

THE HIGH COURT

[2016 No. 558 S.S.]

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

THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF GARDA CAROL MULLANE, GARDA BRIAN WHITNEY AND GARDA
WILLIAM BROSNAN)

PROSECUTOR / APPELLENT

AND

JAMES KELLY, AISLING BUTLER AND CAROLINE DOYLE

DEFENDANTS / OTHERWISE RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 6th day of March, 2017

1. This is a judgment on appeal by way of case stated by a judge of the District Court pursuant to s. 52(1) of the Courts (Supplemental Provisions) Act 1961 on the application of the prosecutor, being dissatisfied with the determination in the above entitled proceedings as being erroneous in point of law, for the opinion of the High Court.

2. At a sitting of Dublin Metropolitan District Court sitting at Dun Laoghaire Courthouse, Corrig Avenue, Dun Laoghaire, Co. Dublin on 13th January, 2016 each of the defendants/respondents (hereinafter the defendants) appeared before the District judge to each answer criminal complaints. The first named defendant was before the court charged with three offences prosecuted by the prosecutor (hereinafter the DPP) at the suit of Garda William Brosnan, the subject matter of the charges alleging offences contrary to s. 24(3), s. 9 and s. 8 of the Criminal Justice (Public Order) Act 1994. Each of the defendants were charged with these offences.

3. This Court will set out the evidence and matters that were raised before the District court judge of relevance to these proceedings.

The Offences

4. The offences were:

"1. On the 18th May, 2015 at York Road, Dun Laoghaire, Dublin in the said District Court area of Dublin Metropolitan District did, following a demand made by Sergeant David Gilmore, a member of An Garda Síochána exercising his powers under s. 24(2) of the Criminal Justice (Public Order) Act 1994 fail to provide the said member with his name and address, contrary to s. 24(3) and (4) of the Criminal Justice (Public Order) Act 1994 as amended by s. 22 of the Intoxicating Liquor Act 2008.

2. On the 18th May, 2015 at York Road, Dun Laoghaire, Dublin a public place, in the said district area of Dublin Metropolitan District, did without lawful authority or reasonable excuse wilfully prevent or interrupt the free passage of a vehicle in the said public place, contrary to s. 9 of the Criminal Justice (Public Order) Act 1994 as amended by s. 22 of the Intoxicating Liquor Act 2008.

3. On the 18th May, 2015 at York Road, Dun Laoghaire, Dublin a public place, in the said District Court area of Dublin Metropolitan District, having been found in the said public place by a member of An Garda Síochána, namely Sergeant David Gilmore, who suspected with reasonable cause, that you were or had been acting in a manner contrary to the provisions of s. 9 of the Criminal Justice (Public Order) Act 1994 and having been directed by the said member of An Garda Síochána to leave immediately the vicinity of the place concerned in a peaceable and orderly manner, did without lawful authority or reasonable excuse fail to comply with the direction given by the said member of An Garda Síochána, contrary to s. 8 of the Criminal Justice (Public Order) Act 1994 as amended by s. 22 of the Intoxicating Liquor Act 2008."

5. The prosecutor was represented by Michael Durkin solicitor of the office of the Chief Prosecution Solicitor, Infirmary Road, Dublin 7. The defendants were each represented by John Berry B.L. instructed by Cahir O'Higgins and Company, Kings Bridge House 17-22 Parkgate Street, Dublin 8.

6. The case proceeded to trial, and the prosecution called two witnesses, Gerard Gilmartin a contractor for Irish Water and Sergeant David Gilmore. It had been intended to call Gardaí Brian Whitney, Carol Mullane and William Brosnan but counsel for the defendants indicated that it was accepted by the defendants that they had been validly arrested. The facts as proved or admitted are agreed:

(a) Mr. Gilmartin gave evidence that on the 18th May, 2015 he was doing work for Irish Water installing water meters in Dun Laoghaire, Co. Dublin. On that day he was in charge of health and safety and traffic management at York Road, Dun Laoghaire - a site specific management plan was in operation with the water meters being installed in the area.

(b) At 2p.m. Mr. Gilmartin was driven down York Road when he saw a vehicle, a truck, which had been stopped by a group of protestors. He was driving in the opposite direction. Mr. Gilmartin then did a three point turn to get away from the protestors. The protestors saw his vehicle and began running after him. He drove his car away and parked it.

(c) He then went to see where the truck had been blocked by the protestors. The truck was being driven by a man called Declan McCormack. Mr. McCormack was unable to remove the truck because he was being blocked by protestors. Mr. Gilmartin then went to the site of the installation of the water meters 80 to 100 metres away. He made the site safe and removed a stop / go system at the location. He observed that traffic had to drive around the truck onto the opposite side of the road to get past.

(d) Mr. Gilmartin recalled the gardaí arriving at about 2.20p.m. He told them he was in charge of the site and told them what had happened. The protestors remained at the road when the gardaí were there. At approximately 3p.m. Mr. Gilmartin spoke to Sergeant David Gilmore and told him what had happened. Mr. Gilmartin took photographs of the street. After the protestors were arrested and the road was cleared, he saw the truck drive up the road and leave the area.

(e) Sergeant Gilmore gave evidence that on the 18th May, 2015 that he was on duty at Dun Laoghaire Garda Station when he was informed of an ongoing incident at York Road, Dun Laoghaire. He went to the scene with a Garda Michael Quill arriving at approximately 3.05p.m. Already present at the scene when he arrived were Gardaí Paul O'Donnell, Lee Graydon and Joseph Byrne.

(f) Sergeant Gilmore observed the truck stop on the outbound lane of York Road. It was a flatbed truck bearing Registration No. 08D45673 with a trailer with a mini digger on it. He observed a number of people standing on the road immediately in front of the truck and three females sitting in a circle on the road behind the truck. At the time the road was fully open, and traffic had to cross to the opposite side of the road to get around the truck. He directed Garda Graydon and Quill to direct the traffic. He observed Declan McCormack was sitting in the driver's seat of the truck. The engine was running. He had a conversation with Mr. McCormack as to what had occurred.

(g) At 3.40pm Sergeant Gilmore gave a direction to the people both in front of and behind the truck under section 8 of the Criminal Justice (Public Order) Act 1994 as he believed that each of them were committing an offence under s. 9 of the said act. He informed each of them of the consequences of failing to comply with the direction. All of them failed to comply with this direction.

(h) At 4.05pm Sergeant Gilmore left the scene and returned to Dun Laoghaire Garda Station to discuss the situation with Superintendent Martin Fitzgerald, Inspector Tom O'Sullivan and Inspective Martin Creighton. He returned to York Road at 4.45pm. On his return he observed that the truck was still in the same position with the engine running, and the same people were in the same positions preventing vehicles moving forward. They were the same people to whom he had earlier given the direction under s. 8 of the Criminal Justice (Public Order) Act 1994.

(i) At 4.45pm Sergeant Gilmore made a demand under s. 24 of the Criminal Justice (Public Order) Act 1994 for the name and address of people who were blocking the traffic on York Road. The people to whom the demand was made were the same people who had been the subject of the direction under s. 8 of the 1994 Act earlier. All of the people refused to furnish Sergeant Gilmore with their names and addresses. Sergeant Gilmore was in a position to identify eight people to whom the s. 8 direction was given which included the three defendants.

(j) At 5.01pm Sergeant Gilmore made a further direction under s. 8 of the Criminal Justice (Public Order) Act 1994 to the people at the front and rear of the vehicle. The direction was made to the eight people which included the three defendants. *He did so as he believed each of them were committing an offence contrary to s. 9 of the Criminal Justice (Public Order) Act 1994* (this Court's emphasis). They were told of the potential consequences of failure to comply with a direction, including the possibility of being convicted of an offence. All failed to comply with the direction.

(k) Sergeant Gilmore then requested further garda resources be made available to deal with the incident.

(l) Further gardai arrived at 5.15pm. Sergeant Gilmore then gave a direction to each of the persons both at the front and back of the truck under s. 8 of the Criminal Justice (Public Order) Act 1994 to desist and move on. The three defendants were each among this group of people. He did so as he believed each of them were committing an offence under s. 9 of the Criminal Justice (Public Order) Act 1994. He explained to them the consequences of a failure to comply with the direction including being prosecuted for a criminal offence.

(m) The first named defendant was then sitting on the road directly in front of the truck and had linked arms with three others. Another man stood in front of them holding a mobile phone. The second and third named defendant and another female were sitting on the ground behind the truck. All of the defendants heard the direction, and were told of the consequences of failing to comply with it. All of the people including the defendants refused to comply with the direction given by Sergeant Gilmore. Each of the people including the defendants were arrested under s. 24 of the Criminal Justice (Public Order) Act 1994 on suspicion of having committed an offence *under s. 8 of the Criminal Justice (Public Order) Act 1994* (this Court's emphasis). Each was cautioned and told of the reason for their arrest. The truck was then driven off and the traffic was thereafter able to move as normal.

7. In cross examination Sergeant Gilmore was asked about his understanding of s. 9 of the Criminal Justice (Public Order) Act 1994. He confirmed that it was an offence of wilful obstruction of traffic. He made no mention of the lawful authority or reasonable excuse elements of the offence.

8. Following the evidence in the District court, submissions were made in relation to the adequacies of the prosecution evidence. In relation to the s. 24 charges, the District judge held that there was inadequate evidence that the defendants had been informed of the potential penal consequences of their failure to comply with the demand of Sergeant Gilmore, as required by the decision of the *DPP v. Mulligan* [2009] 1 I.R. 794. Mr. Durkin had attempted to elicit this evidence by asking Sergeant Gilmore "what did you say" and the District judge had disallowed the question as the judge held it to be a leading question. There was therefore no evidence of the defendants being given the warning as required by the *DPP v. Mulligan* [2009].

Lawful authority or reasonable excuse

9. Submissions were then made in relation to the section 9 charges. The District judge held that the reference in the section to "without lawful authority or reasonable excuse" is not a matter for the defence to prove, but rather, it is for the prosecution to prove the absence of lawful authority or reasonable excuse. Mr. Durkin submitted that the evidence of the duration and nature of the protest combined with the absence of any discussion in advance with the gardai was adequate to discharge the burden of proof in this regard. In dismissing these charges, the District judge held the following:

(1) That the evidence given was that there was no permission sought from the garda by the protestors in relation to this incident;

(2) That the court was not able to discount the possibility that another form of reasonable excuse or lawful authority was available to the defendants;

(3) That the court did not require the prosecution to disprove every fanciful possibility - However, Sergeant Gilmore didn't state that there was nothing that could give rise to lawful authority or reasonable excuse.

(4) That in all the circumstances where no direct evidence had been given by the prosecution in relation to the absence of lawful authority or reasonable excuse, the District judge could not be satisfied that this element of the offence had

been proved.

(5) Further, the District judge contrasted the offence created by s. 9 of the Criminal Justice (Public Order) Act 1994 with the offence created by s. 9(1) of the Firearm and Offensive Weapons Act 1990, where there is a statutory defence provided where the onus rests on a defendant establishing that defence.

10. Submissions were made in relation to the section 8 charges. Mr. Durkin submitted that *the fact that the s. 9 charges had been dismissed was not relevant, as there was a well-established wide discretion to arrest or give a direction, where it related to a belief which was held bona fide* (this Court's emphasis). The District judge held that Sergeant Gilmore had been asked to confirm his understanding of s. 9 offence and had not made any reference to the "lawful authority or reasonable excuse" elements of the offence. The District judge was not satisfied that Sergeant Gilmore could have had the reasonable suspicion required to make the direction pursuant to s. 8 of the Criminal Justice (Public Order) Act 1994. The District judge held the following:

- (a) That in order for a valid direction pursuant to s. 8 to be made, Sergeant Gilmore had to have reasonable suspicion that an offence was being committed contrary to s. 9.
- (b) That this reasonable suspicion involved two elements: that wilful obstruction was taken place; and that there was no reasonable excuse or lawful authority for this wilful obstruction.
- (c) That Sergeant Gilmore gave evidence that his opinion was solely based on wilful obstruction - he made no reference to the lawful authority or reasonable excuse elements of the offence. Sergeant Gilmore confirmed on cross examination that his suspicions extended only to wilful obstruction.
- (d) That there were no surrounding circumstances or other evidence which could allow the District judge to infer that he had formed any other suspicion, particularly where he had given evidence of his suspicion.
- (e) That even if the evidence established that an offence pursuant to s. 9 had been committed at the time, the relevant issue was the suspicion formed at the time of the making of the direction.

The District judge therefore dismissed all of the charges against each of the defendants.

11. The opinion of the High Court is being sought in the following question:

- (i) Was the District judge correct in law and holding that there was inadequate evidence that each of the defendants was acting without lawful authority or reasonable excuse.
- (ii) If the answer to question (i) is no, was the District judge correct in dismissing the s. 9 charges against each of the defendants.
- (iii) Was the District judge correct in holding that Sergeant Gilmore was required to believe that the defendants were wilfully obstructing traffic without lawful authority or reasonable excuse contrary to s. 9 of the Criminal Justice (Public Order) Act 1994 in order to give a direction to each of the defendants under s. 8 of the Criminal Justice (Public Order) Act 1994.
- (iv) If the answer to question (iii) is yes, was the District judge correct in dismissing the s. 8 charges against each of these questions.
- (v) If the answer to question (iii) is no, was the District judge correct in dismissing the s. 8 charges against each of the defendants.

12. It was agreed by both sides that the issues arising from s. 24 of the Criminal Justice (Public Order) Act 1994 were not being pursued by the prosecutor.

13. As stated in the case stated by the District judge, each of the three defendants appeared charged with the three offences on 13th January, 2016. Each of the defendants were charged with the three offences resulting from an Irish water protest rally that occurred on or about the 18th May 2015 in Dun Laoghaire. Counsel for the prosecutor conceded that the prosecution bears the onus of proving every element of an offence beyond a reasonable doubt, and submitted that within section 9 there were two elements of the offence, the first, wilfully interrupting the free passage of the road and the second, doing so without lawful authority or reasonable excuse. He submitted that in the instant case the prosecution lead evidence of protestors blocking the York Road. The prosecution lead evidence that Sergeant Gilmore believed that an offence contrary to s. 9 of the Criminal Justice (Public Order) Act 1994 was being committed by the protestors. He gave evidence that there was no discussion between An Garda Síochána and the protestors prior to the protest starting.

14. He said that there were no judgments of the court which consider section 9 of the 1994 Act but said that similar enactments have been considered and the dicta of those judgments is persuasive. He referred to s. 2 of the Criminal Justice (Public Order) Act 2011 who prohibits aggressive begging and defines begging as:-

"For the purposes of this Act a person begs if

- (a) other than in accordance with the license, permit or authorisation (however described) granted by or under an enactment, he or she requests or solicits money or goods from another person or other persons."

15. He referred to the *DPP v. Rostas* [2012] 1 I.R. 393, where the accused was charged with aggressive begging. In that case, a direction was sought at the close of the prosecution evidence on the basis that no evidence had been led by the prosecution that there was no license, permit or authorisation granted. In that case a consultative case was stated by Judge Earley as to whether the accused bore any burden of proving that he had such a license. In the High Court White J. held that the burden of proving the existence of a license was not impliedly shifted to the accused person. He held that:-

"The issue of a licence, permit or authorisation is not a matter of legal defence. The prosecution are obliged to lead some evidence to establish a prima facie case that the begging took place without legal authorisation. Once this is established the burden of proof is transferred to the accused to establish a reasonable doubt as to the legality of the

begging. It is a matter for the trial judge to decide if a prima facie case has been established."

16. Counsel for the prosecutor submitted that section 9 includes the absence of excuse or authority in its definition of the offence. It is in that context that the prosecution bore the burden of proof in demonstrating there was no reasonable authority or excuse.

17. Counsel for the prosecutor then summarised the judgments in relation to the right to protest. He included in that judgments of the European Court of Human Rights. The court accepts that the right to protest is established in Irish law but that the right to protest must be in accordance with law.

18. Section 8 of the Criminal Justice (Public Order) Act, 1994 provides:

"8.—(1) Where a member of the Garda Síochána finds a person in a public place and suspects, with reasonable cause, that such person—

(a) is or has been acting in a manner contrary to the provisions of section 4, 5, 6, 7 or 9, or

(b) without lawful authority or reasonable excuse, is acting in a manner which consists of loitering in a public place in circumstances, which may include the company of other persons, that give rise to a reasonable apprehension for the safety of persons or the safety of property or for the maintenance of the public peace,

the member may direct the person so suspected to do either or both of the following, that is to say:

(i) desist from acting in such a manner, and

(ii) leave immediately the vicinity of the place concerned in a peaceable or orderly manner.

(2) It shall be an offence for any person, without lawful authority or reasonable excuse, to fail to comply with a direction given by a member of the Garda Síochána under this section.

(3) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 6 months or to both."

Section 24(1) provides:-

"Where a member of the Garda Síochána finds any person committing an offence under a relevant provision, the member may arrest such person without a warrant."

19. Counsel on behalf of the defendants also quoted from White J.'s argument in *DPP v. Rostas* [2012] 1 I.R. 393 and further referred to *McGowan v. Varville* [1960] I.R. 330 which was referred to by White J. in *DPP v. Rostas*. White J. quoted the decision in the High Court by Murnaghan J. (this case had been appealed to the Supreme Court and the appeal was dismissed):

"It is a cardinal principle of the administration of the criminal law in this country, which has often been stated and cannot be too often re-stated, that there is no onus on a person charged with an offence to prove his innocence, the onus at all times being on the State to prove his guilt. To this rule certain exceptions have been introduced by statute, mainly in the administration of the customs code and there is I fear a regrettable but growing tendency on the part of the executive to promote legislation putting the onus of proving the having of lawful authority, in the shape of a licence, certificate or otherwise, on the person charged. It is necessary, in my view, that the courts should steadfastly refuse to allow any unnecessary exception to the principle I have stated."

20. Counsel suggested that in this case, the district judge had correctly applied the law. She had correctly identified the non-existence of a lawful authority or reasonable excuse as being an element of the offence, the burden of proving which rests with the prosecution. She correctly held that the prosecution is not "required to negate every fanciful possibility", however, she also held no direct evidence had been given by the prosecution in relation to the absence of the lawful authority. In those circumstances she dismissed the offence.

21. This Court is of the view that the District judge was correct in dismissing the offence, as there was *no evidence of any kind to suggest that the defendants were obstructing traffic without lawful authority or reasonable excuse* (this Court's emphasis).

22. As an aside, it could be argued that the District judge could have taken judicial notice of the fact that at the time water protestors were obstructing traffic. However, the District judge is not required to infer that the protestors were obstructing traffic without lawful authority or reasonable excuse, i.e. there was no onus on the District judge to take judicial notice of the evidence, and in those circumstances she was correct in dismissing the s. 9 charge.

Legitimate opinion or suspicion to ground an arrest

23. Counsel for the prosecutor said that the section 8 charges has been dismissed by the District judge on the following basis: the garda could not have had a reasonable suspicion to ground his direction under s. 8, given that there had been no evidence at trial as to the lawful authority or reasonable excuse elements of the s. 9 offence.

24. This Court must analyse if a dismissal of the section 8 charges logically follows from a dismissal of the s. 9 charges. Can a garda form the reasonable suspicion required by s. 8, where the elements of the s.9 offence have not been made out at trial?

25. Counsel for the prosecutor suggested there was ample evidence to justify the Garda's suspicion. He quoted from Clark J. in *DPP v. Finnegan* [2009] 1 I.R. 48 in relation to a garda's opinion:-

"Over the years, the courts have considered the characteristics of a legitimate opinion or suspicion which grounds an arrest. In Gallagher v. O'Hanlon Finlay P. referred to the necessity of the "reasonableness of the opinion". Costello J. in Hobbs v. Hurley stated that:-

'the opinion arrived at must, of course, be a reasonable one, and must be one which results from an honest belief.'

Egan J. in the Director of Public Prosecutions v. Breheny stated that:-

"If the opinion is genuinely and reasonably held at the time of the making of the request, it seems to me that the literal terms of the subsection [12(1) of the Road Traffic Amendment Act] have been complied with and it makes no difference that the member's opinion is not proved to be factually accurate."

And he quoted from Charleton, McDermott, and Bolger on Criminal Law:-

"It is well settled and indeed common sense that an opinion or suspicion, arrived at in good faith is not invalidated by subsequent court findings."

And quoted from Dunne J. in the *Director of Public Prosecutions v. Penny* [2006] 3 I.R. 553:-

"In the present circumstances there is a finding of fact that the garda had formed the necessary opinion. In those circumstances, that being so, I cannot see how a fact so found can be vitiated by subsequent events."

26. In *DPP v. O'Neill* [2011] IESC 7 a defendant was arrested by a garda who was of the opinion the person was committing an offence. The District judge held that the opinion was mistaken but *bona fide* held. The arrest grounded on that opinion was not vitiated and the defendant had validly arrested. This was upheld by the Supreme Court:-

"In this case, the member of An Garda Síochána formed an opinion, bona fide, on the facts and reached a conclusion of law and invoked section 50(10). The opinion of Garda Galvin was reasonable. The arrest of the respondent was lawful. The fact that at a later date the opinion may be found to be mistaken, does not alter the validity of the arrest. Nor is the validity of the arrest altered if at a later stage it is decided to prosecute the respondent under s. 49, rather than section 50."

Counsel for the prosecutor submitted that it was clear that the garda who had given a direction under s. 8 had a *bona fide* belief that the defendants were committing offences under s. 9 of the 1994 Act and therefore, his s. 8 direction was valid and their failure to comply with it was an offence.

27. Counsel for the defendants stated that Sergeant Gilmore had been asked to confirm his understanding of the s. 9 offence and had not made any reference to the lawful authority or reasonable excuse elements of the offence. The District judge could not be satisfied that Sergeant Gilmore had a reasonable suspicion required to make the direction pursuant to s. 8 of the Criminal Justice (Public Order) Act 1994. Counsel accepted that it had to be conceded it was not the purpose of the criminal law to turn every member of An Garda Síochána into a walking statute book, and also conceded that it was important to note that when a garda gives evidence of having formed an opinion allowing him to exercise the power, that evidence, in the absence of anything else, is sufficient to give rise to a presumption that the power was correctly exercised.

28. Counsel for the defendant submitted that Sergeant Gilmore was asked to confirm, in cross examination, his understanding of the section on which he based his direction. His understanding was found to be flawed. The District judge expressly referred to the fact that Sergeant Gilmore was cross-examined on his understanding of section 9. She also held the following: that the finding of facts, that there were "no surrounding circumstances or other evidence [...] could allow [her] infer that he informed any other suspicion, particularly were he had given evidence of his suspicion".

29. Counsel for the defendant referred to the *People (DPP) v. Tyndall* [2005] I.R. 593. The accused had been arrested pursuant to s. 30 of the Offences against the State Act 1939 which requires a suspicion that a person has committed a scheduled offence. While giving evidence, the arresting member gave no evidence of having formed such a suspicion. The Supreme Court held that the existence of the suspicion giving rise to the power of arrest was a matter of fact which could be inferred, but that there were no circumstances which could be inferred in the circumstances of that case. Counsel also referred to a recent decision of Hogan J. in *Trosi v. Governor of Cloverhill Prison* [2012] 1 I.R. 514. This was an Article 40 application, and the point of challenge concerned the reasonableness of the garda's belief to justify the arrest. The arrest was pursuant to s. 5(1) of the Immigration Act 1999 (as amended) which provides where a garda with reasonable cause suspects that a person against whom a deportation order is enforced intends to avoid removal from the State, he may arrest such a person without a warrant and detain him in a prescribed place. Hogan J. held in granting release pursuant to Article 40 that it was clear from the statute concerned that the test to establish whether or not an arrest was lawful was an objective one. It mattered not that the gardaí were acting *bona fide* or that they considered themselves they had reasonable grounds to affect the arrest. Hogan J. held that in respect of the common law power of arrest, the test was an objective one - namely whether a reasonable man, assumed to know the law believed there was reasonable and probable cause for arrest.

30. Counsel for the defendant submitted that the failure of Sergeant Gilmore to give evidence relating to the lawful authority and reasonable excuse elements of the offence created by s. 9 is not a mere slip which can be ignored, or a mistake which does not prejudice the accused. The evidence is that Sergeant Gilmore was blind to the lawful authority and reasonable excuse elements of the offence.

31. According to the case stated as submitted by the District judge, Sergeant Gilmore gave evidence that at 3.40pm he gave a direction to the people both in front of and behind the truck under s. 8 of the Criminal Justice (Public Order) Act 1994, as he believed each of them were committing an offence under s. 9 of the same Act. He informed each of them of the consequences of failing to comply with the direction. All of them failed to comply with his direction. He then left the scene and returned to discuss the matter with Superintendent Martin Fitzgerald, Inspector Tom O'Sullivan and Inspector Michael Creighton. On his return he observed the truck was still in the same place with the engine running and the same people were in the same positions preventing the truck moving forwards or backwards. They were the same people to whom he had earlier given the direction under s. 8 of the Criminal Justice (Public Order) Act 1994.

32. At 4.45pm Sergeant Gilmore made a demand under s. 24 of the Criminal Justice (Public Order) Act 1994 for the names and addresses of the people who were blocking the traffic on York Road. The people to whom the demands were made were the same people who had been the subject of the direction under s. 8 of the 1994 Act. All of the persons refused to furnish Sergeant Gilmore with their names and addresses. Sergeant Gilmore was in a position to identify eight people to whom a s. 8 direction was given, which included the three defendants.

33. At 5.01pm Sergeant Gilmore made a further direction under s. 8 of the Criminal Justice (Public Order) Act 1994 to the people at the front and rear of the vehicle. The direction was made to the eight people which included the three defendants. He did so as he believed each of them were committing an offence contrary to s. 9 of the Criminal Justice (Public Order) Act 1994. They were told that the potential consequences of failure to comply with the direction including the possibility of being convicted of an offence all

failed to comply with the direction. Sergeant Gilmore then requested further garda resources and at 5.15pm Sergeant Gilmore then gave a direction to each of the people both at the front of and behind the truck under s. 8 of the Criminal Justice (Public Order) Act 1994 to desist and move on. The three defendants were each among this group of people. He did so as he believed each of them was committing an offence under s. 9 of the Criminal Justice (Public Order) Act 1994. He explained to them the consequences of a failure to comply with the direction including being prosecuted for a criminal offence.

34. The first named defendant was then sitting on the road directly in the front of the truck and had linked arms with three others. Another man stood in front of them holding a mobile telephone. The second and third named defendant and another female were sitting on the ground behind the truck. All of the defendants heard the direction and were told of the consequences of failing to comply with it. All of the people including the defendants refused to comply with the direction given by Sergeant Gilmore. Each of the people including the three defendants were arrested under s. 24 of the Criminal Justice (Public Order) Act 1994 on suspicion of having committed an offence under s. 8 of the Criminal Justice (Public Order) Act 1994.

35. It appears to this Court that Sergeant Gilmore's opinion of his belief that the accused were committing an offence under s. 9 was a reasonable opinion, particularly when they were requested at least three times to comply with his order under s. 8. Having regard to the decision of Egan J. in the *DPP v. Breheny* (Unreported, Supreme Court, 2nd March, 1993):-

"If the opinion is genuinely and reasonably held at the time of the making of the request, it seems to me that the literal terms of the subs. s. 12(1) of the Road Traffic Amendment Act have been complied with and it makes no difference that the member's opinion is not proved to be factually accurate."

It seems that the direction given by Sergeant Gilmore and his subsequent arrest of the three accused under s. 8 of the Criminal Justice (Public Order) Act 1994 is reasonable and lawful.

36. In those circumstances I answer the District judge's questions as follows:

(1) Was I correct in law in holding that there was inadequate evidence that each of the accused was acting without lawful authority or reasonable excuse – Yes.

(2) If the answer to question (1) is no was I correct in dismissing the s. 9 charges against each of these accused? See answer to (1).

(3) Was I correct in holding that Sergeant Gilmore was required to believe that the defendants were wilfully obstructing traffic without lawful authority by reasonable excuse contrary to s. 9 of the Criminal Justice (Public Order) Act 1994 in order to give a direction to each of the defendants under s. 8 of the Criminal Justice (Public Order) Act 1994? No.

(4) If the answer to question (3) is yes was I correct in dismissing the s. 8 charges against each of the defendants? See answer to question (5)

(5) If the answer to question (3) is no was I correct in dismissing the s. 8 charges against each of the defendants? No.

37. In the circumstances of this case I feel that it is appropriate to revert the case to the District judge so as in order to deal with the charge remaining against each of the defendants under s. 8 of the Criminal Justice (Public Order) Act 1994.