THE COURT OF APPEAL

JUDICIAL REVIEW

Neutral Citation Number: [2017] IECA 196

Birmingham J.
Mahon J.
Hedigan J.

Appeal No. 2016/124

BETWEEN

CHRISTOPHER CONNORS

APPELLANT

-AND-

DISTRICT JUDGE JAMES FAUGHNAN

FIRST RESPONDENT

-AND-

THE DIRECTOR OF PUBLIC PROSECUTIONS

SECOND RESPONDENT

JUDGMENT of Mr. Justice Hedigan delivered on the 30th day of June 2017

1. This is an appeal against the judgment and order of the High Court (O'Regan J.) of 15th February, 2016, refusing an order of *certiorari* to quash the appellant's conviction of 23rd September, 2014, and the two month suspended sentence imposed upon him on 7th October, 2014, for "handling stolen property". On 24th November, 2014, the appellant was granted leave to seek judicial review on the basis that the District Court judge had breached fair procedures and natural justice by:

> (i) failing to give any or adequate reasons for refusing a direction to acquit;
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> (ii) acting in a manner tantamount to refusing to give reasons;
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> (iii) breaching fair procedures by indicating that he did not have to give reasons;
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> (iv) erred in law and acted in excess of jurisdiction by stating that he was not obliged to give reasons in the circumstances of the case.

Background

2. On 16th December, 2013, Gardaí entered the appellant's dwelling in Clanbrassil Street and located therein a stolen blue canvas holdall bag that had been taken in the course of a burglary in County Monaghan on 23rd November, 2013. The full and zipped up bag was located in a very small bedroom shared by the appellant with his partner, Bridget Kelly. On the 22nd of September 2014 she pleaded guilty to handling the stolen bag. On the 23rd of September 2014 the appellant pleaded not guilty to the handling charge but expressly accepted at the start of the District Court hearing that the bag had been stolen and that it had been found in his bedroom. Detective Garda Ryan testified that when he called to the appellant's apartment on 16th December, 2013, to execute the search warrant, it appeared to him that the appellant, who admitted him into the bedroom, had only very recently got out of bed. His partner was still in bed. A number of items were seized in the course of the search on the suspicion that they constituted stolen property taken in the course of various crimes. One of these items was the blue holdall bag the subject of this case. Sergeant Watters seized the bag because he suspected it had been stolen by the appellant. However, although the appellant was questioned at three subsequent Garda interviews, nothing probative arose to substantiate such a suspicion. Accordingly, after the injured party identified the bag as her property and when it was confirmed to be stolen, the appellant was charged with the offense of handling contrary to s. 17 of the Criminal Justice (Theft and Fraud Offences) Act 2001 ("the 2001 Act"). The appellant's defence as put to Detective Garda Ryan in cross examination was that it was his partner, Ms. Kelly, and not himself who had brought the bag into the room. Sergeant Watters described the dimensions of the bedroom and that the double bed occupied most of the room space. He had located the holdall bag on the floor of the bedroom between the bottom of the bed and the wall. The zipped up bag was full of China, cutlery and crystal glasses however no charges had been proffered in relation to the contents. After the two Garda witnesses had given their evidence and the prosecution had closed its case, the appellant applied for a direction on the basis of two very brief legal submissions.

3. These submissions were as follows:

> "I have two submissions to make very briefly in relation to this matter. The first is that I think it was Detective Garda Ryan indicated that he suspected that it was Mr Connors who stole these items and as the Court will be aware that section 17 of the Criminal Justice (Fraud Offences) Act indicated that handling has to occur otherwise than in the course of stealing. It's an alternative offence so that it can't be both. So, if the Garda was suspecting that this gentleman has in fact stolen the items, my submission is that he can't have been charged with the alternative charge of handling the items and on that basis I'm saying that this charge should be dismissed."

Further and linked with this submission counsel for the appellant continued:

> "[C]onsidering that the section itself states that, "a person is only guilty of handling if otherwise in the course of stealing

> he or she knowingly or being reckless as to whether it was stolen dishonestly receives…" et cetera et cetera So, it's I suppose part of the offence that it's otherwise than in the course of stealing and considering that the guard has given evidence that he suspected that it was Mr Connors who stole these items, it would seem to me that it would be a logical follow-on from that that he can't then be guilty of the handling of that particular offence or that particular piece of property."

4. The second submission made by counsel for the appellant was as follows:

> "The second submission I have is in relation to Detective Garda Ryan's evidence where he indicated that Mr Connor's partner, Ms Kelly, has already entered a guilty plea to those matters. Obviously if the Court were to find both parties guilty, there would have to be some evidence of a joint enterprise or common design. The State have made – have led no evidence whatsoever in relation to that. So, on that basis if some other party has already entered a guilty plea to this matter, I would submit that outside of the State running a case on joint enterprise or common design that Mr Connors can't also be convicted of the same offence and that evidence certainly wasn't before the Court. So, on that basis I'm submitting that Mr Connors should not be also convicted of an offence that his partner has already admitted to."

5. In relation to the first submission the judge indicated that he was not accepting the submission. He gave no reason. There followed a brief exchange in which the District Court judge suggested that counsel for the appellant should have pursued with the Garda the question of his suspicion of theft on the part of the appellant if that was the case that he wished to make. In relation to the second submission the District Court judge simply responded that he believed that the appellant had a case to answer. The District Court judge indicated to counsel for the appellant that he was not entitled to reasons for acceptance or rejection of the submissions. Following a brief exchange the District Court judge recited the last two lines of the charge:

> "… knowing that the property was stolen or were reckless as to whether it was stolen…"

He then stated that he was not accepting counsel's submission.

6. On 15th February, 2016, O'Regan J. delivered a short *ex tempore* judgment in the application as follows:

> "This is an application for an order quashing a decision of the District Court following a trial which occurred on 23rd of September 2014. And that in turn followed the finding of a blue holdall bag at the bedside of the accused's bedroom, which he shared with his girlfriend on 16th of December 2013. The offence the accused was charged with is under section 17 of the 2001 Act. Only one charge was preferred against the defendant and this was confirmed by Mr Clarke in the transcript at page 7, and the handling of the bag was the offence. During the course of evidence, a garda gave his view that he suspected the accused of having stolen the items. Following this, there was a submission on behalf of the accused, one, that because of the reference to the stealing he could not be charged with handling and two, because of the involvement of his girlfriend, she having pleaded guilty on the previous day to 23rd of September, 2014 a common design had to be established. The submission in relation to the charge of handling as opposed to stealing was made at page 9 of the transcript and the submission in relation to the involvement of the girlfriend and the subsequent necessity to establish a common design was made at page 11 of the transcript. After both submissions, the judge quoted from the charge and this appears at page 12 of the transcript.
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> The relief is sought on grounds relating to the manner in which the District Court addressed the arguments raised on behalf of the accused as opposed to any of the possible scenarios arising under section 17 of which the defendant was later convicted. There are two relevant decisions of the Supreme Court, namely Kenny of 2014 and O'Malley v. Ballagh of 2002. In the 2014 judgment of the Chief Justice, she reviewed prior cases including European Court cases. And in the course of the case of Ruiz v. Spain of 2001, it was held that: "reasons for a decision cannot be understood as requiring a detailed answer to every argument". And the Chief Justice refers to this at paragraph 21 and 22 of her judgment. In this judgment of the Supreme Court, at paragraph 15, it is stated that: "The fact that the nature and ingredients of the offence are straightforward is an important factor". She also held that the onus rests on the applicant. In this matter, there was an admission which appears at the earlier part of the transcript that the items were indeed found in the accused's premises and that the owner of the property was allowed to go. There was reference to the stolen – or the allegedly stolen property. At paragraph 24 of the Chief Justice's judgment, she says there is no requirement on a trial judge to elaborate on the obvious. I think this judgment is consistent with the prior Supreme Court judgment of O'Malley v. Ballagh. And in that case the judicial review was successful on the basis that the defendant did not know which of the arguments the Court was rejecting. In this matter, I believe that the defendant did know of the charge, he knew of the fact that both of his arguments were being rejected and the basis of that rejection was the content of section 17. And having regard, therefore, to the necessity of giving reasons in the case of a straightforward matter, I believe that the application must be refused as both submissions were dealt with by the judge in his recitation of section 17."

7. The grounds of appeal herein are as follows:

> (i) The learned trial judge erred in law by failing to apply the law as set out in Kenny v. Judge Coughlan and the DPP [2014] IESC 15 and O'Mahony v. Ballagh [2002] 2 I.R. 410; reaffirmed by the Supreme Court subsequent to the hearing before O'Regan J., in the case of Oates v. Judge Browne and the DPP [2016] IESC 7;
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> (ii) The learned trial judge erred in fact and in law by holding that the District Court judge had given any or any sufficient reasons for his decisions;
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> (iii) The learned trial judge erred in law by holding that the appellant's case was of similar simplicity to that in Kenny v. Judge Coughlan and the DPP [2014] IESC 15 and accordingly, the reasons given were sufficient;
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> (iv) The learned trial judge erred in fact and law by holding that as the District Court judge had read out s. 17 of the 2001 Act this was sufficient to satisfy the obligation to give a reason for his decision in circumstances where the District Court judge had not in fact done so, but counsel for the DPP in the hearing in the High Court had;
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> (v) The learned trial judge erred in law in holding that following a summary trial the only entitlement of a convicted person was to leave the court knowing what they have been convicted of and why they have been convicted, such however not including the reasons for such;
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> (vi) The learned trial judge erred in law by failing to address, in any way, the fact that any comments of the District Court

judge were in the context of the District Court judge believing and having specifically indicated he did not have to give reasons and that there was superior court authority affirming his position;

(vii) The learned trial judge erred in law by failing to address the District Court judge's incorrect reference to the decision in O'Brien v. District Judge John Coughlan & Anor. [2014] IEHC 425 and the decision of the Court of Appeal in that case at [2015] IECA 245.

The submissions of the appellant

8. The appellant submitted that the following principles can be extracted from the case law:

(i) It is an essential and fundamental element of a fair trial that a person is aware of the reason(s) as to why he is convicted and the same should be provided accordingly. This includes an indication of which arguments made on behalf of an accused are being accepted and which are being rejected;

(ii) This right has its origins in the Constitution;

(iii) Reasons should be given to allow an accused person and his/her advisors make a decision as to how they wish to proceed with the case – be it giving evidence, requesting a case stated or contemplating judicial review proceedings;

(iv) Public confidence in the judicial process is heightened when rational reasons are explained and furnished;

(v) Reasons given should be expressed with clarity;

(vi) The extent and detail that the reasons to be given will depend on the nature of the offence before the court, the venue of the hearing and the length of the court list on the day;

(vii) Where the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other;

(viii) A failure or refusal by a decision maker to explain or give sufficient reasons for a decision may amount to a ground for quashing it.

9. In this case it is submitted that the District Court judge not only failed to engage with the arguments made by counsel but he specifically stated that he was not obliged to "enlighten" counsel as to the reasons for the rejecting the submissions made. The appellant further submits that in her *ex tempore* judgment, the learned High Court judge appears to have based her decision on two factors:

(i) the judgments of the Supreme Court in *O'Mahony v. Ballagh* and *Kenny v. Coughlan*, and

(ii) an erroneous assumption that District Judge Faughnan read out the content of s. 17 of the 2001 Act to support his rejection of the submissions made. The appellant submits that the learned High Court judge was incorrect in her reliance on both of these factors.

The appellant further submits that the learned High Court judge erroneously interpreted and applied the *ratio* in *O'Mahony* and *Kenny*. The appellant further submits that the learned High Court judge in her ruling did not deal with the fact that the District Court judge informed counsel that he did not have to give reasons for his decision. Nor, it is submitted, did she deal with the erroneous reference by the District Court judge to O'Brien. The appellant also submits that at the hearing before the High Court, counsel for the DPP consistently referred to aspects of the underlying facts of the case and the nature of the alleged offence. This, he submits, is a practice deprecated by Hardiman J. in *O'Keeffe v. Connellan* [2009] 3 I.R. 643 at p. 653. Finally it is submitted that the primary basis for the learned High Court judge's ruling was influenced by her erroneous belief that the District Court judge had gone further than he did in terms of giving a reason in that she thought he had recited the whole of s. 17 of the 2001 Act.

The submissions of the second respondent

10. The learned High Court judge had no difficulty in rejecting the appellant's claim. The case was a straightforward one and was determined by the judge in the context of the reliefs sought, the submissions made and by specific reference to the District Court transcript. The learned High Court judge determined that the appellant knew the charge that he faced and that he was aware that both of his arguments had been rejected and the basis therefore. The judge it is submitted correctly concluded that it was a straightforward matter and the District Court judge had adequately dealt with the case before him. The appellant made further submissions in relation to the two matters upon which a direction was sought although it would appear that those two matters were not in fact pursued before the High Court in judicial review. The challenge in judicial review was solely based upon the proposition that the judge in the District Court failed to give reasons. The respondent's submissions in this regard are directed towards demonstrating that in fact the grounds for the application for a direction were very weak ones. As to the obligation to give reasons, the respondent submits that there is in fact no real difference between the parties herein and the disagreement between them is on the basis of how the case law should be applied to the facts of this particular case. The respondent submits that the District Court judge entertained and engaged with the appellant's two brief submissions before he rejected them. Thus they submit this is an entirely different type of a case to *Oates.* It's closest comparator is *Kenny.* Extensive reasons were not required. The transcript records that, when pressed for reasons, the judge explained his position. There was no evidence that the appellant had perpetrated the theft and an historic Garda suspicion was not sufficient. The District Court judge pointed out that the appellant had the opportunity to further explore that suspicion with the Garda if he had so wished but he had not done so. The prosecution solicitor responded to the appellant's submissions and highlighted the fact that the appellant and his partner shared the same bedroom and thus they both had control of the stolen property. The District Court judge then offered the appellant's counsel another opportunity to respond but he declined. The District Court judge was not initially inclined to give reasons but when pressed by counsel to do so he did. In this regard he quoted from the charge and he specifically referenced the last two lines of the charge … "knowing that the property was stolen or were reckless as to whether it was stolen." That, it is submitted, represented an engagement with and a response to both of the appellant's submissions. The District Court judge indicated that he was not accepting either of the appellant's submissions. The District Court judge concluded that a *prima facie* case had been established. In the context of the detection of the full stolen holdall in the appellant's small bedroom it was open to the judge to find a *nexus* between the appellant's state of knowledge and the commission of the offence. He specifically cited the alternatives of "knowledge" and "recklessness" by reference to the charge sheet

that contained the specific terminology used by the legislature in section 17. It is submitted that it is difficult to see how his partner's guilty plea could somehow change that dynamic. The appellant knew the case he had to meet, was aware of the statutory presumptions that he could seek to rebut, yet, he declined to give evidence. The District Court judge was then entitled to convict on the evidence and he acted within jurisdiction in so doing. The appellant could have been in no doubt of the outcome of the trial and/or why he was convicted. The respondent submits that the learned High Court judge expressly noted and cited the parts of the transcript that were relevant to her rulings including the relevant portion of the charge sheet containing the elements of s. 17 that the District Court judge had quoted. The learned High Court judge expressly noted that the District Court judge quoted from the charge. She did not suggest that it had been recited chapter and verse.

Decision

11. This application for judicial review is brought on the basis of a failure by the District Court judge to give reasons as to why he rejected the two submissions made by counsel for the appellant in the District Court. The learned High Court judge correctly identified this as the substance of the appeal. She considered the judgment of the Chief Justice in Kenny. She particularly noted that there was no requirement on a trial judge to elaborate on the obvious. She went on to hold that the appellant did know the charge against him, did know that both of his submissions were being rejected and that the basis of that rejection was the content of section 17. She held that the District Court judge's reference to the section and his recitation thereof, in the context of such a straightforward matter was sufficient.

12. What is the extent of a District Court judge's obligation to give reasons? The fundamental principle is that outlined by Murphy J. in *O'Mahony v. Ballagh* [2002] 2 I.R. 410 where he stated at page 416:

> "… every trial judge hearing a case at first instance must give a ruling in such a fashion as to indicate which of the arguments he is accepting and which he is rejecting and, as far as is practicable in the time available, his reasons for so doing."

This principle was elaborated by Charleton J. in *Lyndon v. Judge Collins* [2007] IEHC 487 where he stated at paragraph 7:

> "7. Now, I am satisfied as a matter of law that judicial bodies are required to give reasons for their decisions, but the extent of which judicial bodies are required to give reasons for their decisions depends upon the nature of the case that they are dealing with and the nature of the remedies that flow from such a decision."

Charleton J. continued at paragraphs 9 to 13:

> "9. The third ruling was in essence a ruling to the effect that, and I take it, and I think any reasonable person would take it, to the following effect, that the defence case had been rejected in its entirety and that the evidence given on behalf of the prosecution by the prosecuting Garda was accepted by the learned judge.
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> 10. It seems to me that there is a difference in relation to this case compared to many of the cases helpfully opened to me by Mr. McCarthy. This is not a case where, consequent upon the reasons, one would have a right to appeal for instance in relation to a pension, and so need detailed reasons as to why you were not so entitled under an administrative scheme. I am satisfied as well that it is different to *O'Mahony v. District Judge Ballagh* [2001] IESC 99 for the simple reason that this is not a case where it was essential to know going into the witness box whether or not one's main legal point had been accepted or rejected. 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.
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> 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 give 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.
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> 12. On the point of discretion in judicial review, I would add that I feel in this case, and it would be a rare case indeed where an applicant has won a case on a matter of law in judicial review that one would apply the principle enunciated by Henchy J. in *State (Abenglen Properties Ltd) v Dublin Corporation* [1984] IR 381, but I feel that if indeed there was a problem in giving reasons for a decision, which I have ruled did not happen, that the learned district judge did not fall into unconstitutionality thereby, as Mr. McCarthy has argued, depriving the applicant of his right to a trial in the District Court under the Constitution, followed by a rehearing under the statutory scheme in the Circuit Court, an appeal in this case would meet every alleged defect, if there was a defect, in the ruling that Judge Collins gave; see *Stefan v Minister for Justice* [2001] 4 IR 203.

13. Lastly, I am completely satisfied having read the papers and, as I have said, I am grateful for the way they have been set out by the applicant, that there is no injustice in this case which cannot be met by an appeal. It is obvious in my judgment what happened. In consequence of that, even if it were to be the case that I was satisfied in some way that there was a defect, I would refuse the remedy of certiorari because I simply do not believe it is in the interests of justice. I believe it is apparent what actually happened."

13. In this case, the learned High Court judge, as noted above, relied upon *Kenny.* It is indeed a very good comparator for this case. In *Kenny* the District Court judge upon application for a direction simply stated that he was satisfied with the evidence presented and saw no reason to dismiss the prosecution. In the High Court on the hearing of the application for judicial review, O'Neill J. described the applications made as being on grounds weak or unstateable. He was of opinion that the terse response of the District Court judge was readily understandable to the parties and unequivocally showed that the District Court judge accepted the evidence of the prosecution. On appeal in the Supreme Court Denham C.J. stated at paragraph 24:

> "24. As the case-law of the European Court of Human Rights indicates, and as also stated earlier in this judgment, the degree and extent to which a decision of the District Court must be explained by giving reasons will depend in turn on the nature and circumstances of the case. In some cases, it may be necessary to succinctly but fully explain the reasons for the decision so that the parties have a proper understanding of the reasons upon which it was based. In this case the offence was simply that of speeding and the mode of trial was summary. This was one of hundreds of such cases that come before the District Court routinely every day of the week. There had been a clear presentation of the issues by the

> parties, in adversarial proceedings. The District Court Judge indicated that he preferred the evidence given on behalf of the prosecution. The District Court Judge said that he was accepting the evidence of the prosecution. In the circumstances that was sufficient reason. There was no requirement for the trial judge in such a situation to elaborate on the obvious."

It is to be noted that the Chief Justice cited and did not demur from O'Neill J.'s observation that where submissions were so weak or unstateable the District Court judge's simple refusal to accept them was sufficient to meet the obligation to give reasons.

14. In the light of the above case law, the extent of a District Court judge's obligation to give reasons may be summarised as follows:

> (a) District Court judges must give their rulings in such a fashion as to indicate which of the arguments are accepted and which are rejected.
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> (b) So far as is practicable in the time available, District Court judges should give their reasons for rejecting or accepting those arguments.
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> (c) The extent to which District Court judges are required to give reasons for their decisions depends upon the nature and circumstances of the case and the nature of the remedies that flow from such a decision. The simpler the case, the less the reasoning that is required.
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> (d) There may be cases so straightforward that merely indicating that the evidence is sufficient to satisfy the District Court judge that there is a case to answer or to convict will be adequate reasoning. A clear statement of rejection of one side's evidence and acceptance of the other may suffice. There is no need to elaborate on the obvious.
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> (e) Those convicted must know of what they have been convicted and why. Legal submissions considered by the District Court judge to be weak or unstateable, particularly when assessed in the light of the evidence, may be answered adequately by a simple statement that they are rejected.

15. Applying these principles to this case; the appellant has referred the Court to the District Court judge's comments that appear on the transcript at p. 12 where, having rejected the application for a direction, he stated that he did not have to enlighten counsel for the appellant as to his reasons for acceptance or rejection of his submissions. He went further to indicate that counsel for the appellant was not entitled to reasons as to why his submissions were rejected. However when pressed further the District Court judge read out the last two lines of the charge:

> "… knowing that the property was stolen or were reckless as to whether it was stolen…"

16. The District Court judge appears to have been referring to the decision of Kearns P. in *O'Brien v. Judge Coughlan* [2014] IEHC 425 when he stated that he did not have to enlighten counsel in respect of the acceptance or rejection of submissions and that counsel was not entitled to reasons. He also indicated that he believed there were other High Court decisions supporting this proposition. As can be seen from the above cases and the principles derived therefrom, this is too broad a statement. Kearns P. in the above judgment actually states in the first sentence of the decision part of his judgment at paragraph 15:

> "It goes without saying that judges must provide reasons for their decisions and this obligation has been emphasised repeatedly by the superior courts."

He then went on to find that the fact the District Court judge in that case had not explicitly stated in his ruling that he had considered the option of community service and given reasons for not imposing such service where the same was neither sought nor consented to, was not a requirement.

17. As stated above, it is only where the nature of the case is so straightforward or obvious or the submissions are so weak or unstateable that the need for a District Court judge to give reasons is met by simply stating that the application for a direction is refused.

18. In this case the submissions made were very weak. The first was that as the Garda had suspected the appellant of stealing the bag, he could not be charged with handling it. It might well be that the appellant was suspected of theft but he was charged only with handling. There can be no bar on charging for the handling where the Garda did not have the evidence to prefer a case of stealing. Joined with this submission was another linked one that the handling had to be otherwise than in the course of stealing. In this case the handling could not be in the course of stealing since there was a three week gap between one action and the other. The second submission was to the effect that since the appellant's girlfriend had pleaded guilty to handling the bag, the appellant could not be convicted because two people cannot be convicted of the same offence. This is patently not so. Any number of people may be convicted of handling the same property. In *Kenny*, the Chief Justice cited without demurring, the finding of O'Neill J. in the High Court where he found no breach of the appellant's rights where weak or unstateable points raised in submissions were rejected without giving reasons. The submissions made herein fall into that category and the judge's dismissal of them without giving reasons for doing so was permissible and did not breach the appellant's constitutional right to fair procedures and natural justice.

19. Although this disposes of the appeal, it is fair to observe that when challenged by counsel on his refusal to give reasons, the District Court judge did in fact engage with the arguments raised. He questioned whether counsel for the appellant should have pursued with the prosecuting Garda the question of his suspicions of theft on the part of the appellant. He ended up reciting that part of s. 17 which referred to knowledge that the property was stolen or being reckless as to whether it was stolen. It may have been a rather inconclusive exchange but it was clearly removed from a refusal to engage at all.

20. For the above reasons the appeal is dismissed.