Doran's car, the driver-window of the car was open. The bus-driver unleashed his diatribe and moved in such a way as to cause Mr Doran instinctively to recoil to his left, thinking that the bus-driver was about to hit him. The court has no difficulty in accepting this as true. Many people up and down the country have likely seen, or been at the receiving end of, instances of so-called 'road rage', i.e. incidents in which people of generally good standing so lose their composure as to put the target of their rage in fear of physical attack. Mr Doran was sitting down, he was in his car, he knew he was blocking traffic, he had tried to explain, had got back into his car, and was now confronted by the bus-driver who was using foul and aggressive language. Frankly, the court almost recoils from the apparent imminence of a battery as it describes the events that transpired, never mind Mr Doran.
8. In passing, the court notes that there was some dispute in the evidence of Mr Doran and the bus-driver as to whether the bus-driver placed his hands on the car while addressing Mr Doran. Though one can see how a person leaning to speak to (or harangue) a person seated in a car might rest his hands on the car-frame, the court cannot conclude, as a matter of probability, from the testimony before it, that the bus-driver did so here.
9. Another Bus Éireann employee, a colleague of the defendant, gave evidence in court that he had been travelling as the sole passenger in the bus when it drew up behind Mr Doran's car. He indicated, consistent with what the bus-driver stated in his oral evidence, that when the bus-horn was sounded, Mr Doran immediately reached out of his car and made a rude gesture – with the bus-driver indicating, in effect, that all that followed on his part was the natural reaction of a driver who had been treated to such gratuitous rudeness. Neither the evidence of the bus-driver nor his colleague rings true in this regard. That is not to say that they were telling lies; it is merely to state that what they believe themselves to have seen does not seem to the court to be either a likely or correct reflection of what in fact occurred. Their evidence does not sit easily with the impression that the court garnered of Mr Doran's general demeanour. It does not sit easily with the fact that Mr Doran had waved other buses on without encountering any difficulty. And it does not sit easily with general experience: Mr Doran may have been relatively nonchalant at being caught the way he was when his car broke down; even so, he was clearly sensitive to the fact that he was causing an obstruction on the road. That he was sensitive to this is evidenced by the fact that Mr Doran pushed his car back to facilitate arriving buses as much as he could; and he kept alert to the arrival of such buses, waving drivers on while he awaited the recovery vehicle. Mr Doran was, in short, doing all he could reasonably do in the situation in which he found himself. It does not ring true that such a man would suddenly depart from this entirely reasonable course of behaviour and start making rude gestures at the first approach of the next bus. What the court

considers more likely to have occurred is that Mr Doran reached his hand out of the car to wave the bus on – as he had with other drivers – that this was mistaken as a rude gesture and that the bus-driver then continued testily to insist that Mr Doran move his car.

10. The court's sense that the balance of probabilities favours Mr Doran's version of events in all respects, save as regards the bus-driver's placing his hands on Mr Doran's car, is buttressed by what Mr Doran did after the principal events complained of. He used his phone to take a photo of the identifying number on the rear of the Bus Éireann bus so that he could make a complaint in due course. This is hardly the behaviour of a man who thinks that he may be in the wrong. He made prompt complaint to a member of An Garda Síochána soon after the events. This is hardly the behaviour of a man who thinks that he may be in the wrong. The following day, when the heat of the moment was gone, he was so upset by what had happened that his girlfriend (not Mr Doran) e-mailed Bus Éireann and, in the course of a reasonably worded complaint, indicated that Mr Doran was "*distraught*". Again this seems a to-be-expected response on Mr Doran's part. In the end, Mr Doran was so vexed by what occurred that he went to see a solicitor. This is hardly the behaviour of a man who thinks that he may be in the wrong. Through the agency of that solicitor, Mr Doran sought on-bus CCTV footage from Bus Éireann in the hope that the events complained of had been caught on camera. To the surprise of those of us who might think that nowadays every action on a public bus is recorded, no such footage has in fact proved to be available. Regardless of this, however, none of the just-described actions seems consistent with the behaviour of a man who thinks that he may be in the wrong; in fact it is consistent with the behaviour of a man who thinks that he has done nothing wrong, who has been exposed to an unexpected verbal onslaught that included an element of racial abuse, who is not going to let matters lie, and who wishes access to the best evidence possible to prove his case.

11. On 15th May, 2014, Mr Doran commenced an action before the Circuit Court seeking (a) damages for assault, battery and/or false imprisonment, (b) such further and other order as the court may see fit, and (c) certain ancillary relief. That action was unsuccessful and the matter has now come on appeal before this Court. There was no mention of the battery claim on appeal and rightly so: there is not a whiff of battery in the facts as the court finds them. As for the claim of false imprisonment, this derived from the fact that the bus-driver allegedly rested his hands on the door or frame of Mr Doran's car, thereby containing Mr Doran in the car against his will for a matter of seconds. Even if this did happen, and the court does not find as a matter of probability that it did, the law does not concern itself with trifles (*'de minimis non curat lex'*). Judges do not sit in judgment on extremely minor transgressions of the law; if they did, our system of court-administered justice would quickly grind to a halt, or become ridiculous, or both. So even if the false imprisonment did occur (and the court does not find that it did) no relief would follow in any event. That leaves the claim of assault.

12. An assault consists of an act that places another person in reasonable apprehension of an immediate battery being committed upon that person (*Dullaghan v. Hillen* [1957] Ir.Jur.Rep.10, 12; *Read v. Coker* (1853) 138 E.R. 1437, 1441). There is no reason why words in and of themselves cannot constitute an assault. When spoken in a context suggesting the imminent use of force, words suffice for assault. As Lord Steyn observes in *R. v. Ireland* [1998] A.C. 147, 162, "*The proposition that a gesture may amount to an assault, but that words can never suffice, is unrealistic and indefensible. A thing said is also a thing done.*" Here, of course, there are acts as well as words: the bus-driver got out of his bus, came across to Mr Doran's car, inclined to the driver-window of the car and launched into a foul-mouthed, aggressive, and racially coloured diatribe. Mr Doran instinctively recoiled at this point, convinced by both the forcefulness of the language and the approach and stance of the bus-driver, that the driver was about to hit him.

13. One point that has given the court cause for pause in this last regard is that the essential substance of what the driver was saying – absent the racial abuse and low vulgarity – was 'If you gesture at me again, I will perform a certain act upon you.' If one looks at these words in the quietness of a judge's chambers, they comprise a conditional promise of future battery, with it being a matter for Mr Doran to satisfy the relevant condition before the battery will follow – albeit a condition formulated in the context of what the court considers was a mistaken apprehension on the bus-driver's part that a wave to move on was in fact something quite different. However, it seems to the court that for it to adopt this line of analysis would be to stretch semantics to an absurdity. Life takes place in the real, and logic must yield to reality. The bus-driver in issuing his threat was not formulating a contractual agreement and his words do not fall to be construed as if he were. His approach to Mr Doran's car was aggressive, the tone of his remarks was aggressive, the entirety of the episode was clothed in aggression on the bus-driver's part, and the language used contained a conditional threat. In such circumstances, practical experience teaches that violence can very quickly ensue notwithstanding any initial conditionality upon which a threat of violence may be based. It is not surprising in all the circumstances presenting that Mr Doran thought that he was about to get a fist in the face and instinctively recoiled from the anticipated blow. The bus-driver, in prompting this reaction by the totality of his actions, committed an assault on Mr Doran. For that assault the payment of some level of damages must follow.

14. Our nation is now more culturally diverse than it has ever been, and is so much the better for it. When the court recalls the sometimes bland uniformity of yesterday and compares it with the rich diversity of today, it cannot but conclude that, as a nation, we are facing into an even brighter tomorrow. A sad irony of this case is that Mr Doran, an Irishman who is black, was racially abused by a white man who has come to this country from abroad and thus might himself be exposed – unacceptably, were it to occur – to some form of intolerance. The lesson the court takes, and that perhaps the bus-driver might wish to take from the above-described events, if the bus-driver has not already done so – and, again, he seems to be a generally decent man possessed of at least some level of regret over what occurred – is just how important it is in our ever more cosmopolitan culture that none of us ever descend, even in a moment of temper, into threatening language that does not reflect who we truly are or wish to be, and – worse – which casts a slur on another person's race, or, to borrow from the equality legislation – and none of these factors present here – a person's gender, civil or family status, sexual orientation, religion, age, disability, or membership of the Traveller Community.

15. The court will make an order as to damages, justice will have been served and, the court trusts, that will be an end of matters.