Neutral Citation Number: [2007] IEHC 487

THE HIGH COURT

2006 783 JR

JOHN LYNDON

APPLICANT

AND
DISTRICT JUDGE MARY COLLINS

RESPONDENT

AND
THE DIRECTOR OF PUBLIC PROSECUTIONS

NOTICE PARTY

Judgment of Mr. Justice Peter Charleton delivered ex tempore on 22nd January, 2007.

1. I must say the first thing that struck me in relation to this case is that the applicant gave a very full affidavit detailing literally all the circumstances both positive and negative for him and against him in bringing this application for a judicial review, which has led the Court to a position where it does not need to make findings of fact. All the facts are set out, and indeed the replying affidavit is proof is of that because it is very short and to the point. I am grateful to the parties for their submissions, and in particular to the applicant for the written submissions, which are very helpful.

2. The case hinges around the issue as to what reasons, if any, need to be given by a district judge in relation to a decision that he or she might make, and secondly, in the event that that goes against the State party represented, the respondent, whether judicial review ought to be granted in the circumstances.

3. As Mr. McCarthy helpfully pointed out to me in relation to the European case law in this matter, all of these matters have to centre on the individual facts in cases as they are presented in court. This case concerns an incident on 6th December 2004 when the applicant was in Marlborough Street in a car in circumstances where the prosecuting Garda later in the District Court said that he was obviously intoxicated, and I do not think there is any dispute about that fact. The dispute is was he in charge of the car, or was he using it in effect as a bed? Was he intending to drive then, or was he intending to drive the following morning? In any event, the reality is that he was arrested and the matter came on for hearing before Judge Mary Collins, who is the respondent in this case.

4. A number of points were made, and examination and cross-examination took place. Defence counsel made three submissions to the effect that, first of all, and I suppose it could be regarded as something of a hoary chestnut, that the Road Traffic Act applies only in a public place, and there was no proof that Marlborough Street, near the Department of Education, was a public place; secondly, that the accused had not been under observation for a 20-minute period; and thirdly, a submission on the facts that the accused was not in charge of the vehicle, and furthermore that he had no intention of driving.

5. Now, this case was met by the district judge stating that in the first instance she was entitled to take judicial notice of the fact that Marlborough Street was a public place; secondly, that she was satisfied that there had been observation of the accused for a 20-minute period so that he could not have, for example, taken a slug of whiskey - I am not saying that he would have -- but so as to deactivate the accuracy of the breathalysing machine that shows how much alcohol there is in the blood; and then the third submission that he was not in charge of the vehicle, the submission in relation to facts, was rejected by the district judge saying words to the effect that she rejected the defence case and she was satisfied that the prosecution had made out its case.

6. That really is what is the problem at issue here. Her actual words on this issue as to the question of, was the accused in charge of the vehicle, were as follows: "I am satisfied that the State has proved its case." There were three rulings, and it is the last one, just quoted, that gives rise to the difficulty.

7. Now, I am satisfied as a matter of law that judicial bodies are required to give reasons for their decisions, but the extent of which judicial bodies are required to give reasons for their decisions depends upon the nature of the case that they are dealing with and the nature of the remedies that flow from such a decision; *International Fishing Vessels v Minister for Marine* [1989] I.R. 149 and *Mulholland v. An Bord Pleanála* [2006] ILRM 287.

8. The nature of the case being dealt with here certainly involved two potential findings that in law would have negatived the consequent breath test after the arrest of the applicant; the 20-minute period and the public place. If either of those had fallen, then in the circumstances there would be no need, I suppose, to go on to consider the third matter.

9. The third ruling was in essence a ruling to the effect that, and I take it, and I think any reasonable person would take it, to the following effect, that the defence case had been rejected in its entirety and that the evidence given on behalf of the prosecution by the prosecuting Garda was accepted by the learned judge.

10. It seems to me that there is a difference in relation to this case compared to many of the cases helpfully opened to me by Mr. McCarthy. This is not a case where, consequent upon the reasons, one would have a right to appeal for instance in relation to a pension, and so need detailed reasons as to why you were not so entitled under an administrative scheme. I am satisfied as well that it is different to *O'Mahony v. District Judge Ballagh* [2001] IESC 99 for the simple reason that this is not a case where it was essential to know going into the witness box whether or not one's main legal point had been accepted or rejected. I fundamentally take the view in this case that although the reasoning was short, that there was reasoning and the reasoning was to the effect that I do not accept the case made in testimony, on sworn testimony by the accused, whereas I do accept the case in entirety beyond a reasonable doubt made by the garda officer.

11. Now, I do not think that it is necessary, as was said by Mr. Justice Murphy in his Supreme Court judgment in *O'Mahony v. Ballagh* that it is not essential that district judges give reserved decisions or in every case to giver reasons to a high standard of academic excellence. What is essential, however, is that people know going out of any district criminal court what they have been convicted for and why they have been convicted, and in this instance I think it is clearly implied in what the learned district judge said that she was convicting the accused because of the fact that she completely rejected his testimony and accepted instead the testimony of the prosecution.

12. On the point of discretion in judicial review, I would add that I feel in this case, and it would be a rare case indeed where an applicant has won a case on a matter of law in judicial review that one would apply the principle enunciated by Henchy J. in *State (Abenglen Properties Ltd) v. Dublin Corporation* [1984] I.R. 381, but I feel that if indeed there was a problem in giving reasons for a decision, which I have ruled did not happen, that the learned district judge did not fall into unconstitutionality thereby, as Mr. McCarthy has argued, depriving the applicant of his right to a trial in the District Court under the Constitution, followed by a rehearing under the statutory scheme in the Circuit Court, an appeal in this case would meet every alleged defect, if there was a defect, in the

ruling that Judge Collins gave; see *Stefan v. Minister for Justice* [2001] 4 I.R. 203.

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