[2019] IEHC 826

THE HIGH COURT

Record No. 2017/694SS

IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT, 1857, AS EXTENDED BY SECTION 51 OF THE COURTS SUPPLEMENTAL PROVISIONS) ACT, 1961

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS

PROSECUTOR/APPLICANT

AND

FERGAL GREENE

ACCUSED/RESPONDENT

JUDGMENT of Mr. Justice Hunt delivered on 23rd March 2018.

Background

1. This matter arises by way of a case stated by District Judge Seamus Hughes dated the 28th of June, 2017. The case stated sets out the facts of the matter in a clear and comprehensive manner. Judge Hughes sat at the Athlone District Court on the 27th January, 2016, when Garda Anthony Brennan of Clonark Garda Station, County Roscommon, applied for the issue of a summons against Mr. Greene so that he might be prosecution by the Director for the offence of careless driving, contrary to s. 52(1) of the Road Traffic Act, 1961, as amended. Garda Brennan applied to Judge Hughes whilst he was sitting in that court by handing up a draft summons through the District Court clerk, wherein the complaint against Mr. Greene was outlined as follows:-

> *"That you on 1st September, 2015, at Thomastown, Thomastown Demense (sic), Athlone, Roscommon, a public place in said District Court area of Athlone did drive a vehicle, register number AK63URR without due care and attention.*
>
> *Contrary to s. 52(1) of the Road Traffic Act, 1961, (as substituted by s. 4 of the Road Traffic (No. 2) Act, 2011)."*

2. Having received the draft summons through the District Court clerk, Judge Hughes records that he read and then signed the summons requiring the attendance of Mr. Greene at Athlone District Court, on the 27th April, 2015, for the hearing of the said complaint, so that he might answer it. On this return date, both Mr. Greene and the Director were represented by solicitors, and Judge Hughes directed disclosure and adjourned the case for mention on the 8th June, with a view to fixing a hearing date on completion of disclosure. However, Judge Hughes noted on the return date that he had personally signed the summons, and this caused him to query whether he had signed the summons in chambers rather then in open court, and he fairly brought this to the attention of the legal representatives of the parties.

3. When the case was listed again before Judge Hughes on the 8th June, 2016, the issue as to where the summons was signed was raised by the accused's solicitor, to which the prosecution responded that the summons at been signed in court rather than in chambers. Judge Hughes records that he acknowledged that that may have been the case, but he nonetheless considered it appropriate on that day to hear evidence from Garda Brennan, who had made the complaint to him on behalf of the prosecutor.

4. Garda Brennan gave evidence to Judge Hughes that he was the principal investigator of a road traffic accident that had occurred on the 1st of September, 2015, within the District Court area of Athlone. Having received a direction from the Director of Public Prosecutions, he had applied to Judge Hughes for the issue of a summons. He testified that as he as he had been unable to make his application before Judge Hughes at a different court on a previous date, as had been his intention, he had attended before Judge Hughes at Athlone District Court on the 27th of January, 2016, for that specific purpose. He further testified that he had engaged with and handed the summons to the District Court clerk, who in turn handed it to Judge Hughes, and the summons as signed by the judge was returned to him some fifteen minutes later. Judge Hughes was satisfied that this represented the correct sequence of events, and he was therefore "entirely satisfied" that the summons was signed by him in court, and not in his chambers.

5. Arising from this evidence, Mr. Greene's solicitor submitted that the complaint made by Garda Brennan on the 27th January, 2016, was not a valid complaint, as it concerned a member of An Garda Síochána (Mr. Greene) and was therefore a judicial matter, rather then an administrative matter under the Courts (No. 3) Act, 1986. In particular, he submitted that there was no evidence before the court as to the nature of that complaint.

6. In response, the prosecution argued that s. 10 of the Petty Sessions (Ireland) Act, 1851 provides for the making of a complaint to the District Judge, that the Director had instructed that there be a prosecution, that the summons on its face indicated an allegation of careless driving, and it was necessary for the Garda to apply to Judge Hughes because the Petty Sessions (Ireland) Act, 1851, and Order 15 of the District Court Rules specifically require that a summons against a person who is a member of An Garda Síochána shall be signed by a judge. It was also submitted that whereas a District Judge may direct that such an application be made by way of sworn information, this was an option open to the District Judge, rather than a mandatory requirement for the issue of a summons in these circumstances. Judge Hughes requested written submissions from the parties, and adjourned the matter to the 20th July, 2016.

7. Judge Hughes subsequently considered the helpful written submissions of the parties, and determined the matter on 20th July, 2016. He noted the change of practice that came into being after the decision of the Supreme Court in *Kelly v. Ryan* [2015] IESC 69, which determined that an application for a summons should be made in public. Judge Hughes also noted that prior to that decision, applications for the issue of a summons under the 1851 Act were routinely made in a judge's chambers, where it was customary for the District Judge to have a discussion with the person making the application, whereby he could seek and/or clarify information. Although Garda Brennan had put the summons before him in open court at Athlone on the 27th January, although the complaint in the summons alleged careless driving by the accused, and accepting that he read that complaint before he signed the summons, having reconsidered the matter, by the 20th July, 2016 Judge Hughes felt that, in retrospect, he did not have adequate particulars of the offence before him at the time that he signed the summons.

8. He considered that what was outlined on the draft summons constituting the complaint were "*bald facts*" and he believed that if

the complaint had been made in his chambers rather than in court, as per the previous practice, he would have made further inquires of Garda Brennan as to what precisely had happened on the 1st September, 2015. In the circumstances, Judge Hughes determined that he had erred in not seeking or receiving any information either orally or in writing in support of the complaint before he issued the summons. In the circumstances, he concluded that he had acted without jurisdiction in signing the summons, and on that basis, he determined that he ought to strike out the matter, and he so ordered.

9. The Director was dissatisfied with this decision as being erroneous on a point of law, and applied to Judge Hughes to state a case for the opinion of this Court. The case stated seeks opinion on the following questions:-

> *(i.) Was I correct in law in my determination that I had acted without jurisdiction in issuing the summons.*
>
> *(ii.) If the answer to the above is in the affirmative, was I deprived of jurisdiction to hear the case?*

(iii.) Was I correct in striking out the proceedings?
Submissions

10. The case stated was argued on 9 February, 2018. Mr. Kieran Kelly appeared on behalf of the Director, and Mr. Eanna Mulloy SC appeared on behalf of Mr. Greene (with Ms. Elaine Finneran). Both parties made helpful oral and written submissions as to the correct answers to the questions posed by the learned District Judge.

11. On the first question, the Director referred to the provisions of the Petty Sessions (Ireland) Act, 1851, and in particular to sections 10 and 11 thereof. Mr. Kelly also referred to page 131 of O'Connor's Justice of the Peace (Volume 1, 1915 edition), which states that no special form of complaint is prescribed; any method whereby the informant or complainant brings to the mind of the justice the necessary particulars of the complaint is sufficient. He also relied on an extract from the judgment of O'Dalaigh C.J. in *Attorney General (McDonnell) v. Higgins* [1964] IR 374, which states as follows:-

> *"A complaint in its essence is a statement of facts constituting an offence. It is desirable in the case of a statutory offence that it should conclude:—'contrary to the statute in such case made and provided'; or, better still, contrary to a specific statute and section, but I can find nothing in authority or in principle that requires that a complaint in respect of contravention of a statute will be invalid if it fails to conclude with the words, 'contrary to the statute in such case made and provided.' The form of information (Form I) in the District Court Rules does not contain these words. The fact that a complaint may be verbal is a further reason for saying that a formal conclusion to the complaint is not necessary to its validity."*

12. Mr. Kelly submitted that Garda Brennan's personal attendance at Athlone District Court on the 27th January, and the process that ensued on that occasion was sufficient to constitute the making of a complaint, that Garda Brennan was available to deal with any queries that the judge may have had, on oath if so required, and the learned Distinct Judge not alone had the necessary authority and jurisdiction to issue the summons, he had a positive duty so to do. Mr. Kelly relied on *Irish Insurance Commissioners v. Trench* [1914] 2 I.R. 172, where the applicant solicitor posted drafts summons to a judge with an accompanying letter requesting the judge to "*sign the enclosed summons*". The judge obliged and signed the summons, and it was subsequently contended on behalf of Mr. Trench that the issue of a summons in such circumstances was irregular and illegal because no "*complaint*" had been made to the magistrate prior to him signing the summons. As a result, it was suggested that the court proceedings based on this procedure were also irregular.

13. Chief Baron Palles held that the receipt by the magistrate of the letter constituted "*a complaint*" and unless the judge reasonably doubted the truth of statement in the draft summons, it was his duty to issue the summons, stating as follows:-

> *"In this case the justice did his duty, he issued the summons, and the fact of the party mentioned in the summons being brought before the court under that summons gave the justices a right and duty to hear the summons. The justices therefore had jurisdiction."*

14. Mr. Kelly submitted that the facts outlined on the face of the draft summons contained sufficient material to indicate the nature of the complaint being made by Garda Brennan against Mr. Greene, and that these matters were more than sufficient to ground a complaint to initiate a prosecution. He submitted that the draft summons met the test set out in *Attorney General (McDonnell) v. Higgins*, in that it was a statement of facts constituting an offence. Accordingly, he submitted that I should answer the first question posed by the learned District Judge in the negative, and proceed no further with the second and third questions posed.

15. Mr. Mulloy focused his submissions on the provisions of s. 88 of the Courts of Justice Act, 1924, as re-enacted with greater specificity by s. 8 of the Garda Síochána Act, 2005. He submitted that the draft summons did not contain the necessary detail that Mr. Greene, the person against whom the complaint was made, was at all material times a serving member of An Garda Síochána based at Athlone Garda Station. He referred to section 10 of the 1851 Act, and the provisions of Order 15, Rule 1 of the District Court Rules (as amended), and also to the provisions of section 8 of the Garda Síochána Act, 2005 which deals generally with the prosecution of offences by member of the force in the name of, and on the instructions of Director of Public Prosecutions.

16. Mr. Mulloy noted that the introduction of the administrative system under the Courts (No. 3) Act, 1986 left intact the previous complaint procedure under the 1851 Act. He referred to section 88(3) of the Courts of Justice Act, 1924, which provides that any summons against any member An Garda Síochána shall be signed by a Justice of the District Court, and the rationale underlying that provision, being that some private individuals might abuse the complaint procedure in order to initiate prosecutions, especially against members of the Gardaí. This rationale was considered and set out by Carney J. in *Finnegan v. Clifford* [1996] 1 I.L.R.M. 446 at 449.

17. It seems to me that the nub of Mr. Mulloy's argument is that the complaint was defective for the purposes of the procedures specified by the 1851 Act because the attention of the learned District Judge was not drawn to the status of the intended defendant, having regard to the provisions of the 1924 and 2005 legislation referred to above. He also refers to the fact that Garda Brennan did not have the matter called in open court, and there was nothing said in court on the 27th January, 2016 which could have been recorded by the digital audio recording system installed in that courtroom.

Discussion of the first question
18. Having regard to these submissions, it appears that the central issue presented is whether the learned District Judge received and considered a complaint so as to validate the subsequent decision to issue a summons on foot of the draft document presented by

Garda Brennan in open court. This involves a consideration of possible deficiencies in the procedures adopted by Garda Brennan and District Judge Hughes on 27 January 2016, or in the information transmitted by Garda Brennan to the learned District Judge in the course of their interaction.

19. On the basis of the authorities opened by counsel as outlined above, that the first requirement of a valid complaint for the purpose of issuing a District Court summons under this procedure is that the information submitted, whether orally or in writing, must comprise a statement of facts constituting a criminal offence. I am satisfied that the contents of the draft summons submitted to the learned District Judge by Garda Brennan on the directions of the Director of Public Prosecutions contained statements of fact sufficient to constitute an allegation that the respondent had committed the statutory offence of careless driving at the specified place and time. The draft summons handed into Judge Hughes recited that the complaint made by Garda Brennan on foot of the directions from the Director was that Mr. Greene had driven a specified vehicle "*without due care and attention*" at a particular date and place, contrary to a specified statutory provision.

20. In my opinion, that material sufficiently illustrated the nature of the conduct complained of, and the allegation that that the conduct alleged constituted the commission of a specific statutory offence. Further information as to the nature of these events would enter the realm of evidence in support of the complaint, rather than information elucidating the underlying nature of that complaint. Consideration of the decision of the Supreme Court in the *Attorney General (McDonnell) v. Higgins*, referred to above, supports the sufficiency of the content of the draft summons as a complaint for the purposes of the provisions of the 1851 Act. The four charge sheets which were the subject matter of that appeal consisted, in effect, of recitations of the offences alleged by each charge sheet, without citing the precise statutory provisions invoked in each case, or using the general formula "*contrary to the statute in such case made and provided*". The challenge to the adequacy of the charge sheets in that case was based on the latter omission, not on the insufficiency of the other matters recited in the charge sheets. The charge sheets in that case were no more detailed or expansive than the draft summons in issue here. In particular, this decision illustrates that there is no necessity for a statement of evidence, a narrative, or a list of particulars or suchlike material to be submitted with a draft summons in order to comprise a valid complaint for the purposes of the 1851 Act.

21. In addition, the complaint was made to the District Judge in public, in accordance with the requirements set out in *Kelly v. Ryan*. I do not believe that it was necessary to validate the decision to issue the summons that the District Judge should enunciate his decision for the benefit of the digital audio recording system, as was suggested by the respondent. This system will record for future reference any verbal exchange that a District Judge might choose to initiate with the applicant for the summons, where the complaint is not embodied in a document, or where it is considered that further information or steps are required in the consideration of a complaint. All that is required is that the information, oral or documentary, is sufficient to amount to a valid complaint, and that all express requirements of statute or court rules are otherwise observed. If the District Judge is satisfied as to the adequacy of the information contained in a draft summons handed into court, then the document is capable of speaking for itself without the necessity of oral elaboration. If they are not satisfied with the contents of a written complaint, the judge can take all necessary and permissible steps to explore the matter further with the applicant.

22. It was also suggested that the decision of the learned District Judge was in some way affected by the fact that the application for the summons took place in circumstances where the learned District Judge was occupied in hearing a busy list in open court. In fact, there is no evidence or information in the Case Stated as to the actual state of the court list at the relevant time, but assuming that this description of the circumstances is accurate, I do not find that this is a factor that could affect the validity of the decision to issue a summons on the basis of the information set out in the draft supplied. Almost all decisions of the District Court are made by District Judges in the context of dealing with very busy lists.

23. The principal objection taken by Mr. Mulloy to the validity of the complaint is that it omitted the detail that the person against whom the complaint was made was at all material times a serving member of An Garda Síochána based at Athlone Garda Station. It is notable that although the Case Stated is both detailed and precise, the learned District Judge did not expressly state that this particular detail was a factor that subsequently caused him to revisit his decision to issue a summons in this case. In this regard, the Case Stated refers only to the initial complaint consisting only of "*bald facts*" and an expression of the view that if the complaint had been dealt with in chambers according to the practice previous to *Kelly v. Ryan*, the learned District Judge would most likely have "*inquired of the Garda as to what precisely had happened on 1st September, 2015".*

24. I do not think that it is possible, without more information, to infer from the latter phrase in the Case Stated that the occupation of the proposed defendant would amount to an additional relevant detail of the incident that prompted the Director to launch a prosecution. The Case Stated does not in fact specify the reason why the learned District Judge changed his mind as to the sufficiency of the information embodied in the complaint previously received for the purpose of issuing the summons. The Case merely records that the learned District Judge felt that he had erred in not requiring Garda Brennan to furnish an oral or written information in support of this complaint, without explaining why this was so.

25. I do not believe that the adequacy of the complaint made to Judge Hughes was affected by the absence of the fact of the defendant's occupation from the information set out in the complaint received by him. I cannot read this requirement into the provisions of section 8 of the Garda Síochána Act 2005, or into Order 15, Rule 5 of the District Court Rules. The 2005 Act simply provides that a member of An Garda Síochána may be prosecuted by another member of the force in a summary manner in the District Court, but only in the name of Director of Public Prosecutions, and in compliance with any applicable directions issued by the Director of Public Prosecutions under section 8(4). Under the Rules, a member of An Garda Síochána enjoys the additional protection that a summons against such a person shall be signed by a judge.

26. None of these provisions indicate specifically that it is a requirement that a District Judge should be informed of the occupation of such a Garda before they can validly issue a summons against them. In this case, it appears from the written submissions provided to the learned District Judge that the local State Solicitor had forwarded a file to the Director of Public Prosecutions, and had received a specific direction that the respondent be prosecuted on the charge in question and that the summons embodying the charge be signed by a District Judge. This direction set in train the events described above.

27. In the circumstances, I consider that the respondent was afforded all proper and necessary protections arising from his occupation as a member of An Garda Síochána. Not only is it not necessary to constitute a valid complaint that it should include the fact that a proposed defendant is a member of An Garda Síochána, it may be that it is generally undesirable that this matter should be referred to, either in writing or orally, when such a complaint is put forward to a District Judge for consideration, unless it has some specific relevance to the circumstances giving rise to the complaint.

28. An example of this might occur where it is alleged that the offence was committed by a member in the course of their duty. There is no suggestion that this was a relevant consideration in this case. The occupation of a proposed defendant should not be a factor in

a decision whether or not to issue a summons in any particular case, unless this fact is in some way integral to the allegation in question, nor is it generally desirable that it should be seen as such. If the legislation governing members of An Garda Síochána had contemplated that this was a necessary protection for members of An Garda Síochána in every case where it was proposed to issue a summons against a member, I have no doubt that this would have been set out in express terms.

Conclusion

29. Therefore, I propose to answer the first question submitted by the learned District Judge in the negative. In the circumstances, an answer to the second question is not required, and the answer to the third question is also in the negative. I will then remit the matter to the District Court for further hearing of the complaint in the ordinary way.