

THE HIGH COURT

2018 No. 1430 SS

IN THE MATTER OF A CASE STATED PURSUANT TO SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

(AT THE SUIT OF GARDA CONOR GURN)

AND

ANTHONY McGRATH

PROSECUTOR

DEFENDANT

JUDGMENT of Mr. Justice Garrett Simons delivered on 12 April 2019.

OVERVIEW

1. This matter comes before the High Court by way of a consultative case stated from the District Court. The case stated concerns a prosecution for driving while under the influence of alcohol. The net issue for determination by the High Court is whether the evidential presumptions applicable to a statement, which sets out the details of the analysis of a breath specimen, apply equally to a *photocopy* of such a statement. The issue arises in circumstances where the original statement has, seemingly, been mislaid.

2. The prosecution was in a position to produce a photocopy of the statement to the District Court, and to supplement that by way of oral evidence from the Garda Sergeant who had operated the apparatus used to analyse the breath specimens.

3. In order to answer the case stated, it is necessary for this court to determine the legal effect of section 30 of the Criminal Evidence Act 1992. That section provides as follows.

"30.(1) Where information contained in a document is admissible in evidence in criminal proceedings, the information may be given in evidence, whether or not the document is still in existence, by producing a copy of the document, or of the material part of it, authenticated in such manner as the court may approve.

(2) It is immaterial for the purposes of subsection (1) how many removes there are between the copy and the original, or by what means (which may include facsimile transmission) the copy produced or any intermediate copy was made.

(3) In subsection (1) 'document' includes a film, sound recording or videorecording."

4. For the reasons set out herein, I am satisfied that—in the particular circumstances of this case—the prosecution was entitled to rely on the *photocopy* of the statement, and that same gave rise to the evidential presumptions provided for under section 20 of the Road Traffic Act 2010. In this regard, I respectfully endorse the *obiter dicta* of the High Court (O'Neill J.) in *Fitzpatrick v. Director of Public Prosecutions* [2007] IEHC 383 as representing a correct statement of the legal effect of section 30 of the Criminal Evidence Act 1992.

CONSULTATIVE CASE STATED

5. This matter comes before the High Court by way of a consultative case stated from the District Court (Judge Gráinne Malone) dated 15 November 2018. The consultative case stated is a model of its type, and presents both the factual background and the legal issues with admirable clarity and conciseness.

6. The Defendant had been charged before the District Court with an offence contrary to section 4(4)(b) of the Road Traffic Act 2010. More specifically, the Defendant had been charged with the offence of driving a mechanically propelled vehicle in a public place while there was present in his body a quantity of alcohol such that the concentration of alcohol in his breath exceeded the prescribed concentration. The Defendant had pleaded not guilty to the charge.

7. Two breath specimens had been taken from the Defendant by a Garda Sergeant, and these specimens had been analysed by the use of what is colloquially known as a "breathalyser" or "intoxilyzer". This apparatus is capable of generating a written statement which sets out *inter alia* the results of the analysis of the breath specimens. Section 20 of the Road Traffic Act 2010 provides that certain evidential presumptions apply to a duly completed statement.

8. During the hearing of the case before the District Court, the prosecutor sought to prove the concentration of alcohol in the Defendant's breath at the relevant time by relying on a photocopy of a statement which had been produced pursuant to section 13 of the Road Traffic Act 2010. A question then arose as to whether the evidential presumptions under section 20 applied to the *photocopy*.

9. The evidence which had been tendered before the District Court in relation to section 13 is summarised as follows in the case stated.

"8. Garda Gurn conveyed the Defendant to Blanchardstown Garda Station, where they arrived at 9.20 p.m. The Defendant was subsequently processed in accordance with the Custody Regulations by the Member in Charge of the station, Sergeant O'Shaughnessy. Garda Gurn then introduced the Defendant to Sergeant Pat Duggan, a trained Evidencer operator. Garda Gurn noted that Sergeant Duggan took specimens of breath from the Defendant pursuant to ss. 12 and 13 of the Road Traffic Act 2010. Garda Gurn was ultimately handed a s. 13 statement by Sergeant Duggan in respect of the breath testing. At this stage, Garda Gurn noted that the original s. 13 statement which he had been handed had been kept in an envelope attached to the back of his case file but that this had been lost. He tendered a document in evidence which he stated was a photocopy of the original s. 13 statement, and was the same copy as the one furnished to the Defendant as part of disclosure. The copy statement which was tendered in evidence is appended to this case stated at Appendix B. At this juncture, Ms. McCarthy informed the court that an application would be made in due course to have that document admitted in evidence pursuant to s. 30 of the Criminal Evidence Act 1992.

9. Sergeant Pat Duggan was then called to give evidence. He stated that he was a trained operator of the Evidenzer IRL machine. He was on duty when the Defendant was brought to Blanchardstown Garda Station by Garda Gurn. At 9.33 p.m., he commenced a twenty minute period of observation of the Defendant in the custody area of Blanchardstown Garda Station. At 9.53 p.m., he brought the Defendant to the doctor's room for the purposes of providing breath specimens using the Evidenzer IRL machine. Sergeant Duggan stated that at 9.55 p.m., he entered the Defendant's details into the Evidenzer IRL machine. He then made a requirement pursuant to s. 12(1)(a) of the Road Traffic Act 2010 for the Defendant to provide two specimens of his breath by blowing into the Evidenzer machine and outlined the criminal penalties attached to a failure to comply with this request. The Defendant duly provided these breath specimens, providing his first sample at 10.05 p.m. and the second sample at 10.08 p.m."

10. Sergeant Duggan noted that the Evidenzer then printed two s. 13 statements. These were signed by Sergeant Duggan and handed to the Defendant to sign. The Defendant signed the statements and returned both of them to Sergeant Duggan, who then handed one of the statements back to the Defendant. Sergeant Duggan noted that the s. 13 statement indicated that the level of alcohol in the Defendant's system at the time of testing was 74 mcg alcohol per 100 ml breath."

10. At paragraphs 12 and 14 of the consultative case stated, the District Court judge records that she was satisfied on the evidence of Garda Gurn that the section 13 statement tendered in evidence was an accurate copy of the original document.

11. The question posed in the case stated is expressed in the following terms.

"In the circumstances of the present case, where the original s. 13 statement is not available but a photocopy of that statement has been tendered in evidence by the prosecution, does the evidential presumption of validity under s. 20(1) of the Road Traffic Act 2010 apply to that photocopied statement?"

STATUTORY PROVISIONS

12. The defendant had been charged with an offence contrary to section 4(4)(b) and section 4(5) of the Road Traffic Act 2010. The offence is defined as follows.

"(4) A person shall not drive or attempt to drive a mechanically propelled vehicle in a public place while there is present in his or her body a quantity of alcohol such that, within 3 hours after so driving or attempting to drive, the concentration of alcohol in his or her breath will exceed a concentration of—

[...]

(b) in case the person is a specified person, 9 microgrammes of alcohol per 100 millilitres of breath.

(5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both."

13. The procedure for taking and assessing a breath specimen is prescribed under Part 4 of the Road Traffic Act 2010, and under the Road Traffic Act 2010 (Section 13) (Prescribed Form and Manner of Statements) Regulations 2015 (*"the 2015 Regulations"*).

14. Section 12(1) of the Road Traffic Act 2010 provides that where a person is arrested under various sections of the Principal Act, a member of An Garda Síochána may, at a Garda Station, do either or both of the following (a) require that person to provide two specimens of his or her breath, or (b) permit the taking of a specimen of his or her blood or his or her urine.

15. Section 13 of the Road Traffic Act 2010 requires that the person who has provided breath specimens is to be supplied with two identical statements, automatically produced by the breathalyser apparatus in the prescribed form, and duly completed by the member in the prescribed manner. The prescribed form is provided for under the 2015 Regulations.

16. The combined effect of the primary legislation and the regulations is that the following procedure is to be carried out by the member of An Garda Síochána.

(1). The Garda must input the following details into the breathalyser apparatus: (i) the member's name and number; (ii) whether the statements are to be produced either in the English language or the Irish language; (iii) the provision that it is alleged the person providing the specimens has contravened, namely, section 4(4) or section 5(4) of the Road Traffic Act 2010; and (iv) the name, address, date of birth and gender of the person providing the specimens.

(2). Following the automatic production of the two identical statements by the breathalyser apparatus, the Garda must sign the statements.

(3). The Garda must then supply those statements to the person providing the breath specimens. On receipt of the statements, that person is to be requested to immediately acknowledge such receipt by placing his or her signature on each statement, and thereupon return either of the statements to the Garda.

(4). The person providing the breath statement is entitled to retain one of the duplicate original statements.

17. Section 20 of the Road Traffic Act 2010 provides as follows.

"20.(1) A duly completed statement purporting to have been supplied under section 13 shall, until the contrary is shown, be sufficient evidence in any proceedings under the Road Traffic Acts 1961 to 2010 of the facts stated in it, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the member of the Garda Síochána concerned with the requirements imposed on him or her by or under Chapter 4 prior to and in connection with the supply by him or her under section 13 of such statement."

18. As appears, section 20 gives rise to certain evidential presumptions. Thus, a prosecutor is able to establish certain of the "proofs" for a prosecution under section 4(4) of the Road Traffic Act 2010 by reliance on a "duly completed statement". These presumptions

are rebuttable ("until the contrary is shown").

19. The most significant presumption is that the "duly completed statement" is sufficient evidence of the facts stated in it. As appears from the *pro forma* statement prescribed under the 2015 Regulations, one of the "facts" which is to be stated is the concentration of alcohol in the breath (measured in microgrammes of alcohol per 100 millilitres of breath). As appears from the definition of the offence (set out above), one of the ingredients of the offence is that the concentration of alcohol in an accused person's breath exceeds the prescribed limit. As accepted by the Defendant in his written submissions, the presumption allows the prosecution to rely on the section 13 statement "without the need for any further proof in relation to, for example, the scientific basis upon which the machine worked or the accuracy of the machine which was used to take breath specimens". See paragraph 16 of the Defendant's written submissions.

"16. As a result of s. 20(1), two evidential presumptions apply where a duly completed s. 13 statement is tendered in evidence. First, the statement is considered to be sufficient evidence of the facts contained therein without the need to prove anything further, unless the 'contrary is shown'. This means that the reading provided on the statement in relation to the actual concentration of alcohol in the breath specimens provided by a person can be treated as accurate without the need for any further proof in relation to, for example, the scientific basis upon which the machine worked or the accuracy of the machine which was used to take breath specimens.⁶ This is the 'presumption of validity' referred to in the question stated by the learned District Court judge in this case. Secondly, the statement provides evidence, until the contrary is shown, that the Gardaí complied with all statutory requirements in relation to the preparation and supply of the s. 13 statement, considered above.

Footnote 6. See Walsh, *Criminal Procedure* (2016, Round Hall) at p. 1306, para. 21–113."

20. Section 20 also gives rise to evidential presumptions in respect of what might be characterised as *procedural* matters. Until the contrary is shown, it is not necessary to adduce evidence to prove any signature on the section 13 statement or to prove that the signatory was the proper person to sign it. Further, a section 13 statement shall—again until the contrary is shown—be sufficient evidence of compliance with the procedural requirements under section 13. These have been summarised above.

21. As discussed immediately below, the gravamen of the Defendant's submission is that these presumptions in respect of procedural compliance do not apply to a photocopy of a section 13 statement. This argument seems to be based upon an allegation that only an original section 13 statement can be said to have been "duly completed".

DEFENDANT'S SUBMISSIONS

22. The essence of the argument made on behalf of the Defendant is that there is an important distinction to be drawn between (i) the admissibility of evidence, and (ii) the operation of evidential presumptions. See paragraphs [52] and [53] of the Defendant's written submissions of 26 March 2019 as follows.

"52. It is clear that s. 30 makes general provision for the information contained in copies of documents to be admitted in evidence in criminal proceedings. In that sense, it can be understood as relaxing the requirements of the best evidence rule, considered above.

53. It is submitted however that there is an important distinction to be drawn between the admissibility of evidence and the operation of evidential presumptions which might be contained in the legislation relating to the prosecution of specific offences. The fact that the information contained in a copy document may be admissible under the general provisions of the 1992 Act does not mean that the evidential presumptions which would have operated under particular statutory provisions had the original document been adduced will have effect. Instead, this must depend on the statutory language regulating the operation of those evidential presumptions. The Criminal Evidence Act does nothing to display such conclusion: it is framed in entirely general terms and does not make provision to the effect that any evidential presumptions which would have attached to the original document should be considered to apply to the copy or similar."

23. The Defendant contends that the evidential presumptions only apply when a section 13 statement which has been "duly completed" by a member of An Garda Síochána is tendered in evidence. It is submitted that the presumption cannot apply to a copy because a copy itself has not undergone the process necessary to be "duly completed", i.e. the copy has not been printed from the breathalyser apparatus and signed by a member of An Garda Síochána. (See page 17 of the Defendant's written submissions).

24. Reliance is placed on the following passage from the judgment of O'Higgins C.J. in *Director of Public Prosecutions v. Kemmy* [1980] I.R. 160 at 164.

"Where a statute provides for a particular form of proof or evidence on compliance with certain provisions, in my view it is essential that the precise statutory provisions be complied with. The Courts cannot accept something other than that which is laid down by the statute, or overlook the absence of what the statute requires. To do so would be to trespass into the legislative field. This applies to all statutory requirements; but it applies with greater general understanding to penal statutes which create particular offences and then provide a particular method for their proof. The Act of 1978 is a penal statute. The whole basis for the evidential value given by the Act to the Bureau's certificate depends upon the Bureau receiving a specimen 'forwarded to it under section 21.' It is such a specimen that it may analyse and in respect of which it may certify the result. Section 21, sub-s. 3, specifically provides that what is to be forwarded to the Bureau is the completed form together with the relevant sealed container. A sealed container unaccompanied by any form could not be regarded as being received by the Bureau under section 21. The case is no different, in my view, if what accompanies the sealed container is a copy of the form. While this copy is exact in all respects and contains a true impression of what was entered on the form completed by Dr. Mulvihill, it is not that form and it was not signed by him as such. It is, therefore, not 'the completed form' provided for by section 21."

25. This passage has recently been cited by the Supreme Court in *Director of Public Prosecutions v. Avadenei* [2017] IESC 77, [33] as representing a correct statement of the law.

26. The Defendant also seeks to rely on the principle of *expressio unius est exclusio alterius*. It is suggested that the fact that the Road Traffic Act 2010 makes express provision elsewhere for evidential presumptions to apply in respect of a "copy" of certain documents indicates that the omission of any reference to a "copy" of a section 13 statement under section 20 should be regarded as deliberate. The sections relied upon are section 10 (authorisation to establish a checkpoint) and section 81 (evidence in relation to speed cameras etc.).

DISCUSSION AND DECISION

27. Section 30 of the Criminal Evidence Act 1992 provides as follows.

"30.(1) Where information contained in a document is admissible in evidence in criminal proceedings, the information may be given in evidence, whether or not the document is still in existence, by producing a copy of the document, or of the material part of it, authenticated in such manner as the court may approve.

(2) It is immaterial for the purposes of subsection (1) how many removes there are between the copy and the original, or by what means (which may include facsimile transmission) the copy produced or any intermediate copy was made.

(3) In subsection (1) 'document' includes a film, sound recording or videorecording."

28. The provisions of section 30 are clear. They provide that where information contained in a document is *admissible* in evidence in criminal proceedings, then the information may be given in evidence by producing an authenticated *copy* of the document. That is precisely what occurred before the District Court in this case. The prosecution produced a photocopy of the original misplaced section 13 statement. The District Court judge was satisfied that the photocopy was authentic. More specifically, the District Court judge records—at paragraphs 12 and 14 of the consultative case stated—that she was satisfied on the evidence of Garda Gurn that the section 13 statement tendered in evidence was an accurate copy of the original document. The District Court judge also refers to having heard oral evidence from the Garda Sergeant who had taken the breath specimens, and had completed and signed the original section 13 statement.

29. The Defendant, in both oral and written submission, makes a complex argument to the effect that there is an important distinction to be drawn between (i) the admissibility of evidence, and (ii) the operation of evidential presumptions. The implication of this argument is that whereas the information in an authenticated copy of the original section 13 statement is admissible as evidence, it has a *lesser status* than the information contained in the original statement. This distinction is predicated on an argument that the copy has not been "duly completed".

30. With all due deference to the skill of counsel in advancing this argument, I cannot accept that it is correct. Section 30 of the Criminal Evidence Act 1992 is drafted in broad terms, and it expressly provides that the information contained in a document may be given in evidence by producing a *copy* of the document. This is subject always to the copy being authenticated in such manner as the court may approve. Once this is done, then the production of the copy has the same legal effect as if the original had been produced in evidence. This is precisely the point and purpose of section 30. It is to afford an authenticated copy the same evidential status as the original.

31. It is clear from a consideration of the content of the *information* contained in the authenticated copy of the section 13 statement in this case that the essential proofs of the prosecution are set out therein. In particular, the copy contains the following information: (i) the details of the person providing the specimen (name, address, date of birth and gender); (ii) the name and number of the member of An Garda Síochána; and (iii) the level of alcohol in the breath specimen to be taken into account for the purpose of the prosecution (on the facts, 74 microgrammes of alcohol per 100 millilitres of breath). The authenticated copy also contains a facsimile of the signatures of the Garda Sergeant and the Defendant.

32. The Defendant's argument to the effect that the copy is not a "duly completed statement" is misconceived. The legal effect of section 30 is that an authenticated copy of an original document is admissible in evidence as if it were the original. In the context of a prosecution pursuant to section 4(4) of the Road Traffic Act 2010, this has the consequence that an authenticated copy of a section 13 statement is admissible in evidence as if it were the original statement, and thus the presumptions under section 20 apply.

33. None of this adversely affects the fair trial rights of a defendant. First, as already discussed, the entitlement to rely on a copy under section 30 of the Criminal Evidence Act 1992 is subject always to the copy being authenticated in such manner as the court may approve. Secondly, in the specific context of a prosecution pursuant to section 4(4) of the Road Traffic Act 2010, the defendant will have been supplied with a duplicate original of the section 13 statement at the time the breath specimens were taken and analysed. A defendant and his or her legal representatives will be able to compare this duplicate original with any copy sought to be relied upon by the prosecution, and to bring any discrepancy between the two to the attention of the court.

34. The foregoing interpretation of section 30 of the Criminal Evidence Act 1992 is entirely consistent with the *obiter dicta* of the High Court (O'Neill J.) in *Fitzpatrick v. Director of Public Prosecutions* [2007] IEHC 383.

"If the prosecution were relying upon a copy of the original they could of course have availed of s. 30 the Criminal Evidence Act, 1992 which provides:

'(1) where information contained in a document is admissible in evidence in criminal proceedings, the information will be given in evidence, whether or not the document is still in existence, by producing a copy of the document or of the material part of it, authenticated in such a manner as the court may approve....'

If this section was relied upon it would not have been necessary to prove that the original had been lost or destroyed or its production was otherwise impossible.

The facts recited in the case stated do not suggest that any attempt was made to rely upon a copy of the statement, or that any reliance was placed on s. 30 of the Criminal Evidence Act, 1992."

35. It is also consistent with the *obiter dicta* of Hardiman J. in *McFarlane v. Director of Public Prosecutions* [2007] 1 I.R. 34, [29].

"It is part of ordinary human experience that documents and items, even those of great significance or intrinsic value, are not infrequently lost. The law has taken note of this over many centuries and is not so unrealistic as to consider that the loss of an original document or item of real evidence is fatal to any litigation based on it. Copies of documents are freely admissible in criminal proceedings, now by virtue of s. 30 of the Criminal Evidence Act 1992, [...]"

36. The Defendant has placed much emphasis on the judgment of O'Higgins C.J. in *Director of Public Prosecutions v. Kemmy* [1980] I.R. 160 at 164. With respect, this judgment is addressing a different point, namely compliance with statutory procedural requirements. The procedural requirements for the taking and recording of the analysis of breath specimens have been summarised at paragraph 16 above. If a defendant wishes to defend a prosecution on the basis that there has been a failure to comply with these

procedural requirements, then he or she is entitled to do so by seeking to rebut the presumption under section 20. If a breach of the procedural requirements is established, then it will be a matter for the trial judge to determine, by reference to the principles in *Director of Public Prosecutions v. Avadenei* [2017] IESC 77, whether the evidence is nevertheless admissible. See paragraphs [87] to [90] of the judgment as follows.

"87. Secondly, the analysis of the authorities cited above demonstrates that in principle a flaw in the implementation of the statutory procedures will invalidate the evidence produced under the statutory regime if:

- (i) A precondition for the exercise of the power to require a specimen has not been met, as where there has not been a lawful arrest; or
- (ii) The power purportedly exercised was not a power conferred by the statute, as where a demand was made in circumstances where the driver was under no obligation to comply; or
- (iii) The power is exercised without full compliance with the statutory safeguards for the defendant's fair trial rights; or
- (iv) The power is erroneously exercised, or procedures are erroneously followed, in such a fashion that the evidence proffered as a result does not in fact prove what it was intended to prove.

88. Although the context within which disputes about the admissibility of evidence has undoubtedly been altered by the judgments of this Court in *Director of Public Prosecutions v. J.C.*, the decisions cited above in relation to the first two of these principles are not in question in this case. The powers conferred by the Act must accordingly be exercised within the statutory context and in accordance with the statutory conditions. Such powers cannot be added to by error on the part of a garda, so as to be exercisable in respect of a person who has not been made amenable to the statutory regime or so as to enable demands to be made that are not authorised by the Act.

89. It seems likely that disputes about the '*due completion*' of the statutory forms will fall into either the third or fourth category. The latter presents a simple enough situation – if a form has been filled in so inadequately as to fail to prove the requisite matters, either in whole or in part, it will to the same extent lose the benefit of the evidential status conferred by the Act.

90. The third category may be more complex. Having regard to the authorities, there should in my view be an analysis in each case as to the actual effect of the procedural error, or flaw in a documentary proof, on the fair trial rights of a defendant. If a breach of the statutory procedure is established, but it has had no consequences in that no unfairness, prejudice or detriment can be pointed to, then the normal standards applicable to criminal trials would indicate that the evidence is admissible. My own view, therefore, would be that both McCarron and Freeman should be regarded as being at the far end of the spectrum of insistence upon the letter of the statute."

37. The ability to defend a prosecution on this basis is in no way undermined by the admission of a *copy* of a section 13 statement. The section 20 presumptions can be rebutted by the defence adducing evidence to the contrary. As it happens, there is no suggestion in the present case that the section 13 procedure had not been complied with. The District Court heard uncontroverted evidence from Garda Sergeant Duggan who took the breath specimens and completed the section 13 statements.

38. For the sake of completeness, it should also be noted that the facts at issue in *Kemmy* are distinguishable from those of the present case. First, as appears from the majority judgments, it was accepted that the carbonised copy of the form completed by the medical practitioner could be introduced in evidence. Having regard to the advances in technology in the intervening decades, a carbonised copy is the equivalent to what would now be a photocopy.

39. Secondly, and more importantly, the legislative context has changed with the enactment of section 30 of the Criminal Evidence Act 1992. This caters precisely for the contingency of admitting an authenticated copy of a document as evidence.

40. I turn next to consider the Defendant's reliance on the principle of *expressio unius est exclusio alterius*. The Defendant's argument in this regard is based on a close reading of the Road Traffic Act 2010, and the identification of two evidential presumptions which expressly extend to include a "copy" of the original document. It is submitted that the omission of any reference to a "copy" of a section 13 statement under section 20 should be regarded as deliberate.

41. With respect, this argument seeks to frame the legal issues too narrowly. The question of statutory interpretation in the present case concerns the interaction between the provisions of the Road Traffic Act 2010 and the Criminal Evidence Act 1992. Specifically, the question is whether the provisions of section 20 of the Road Traffic Act 2010 displace the general rule of evidence introduced under section 30 of the Criminal Evidence Act 1992. The more relevant canon of statutory interpretation is that of *generalia specialibus non derogant*, i.e. general provisions do not override special ones. Section 30 of the Criminal Evidence Act 1992 is a general provision in the sense that it is intended to apply to criminal proceedings *simpliciter*. In principle, it is always open to the Oireachtas to provide that the rule allowing for the admissibility of copy documents does not apply to a specific offence. However, there is nothing in section 20 of the Road Traffic Act 2010 which indicates an intention to displace the clear words of section 30 of the Criminal Evidence Act 1992. Section 20 is silent on the question of whether a copy of a section 13 statement can be relied upon in a prosecution under the 2010 Act. Section 20 of the Road Traffic Act 2010 cannot, therefore, be regarded as a *special* provision which is intended to override the general provision of section 30 of the Criminal Evidence Act 1992.

"DULY COMPLETED STATEMENT"

42. Although it is not necessary to resolve this issue in order to dispose of the present case, it must be doubtful as to whether the Defendant's understanding of what is involved in a "duly completed statement" is correct. It is implicit in the Defendant's submissions that the adducing of an original section 13 statement in evidence will be attended with greater formality than would be the case with a copy statement. In particular, it seems to be implied that some separate evidence will be adduced to confirm that the section 13 statement was "duly completed".

43. This does not appear to be the correct interpretation of section 20 of the Road Traffic Act 2010. Rather, the legal effect of section 20 seems to be that a document, which on its face presents as a duly completed statement purporting to have been supplied under section 13, attracts the evidential presumptions. It will not normally be necessary for the prosecution to formally prove that the statement has been "duly completed". Provided the document contains the requisite information, then the presumption appears to

apply. A "duly completed statement" can be contrasted with one which has been filled in so inadequately as to fail to prove the requisite matters, either in whole or in part. See, by analogy, the passages from *Director of Public Prosecutions v. Avadenei* [2017] IESC 77 (set out at paragraph 36 above).

44. Of course, the presumption is rebuttable, and a defendant is entitled to seek to defend a prosecution on the basis *inter alia* that there has been a breach of the procedural requirements.

ANSWER TO THE CONSULTATIVE CASE STATED

45. For the reasons set out herein, I answer the consultative the case stated as follows.

"In the circumstances of the present case, where the original s. 13 statement is not available but a photocopy of that statement has been tendered in evidence by the prosecution, does the evidential presumption of validity under s. 20(1) of the Road Traffic Act 2010 apply to that photocopied statement?"

YES.