Neutral Citation Number: [2008] IEHC 334

THE HIGH COURT

2008 645 SS

IN THE MATTER OF AN APPEAL BY WAY OF CASE STATED PURSUANT TO SECTION 2 OF THE SUMMARY JURISDICTION ACT 1857, AS EXTENDED BY THE PROVISIONS OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961

BETWEEN

JASON MULLIGAN
APPELLANT/ACCUSED
AND
THE DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF GARDA LINDA RYAN)

RESPONDENT/PROSECUTOR

Judgment of Mr. Justice Charleton delivered the 29th day of October, 2008

1. This is an appeal by way of case stated by District Judge Patrick McMahon pursuant to s. 2 of the Summary Jurisdiction Act 1857, (as extended by section 51 of the Courts (Supplemental Provisions) Act 1961) on the application of the appellant who was dissatisfied with the determination of the learned District Judge as being erroneous in point of law.

2. The opinion of the High Court has been sought on the following questions:

> (i) Where a person is charged with an offence contrary to section 24 of the Criminal Justice (Public Order) Act 1994, in that following a demand by a member of An Garda Síochána, exercising powers under section 24(2) of the Criminal Justice (Public Order) Act 1994, he did fail to provide the said member with his name and address is the prosecution obliged to prove by way of evidence:-
>
> > (a) That the demand for the name and address was made pursuant to section 24(2) of the Criminal Justice (Public Order) Act 1994;
> >
> > (b) That the Accused was informed that the demand was being made pursuant to the aforesaid section;
> >
> > (c) That the accused was informed that failure to comply with such a demand was an offence.
>
> (ii) In light of the Court's answers to the above, was the learned District Judge correct in law in convicting the appellant on the evidence before the Court.

Factual Background

3. The particulars of the offence alleged against the appellant were that he had, on the 24th of March, 2007, at Ballyfermot Road, Ballyfermot, Dublin 10, following a demand made by Linda Ryan, a member of An Garda Síochána, exercising her powers under section 24(2) of the Criminal Justice (Public Order) Act 1994, failed to provide Garda Ryan with his name and address. He pleaded not guilty, and the charge proceeded to hearing. Garda Linda Ryan was the sole prosecution witness.

4. During the course of the hearing, the learned District Judge made the following findings of fact:

> (i) Garda Ryan came across the appellant asleep and roused him;
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> (ii) Garda Ryan formed the opinion that the appellant was intoxicated;
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> (iii) Garda Ryan determined to arrest the appellant for his own safety;
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> (iv) Garda Ryan twice asked the appellant for his name and address, which he refused to provide;
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> (v) Garda Ryan, in making the said demand of the appellant, did not invoke or refer to section 24(2) of the Criminal Justice (Public Order) Act 1994;
>
> (vi) Garda Ryan, in making the said demand of the appellant, did not inform the appellant that it was an offence not to provide one's name and address once such a demand has been made.

5. At the close of the Prosecution case, counsel for the appellant sought a direction that there was no case to answer on the basis that no evidence had been adduced that Garda Ryan had made a demand for the appellant's name and address in the exercise of her powers under s. 24(2) of the Criminal Justice (Public Order) Act 1994.

6. It was further submitted on behalf of the appellant that, even were such a demand made, natural and constitutional justice, and in particular the doctrine of fair procedures, would dictate that for such a demand to be proved lawful, it would have to be proved that the appellant was informed that failure to comply with such a demand was an offence, as it was not an offence to fail to comply with a demand which was unlawful or unconstitutional.

7. The learned District Judge declined to hold with counsel's submissions and, having heard all the evidence, was satisfied that the offence had been proven beyond reasonable doubt.

The Relevant Power

8. Sections 24(2) and (3) of the Criminal Justice (Public Order) Act 1994, provide as follows:

> "(2) Where a member of An Garda Síochána is of the opinion that an offence has been committed under a relevant provision, the member may:
>
> > (a) demand the name and address of any person whom the member suspects, with reasonable cause, has committed, or whom the member finds committing, such an offence…

> (3) Any person who fails or refuses to give his name and address when demanded by virtue of *subsection (2)*, or gives a name and address when so demanded which is false or misleading, shall be guilty of an offence."

9. Members of An Garda Síochána are permitted to ask members of the public for any information that is of interest to their enquiries. Rule 1 of the Judges' Rules of 1912 provides that:

> "When a police officer is endeavoring to discover the author of a crime there is no objection to his putting questions in respect thereof to any person or persons, whether accused or not, from whom he thinks that useful information may be obtained."

10. This is also made clear in the judgment of O'Hanlon J. in *DPP v. Cowman* [1993] 1 I.R. 335 (at p.337) where he said that no:

> "…restriction is imposed by law on the right of a member of An Garda Síochána to approach members of the public from time to time as he thinks fit for the purpose of speaking to them and having communication with them on an informal basis."

11. Any suggestion to the contrary would be wrong. It would in addition prevent the gardaí from acting with the flexibility and informality that their investigative role within society requires and would amount to a declaration that in the investigation of crime they have lesser powers than an ordinary citizen. In many cases, a simple request for a person's name and address will be sufficient to obtain that information without any necessity for recourse to statutory powers of compulsion. However, a person who fails to comply with such an informal request commits no offence.

12. By contrast, where a power of compulsion, enforceable by sanction, is exercised, a person should be informed of this power and also of the consequences of a refusal to comply. In *DPP v. Rooney* [1992] 2 I.R. 7 (at p.10), O'Hanlon J. said the following in relation to powers of search exercisable by the gardaí:

> "Although less drastic in its effect than a power of arrest, [the power of search] does nevertheless amount to a substantial and significant interference with the liberty of the subject, and it seems to me that the same principles [relative to a lawful arrest] … must apply with equal force in this situation also, if the constitutional guarantees of liberty of the person are to be adequately defended and vindicated. Consequently, I would hold that before the power of search…can be lawfully exercised, the suspect is entitled to be informed of the nature and description of the statutory power which is being invoked."

13. In the specific context of the Criminal Justice (Public Order) Act 1994, s. 8 empowers members of An Garda Síochána to require a person to desist from misbehaving in a specified manner, such as shouting out loud or banging on drums, or to immediately leave the vicinity of the place concerned. Section 8(2) of the Act makes refusal to comply with such a direction an offence. In *DPP v. Galligan* (Unreported, High Court, 2nd November, 1995), Laffoy J. held that a person in respect of whom a s. 8 direction was made was entitled to be informed of his legal obligation to comply with such direction and of the penal sanction applicable in the event of non-compliance. I quote p. 5 of the unreported judgment:

> "In a prosecution for an offence contrary to section 8(2) of the 1994 Act there should be evidence before the court of trial that the accused was informed or was aware of the fact that if he did not comply with the direction being given to him by a member of An Garda Síochána he would be committing a criminal offence; no particular form of words need be used to convey such a warning."

This statement of the law has more recently been approved by Ó Caoimh J. in the case of *Bates v. Brady* [2003] 4 I.R. 111.

14. I am satisfied that these principles apply equally to the power of compulsion under s. 24(2) of the Criminal Justice (Public Order) Act 1994. However, out of caution, I need to add to what has already been said. It cannot, however, be expected that the gardaí should be turned into walking repositories of sections and sub-sections of various Acts of the Oireachtas. That has never been the law. A citizen is not obliged to submit to a demand pursuant to police powers unless information is provided to the citizen that such a power exists. This is the theoretical foundation whereby an arrest is lawful only where the reason for arrest is stated. In *Christie v. Leachinsky* [1947] A.C. 573 at 587-588, Viscount Simon reduced the law on arrest to the following propositions:

> "(1) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2.) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3.) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4.) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, *prima facie*, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed."

This passage was cited with approval in the Supreme Court by O'Higgins C.J. in the *DPP v. Walsh* [1980] I.R. 294 (at p. 306) and again by Blayney J. in *DPP v. Mooney* [1992] 1 I.R. 548 (at p.553).

15. In arresting someone for murder, for instance, a garda does not have to mention s. 4 of the Criminal Justice Act 1964. He or she need merely specify the offence of murder and its occasion. Similarly, here, a lawful demand for a name and address is made where a garda specifies that he or she has a power under the Public Order Act or Criminal Justice Act to demand such particulars and that if they are not given an offence is committed. If no name and address is given, or if false or misleading particulars are proffered, then the offence occurs.

Conclusion

16. I would therefore conclude that the conviction of the accused/appellant was in error.