Neutral Citation Number: [2008] IEHC 28

HIGH COURT
JUDICIAL REVIEW

[2007 No. 191 J.R.]

BETWEEN

PATRICK KENNY

APPLICANT

AND
JUDGE JOHN COUGHLAN AND
THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of O'Neill J. delivered the 8th day of February, 2008.

1. In these proceedings the applicant was given leave on the 5th March, 2007 by this Court (Peart J.) to seek by way of judicial review an order of *certiorari* quashing the order of the first named respondent made on the 5th day December, 2006, convicting the applicant of an offence (a speeding offence) contrary to s. 47 of the Road Traffic Act, 1961 (as inserted by s. 11 of the Road Traffic Act, 2004), and s. 102 of the Road Traffic Act, 1961 (as amended by s. 23 of the Road Traffic Act, 2002).

2. The grounds upon which the applicant was given leave to pursue the foregoing relief were that the decision of the first named respondent to convict the applicant of the foregoing offence and to fine the applicant €500, was contrary to natural and constitutional justice and in breach of fair procedures as is stated in paragraph 2 of the applicant's Statement of Grounds as follows:

> *"(i) In circumstances where the prosecution did not adduce any evidence as to the speed of the applicant other than the uncorroborated evidence of the prosecuting Garda.*
>
> *(ii) In circumstances where the court unlawfully and without good reason prevented counsel from cross-examining a prosecution witness. The court had failed to order, in particular that there would be disclosure of the details of the processing of Fixed Charge Notice, and then at the trial would not allow a line of questioning designed to elucidate the information sought unless the unknown witness the subject of the earlier request had been summoned to court by the applicant. By doing this, the first named respondent rendered irrebuttable the presumption at s. 103 (10) of the Road Traffic Act, 1961.*
>
> *(iii) In circumstances where the only information for the court as to the speed limit in the area in which the applicant was travelling was given by a Garda Sergeant where that Sergeant had not been called as a witness or was not on oath.*
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> *(iv) In failing to give reasons for his decision. In particular, by failing to indicate what evidence he was accepting or rejecting in failing to address the submissions made; this in circumstances where the evidence of the applicant as to speed, had not been the subject of challenge or cross-examination where Counsel's submission to the effect that the evidence of the prosecuting Garda had not been corroborated, was neither countered nor addressed in any way on behalf of the Prosecution".*

3. The facts relevant to these proceedings are set out in the affidavits sworn in these proceedings by Evan O'Dwyer, a solicitor acting for the applicant and by Garda Brian Ryan and Sergeant Michael Miley, and may be summarised as follows.

4. On the 3rd December, 2005 at approximately 13.45pm at Longmile Road, Drimnagh, Dublin 12, Garda Ryan was on duty operating a speed check. He stopped a motor vehicle registration number 03LD 789, a red Nissan Primera. The car was driven by the applicant herein. Garda Ryan informed the applicant that he was driving at a speed of 72 kph in a 50 kph zone and showed the applicant that speed recorded on the speed gun. Garda Ryan asked the applicant for identification and he produced a driving licence. Garda Ryan informed the applicant of the penalties that arose from a failure to pay a Fixed Charge Notice which would issue in due course. Garda Ryan then said in evidence that the fine had not been paid, hence the summons had issued which brought the applicant before the court.

5. In cross-examination, Garda Ryan said that he was standing near Drimnagh Castle outbound and that he was not aware of by-laws in existence. At this point, the prosecuting Sergeant, Sergeant Miley, interjected, and said that as the speed limit in operation was a built up area speed limit, it was not governed by any by-law. Garda Ryan stated that he informed the applicant of the 28 and 56 day procedure and that he might be summonsed to court. In further replies to cross-examination, Garda Ryan said that when he returned after his shift to the station, he imputted the details of the applicant from his garda notebook into a handheld device. This device sat in a cradle and downloaded information on to a computer. He said that this was then sent electronically to the Notice Office also known as the Fixed Charge Processing Centre (FCTS). The information was then sent and transferred to Phoenix Park where it was processed by a central mainframe computer. An outside agency, he said, was responsible for this. He said that this was Tico Limited. He said that this company was responsible for putting it on paper and then they issued the Fixed Charge Notice, which was sent to the applicant. Garda Ryan further said that the information was not transferred by hand or by any third party, and the only involvement by any person was the person who put the notices into the envelopes. He was asked who this person was.

6. At this point, the first named respondent intervened and stopped the line of cross-examination being pursued. The affidavit of Mr O'Dwyer and that of Garda Ryan differ as to the reason why this cross-examination was stopped. Mr O'Dwyer says that the reason given by the first named respondent, was that this line of cross-examination could not be pursued unless the witnesses, whose identity was sought from Garda Ryan in cross-examination, were called, to which counsel for the applicant responded that this could not be done unless their identity was disclosed as had been sought in correspondence prior to the hearing and now in cross-examination. In the event, the first named respondent adhered to his refusal to allow further cross-examination on this line.

7. Garda Ryan's version of this event is that he was not an expert on the computer processing of the information concerned and could not give any more information than that already given in evidence. His inability to furnish any more information on the point, and that he had made this clear to counsel for the applicant was the reason why the first named respondent stopped further cross-examination on this line.

8. Counsel for the applicant then requested the first named respondent to adjourn the case to allow the relevant individuals to be identified by the State so as to permit their attendance for the purposes of examination which would then allow cross-examination to continue. The first named respondent refused this application. Counsel for the applicant then submitted that the case should proceed on the basis that the prosecuting Garda could not give the evidence he had given and protested that the required information which

was within the remit of the State was not made available. The first named respondent dismissed this submission and request and directed counsel for the applicant to continue.

9. The first named respondent then stated that there were presumptions under the Road Traffic Acts and these presumptions were to the effect that what had occurred was in order and it was a question of rebutting the presumption.

10. Counsel for the applicant then submitted the only evidence as to speed was the uncorroborated oral evidence of the prosecuting garda and he relied upon s. 21(4) of the Road Traffic Act, 2002 for what appears to have been an application for a direction. Also, the applicant relied upon s. 103(2) of the Road Traffic Act, 1961 to submit that the prosecuting garda had not served or caused the notice to be served which had been the issue upon which the first named respondent had refused to allow cross-examination to continue. The first named respondent rejected these two submissions, apparently without giving reasons.

11. At that point, the applicant was called to give evidence. He told the first respondent, with the assistance of a number of photographs which he had taken, that he was travelling in a 60 kph zone and not in a 50 kph zone. He stated in evidence that to the best of his knowledge he was not exceeding the speed limit, but in reply to a question from the first named respondent "*can you explain your speed?*", the applicant stated that he did not think he was going at that speed, i.e. 72 kph.

12. The major part of the applicant's defence was that he was in a 60 kph speed zone and not a 50 kph speed zone. In cross-examination, Garda Ryan, when asked about this, had said that where he was standing carrying out the speed check, there was a 50 kph speed limit sign on the road.

13. Then, counsel for the applicant repeated his submissions under s. 21(4) of the Road Traffic Act, 2002 and s. 103(2) of the Road Traffic Act, 1961. Thereafter, the first named respondent stated that he was satisfied with the evidence outlined before him and he saw no reason to dismiss the prosecution and went on to convict the applicant and impose a fine of €500.

14. As said earlier, the applicant was given leave to apply on four grounds. The first of these is to the effect that the prosecution failed to produce any evidence of the applicant's speed, save that of the uncorroborated evidence of the prosecuting garda.

15. It is clear from the evidence summarised above that the facts don't support this submission. Garda Ryan, when he stopped the applicant, showed him the speed recorded on the speed gun. Manifestly, that evidence was capable of corroborating the evidence of Garda Ryan. Indeed it could be said the evidence as to speed was not Garda Ryan's evidence but rather the evidence of the speed recorded on the speed gun, in which case s. 21(1) of the Road Traffic Act, 2002 (as amended by s. 15 (a) of the Road Traffic Act, 2004) would have applied. The relevant part of this is s. 21(1) (b) and it reads as follows:

> *"(i) The onus of establishing prima facie proof of a constituent of an offence (including the speed at which a person, whether the accused or other person, was driving, under s.47, 52, 53, 55, 91, 92, 93 or 94 of the Principle Act or s. 25 of the Act of 1994, may be discharged by tendering evidence from which that constituent can be inferred of measurements or other indications which were given by - . . . .*
>
> *(b) Electronic or other apparatus, including a radar gun, which is not capable of producing a permanent record.*
>
> *It is not necessary to prove that the electronic or other apparatus was accurate or in good working order".*

16. In my view, it is this section which it would appear to have applied rather than s. 21(4) of the Act of 2002 which is in the following terms:

> *"(iv) In proceedings for an offence referred to in ss. (i), if proof of the offence involves proof of the speed at which a person (whether the accused or other person) was driving, the uncorroborated evidence of one witness stating his opinion, as to that speed, shall not be accepted as proof of that".*

17. If one were to regard the evidence of speed as the evidence of the Garda, then the inexorable conclusion is that the evidence was corroborated by the speed recorded on the gun. If one were to take the view that the primary evidence is that of the reading given of the speed recorded on the gun, then s. 21(1)(b) applies and no corroboration is required.

18. Even if the respondent erred in this regard (and there is no indication that he did), that error would clearly have been an error within jurisdiction and not amenable to the remedy of judicial review.

19. The third ground relied upon was to the effect that the only information before the court as to the speed limit in the area where the applicant was travelling was given by the prosecuting Garda Sergeant who was not called as a witness and was not sworn.

20. This ground, too, in my opinion, is not supported by the facts established from the evidence in the case. In the course of cross-examination, Garda Ryan gave evidence to the effect that where he was standing he was looking at a speed limit road sign which disclosed the speed limit to be 50 kph. The evidence was that the location was on the Longmile Road adjacent to Drimnagh Castle. Manifestly, the respondent was entitled to take judicial notice of the fact that this was a built up urban area. Hence, what was said by the prosecuting sergeant was not unsworn evidence but can properly be regarded as a submission to the effect that no by-laws applied in respect of that built up area.

21. As with the previous ground, if there was any error on the part of the respondent (and in this instance also there is no indication of such error), it was clearly an error within jurisdiction.

22. Mr McDonagh, S.C. for the applicant did not vigorously press either of the foregoing two grounds, placing primary reliance on the second and fourth grounds.

23. The second ground, which is a natural justice or fair procedures ground, is to the effect that the respondent failed to order disclosure of details of the processing of the Fixed Charge Notice, in advance of the trial, and at the trial, disallowed a line of cross-examination designed to elucidate the information sought unless unknown witnesses, the subject of the earlier request, had been summoned to court by the applicant, and in so doing, the first named respondent rendered irrebuttable the presumption at s.103(10) of the Road Traffic Act, 1961.

24. Prior to the hearing, the solicitor for the applicant sought information in a letter dated 13th January, 2006 addressed to the Superintendent, An Garda Siochána, Terenure, Dublin 6. This letter states *inter alia*:

"We have been consulted in relation to a Fixed Charge Notice which issued to our client on the 9th December relating to an alleged offence on the 3rd December last.

We are concerned about the format of the Fixed Charge Notice. There is a period of 56 days within which any Fixed Charge Notice must be paid. This 56 days expires on the 3rd February next.

We require confirmation as to what form a Fixed Charge Notice takes. To clarify this, we require the Statutory Instrument to which the format of the Fixed Charge Notice corresponds. You will be aware that Statutory Instrument 492 of 2002 is the original statutory instrument which sets out the format on which a Fixed Charge Notice is taken and this has been subsequently amended.

Given that this is fundamental to the entire procedure, we require confirmation by return post.

We are also instructed that this offence is alleged to have taken place on the Longmile Road. We are instructed that the Garda stopped the client and inputted his details but did not issue the Fixed Charge Notice immediately. This is borne out by the fact that the offence is alleged to have taken place on the 3rd December whereas the date of the Fixed Charge Notice is the 9th December.

In light of the foregoing, we require confirmation as to what procedure was involved with regard to the completion of the Fixed Charge Notice and in what context it is alleged the offence took place.

More particularly, we require confirmation as to whether the new Itronix hand held computer was used by the Garda and if so what evidence will be offered so as to confirm that the offence did actually take place and what evidential proof there will be in respect of the same, bearing in mind s.21 of the Road Traffic Act, 2002, as amended by s.15 of the Road Traffic Act, 2004.

We enclose herewith for your attention copy correspondence received from Sergeant Michael Miley for Inspector James Keegan of the Garda Fixed County Office at Capel Street. . . .".

25. This letter was replied to by a letter of the 7th April , 2006 from Garda Ryan in which he says *inter alia*:

"On the 3rd December, 2005, I was operating a speed check on the Longmile Road, Drimnagh, Dublin 12, a public place. At approximately 13.45 hours I stopped motor vehicle 03 LD 789 a red Nissan Primera, this vehicle was travelling at 72 kph in a 50 kph zone. I spoke with the driver of the vehicle and explained to him why he was being stopped. Furthermore, I showed the driver of the vehicle the speed gun which had the speed of his vehicle clearly marked on the gun, this was explained to the driver. I then asked the driver for identification and he produced a driving licence. The driving licence identified the driver as Patrick Kenny of the above mentioned address. I took down all relevant details pertaining to the outlined offence in my official Garda notebook. There was not a Notice issued to Mr Kenny at the scene, I fully explained to Mr Kenny the procedure that would follow relating to the offence and what the requirements are in relation to the Fixed Charge Penalty Notice.

On returning to the station, I imputted all details of Mr Kenny's offence into a hand-held device. This device was then downloaded and the details were forwarded electronically to the Parking Fines Office, Capel Street, for processing. There will be oral evidence in relation to the offence provided in court.

I understand from your correspondence that your client was issued the Fixed Penalty Notice on the 9th December, 2005. Once the details are downloaded and forwarded to the Parking Fines Office, it is no longer under my control and I am unable to comment on the procedures adopted by this office.

Please find attached a copy of Statutory Instrument No. 492 of 2002 in relation to the format of a Fixed Penalty Notice issued to Mr Kenny. Should you require further Statutory Instruments relating to this legislation, please refer your queries to the Government Publications Office, Sun Alliance House, Molesworth Street, Dublin 2 . . ".

26. The evidence of the solicitor for the applicant is that this letter was not received by him or by the applicant. By letter of 24th October, 2006, sent to the Superintendent, An Garda Siochána, Terenure, Dublin 6, the solicitor for the applicant raised 154 separate queries. Some of these queries involved multiple demands for information. One query, i.e. no. 17, broke down into a further 10 questions. Query number 33 consisted of 7 internal questions. Query number 60 involved 6 additional questions, query 60(f) sought a copy of all patents issued to the manufacturer of the computer and software extracting the information from the video to include the drawings and the specifications.

27. When the matter came before the District Court on the 27th October, the solicitor for the applicant pressed the respondent for an order directing replies to queries raised in this letter. The respondent declined that but made a "Gary Doyle" order, and adjourned the matter to the 5th December, 2006. By letter of the 24th November, 2006, Garda Ryan, in compliance with the "Gary Doyle" order, set out his proposed evidence. This letter was in largely similar terms to the previous one written by him. When the matter was before the court on the 5th December, 2006, counsel appearing for the applicant complained that neither this letter nor the previous one sent by Garda Ryan had been received and that it was only that morning that the defence had seen a *précis* of the evidence to be called on behalf of the prosecution.

28. In my view, in a summary proceeding in respect of a speeding offence, the disclosure ordered by the respondent was entirely appropriate. The 15-page letter of the 24th October, 2006 with 154 requests for information and documents, was a preposterous exercise in summary proceedings and the demand for disclosure in terms of that letter was rightly rejected.

29. The first respondent cannot be faulted, if it was the case that the two letters which Garda Ryan says he sent to the applicant or his solicitor were not received. In light of the fact that the applicant acknowledged through his counsel that he had seen the précis of Garda Ryan's evidence on the morning of the trial, i.e. the 5th December, 2006, and having regard to the simplicity of the evidence, in my view it cannot seriously be said that in a summary prosecution for a speeding offence, the applicant's right to natural justice and fair procedures was breached by the first respondent in refusing to adjourn the hearing of the complaint.

30. Given that the applicant's complaint is that because of this, and the subsequent disallowing of further cross-examination by the respondent, which I will deal with shortly, he was prevented from rebutting the presumption contained in s. 103(10) of the Road Traffic Act, 1961, one cannot ignore the fact that in a letter of the 13th January, 2006 (open correspondence), the solicitor for the

applicant implicitly acknowledges receipt by the applicant of the Fixed Charge Notice issued to the applicant on the 9th December, 2005, relating to the offence on the 3rd December, 2005.

31. I shall return to this later.

32. Moving to the complaint concerning the stopping of cross-examination at the hearing on the 5th December, 2006, the first named respondent stopped Counsel for the applicant in cross-examination of Garda Ryan in a line of cross-examination which sought to elicit from Garda Ryan the identification of persons involved in the process of the issuance of a Fixed Charge Notice. In the course of that cross-examination, it was Garda Ryan's evidence that the information gleaned by him in his encounter with the applicant when he stopped him for speeding was inputted into a hand-held device and downloaded onto a computer and transferred to a mainframe computer, from which the Notice issued and that the only person involved was the person who put the Notice into an envelope. It was at this point that the first named respondent intervened. The evidence of Garda Ryan was that he was unable to furnish any more information and that that was the reason the cross-examination was stopped then. The evidence of the applicant was that the first named respondent stopped cross-examination on this line unless the person or persons in question were going to be called to which the applicant's counsel responded that this could not be done because their identity was not known to the applicant because that had not been disclosed in pre-trial correspondence and was not now being permitted to be ascertained in cross-examination.

33. The issue to which this line of cross-examination was relevant was the rebutting of the presumption set out in s. 103(10) of the Road Traffic Act, 1961 as inserted by s. 21 of the Road Traffic Act, 2000 and substituted by s. 15(h) of the Road Traffic Act, 2004 which reads as follows:

> *"(h) By substituting for sub-section (10) the following:*
>
> *(10) In a prosecution for a Fixed Charge offence, it shall be presumed until the contrary is shown, that -*
>
> *(a) The relevant Notice under this section has been served or caused to be served and,*
>
> *(b) That a payment pursuant to the relevant Notice under this section accompanied by the Notice duly completed (unless the Notice provides for payment without the Notice accompanying the payment) has been made".*

34. In effect, two presumptions arise, namely -

> *(a) That the Notice has been served or cause to be served, and*
>
> *(b) That payment accompanied by the Notice duly completed has not been made.*

35. Clearly, the line of cross-examination stopped was wholly irrelevant to presumption (b). Similarly, the enquiries raised in pre-trial correspondence were likewise wholly irrelevant to this presumption.

36. The line of cross-examination which was stopped had a relevance to presumption (a). Having regard to the fact that the only person identified in the cross-examination as having been involved in the process was the person who put the Notices into an envelope, the probative value of the identity of that person to rebutting the presumption was tenuous and remote in the extreme. It was clearly to be inferred from the evidence elicited, that the person who discharged this function, or the persons who discharged this function, would be highly unlikely to remember the Notice addressed to the applicant out of the hundreds if not thousands of such Notices placed in envelopes by such persons. The apparent futility of any further cross-examination on that line would have justified any Judge in curtailing it.

37. In any event, the stopping of the cross-examination did not stop the applicant rebutting either presumption. He was in a position to give evidence that he either did not receive the Notice, or if he did that he had paid a fixed fine with a duly completed Notice.

38. It is quite clear from the evidence, or indeed the absence of any evidence, that the applicant did not maintain either of these contentions, and the implicit acknowledgement by his solicitor in correspondence that he had received the Fixed Charge Notice, would clearly have inhibited any effort to rebut that presumption.

39. Hence his purported rebuttal of either presumption was speculative, though permissible, and was not at all in my view hampered by the stopping of the cross-examination or by any want of pre-trial disclosure.

40. Therefore, in my view, and taking the evidence at its height from the applicant's point of view, there was no breach of the applicant's constitutional right to natural justice and fair procedure. If one were to accept the evidence of Garda Ryan in these proceedings, which was not contradicted, as to the reason for the stopping of the cross-examination, no complaint whatever could be made by the applicant of any breach of his right to natural justice and fair procedures.

41. A final ground advanced by the applicant is that the first named respondent did not give any adequate reasons for his decision. The first named respondent's decision-making came in two stages. The first stage was his ruling which required the applicant to go into evidence. What appears to have happened is that following the stopping by the first respondent of the cross-examination of Garda Ryan, as discussed above, counsel for the applicant applied for an adjournment to ascertain the identification of persons he was seeking to identify and to bring them to court. This application for an adjournment was refused by the first named respondent. Counsel for the applicant then submitted that the case should continue but without Garda Ryan's evidence because of his failure to have given the required information. This submission was rejected by the first respondent. Counsel for the applicant then submitted that the only evidence of speed was the evidence of Garda Ryan which was uncorroborated evidence and therefore should not be accepted pursuant to s. 21(4) of the Road Traffic Act, 2002.

42. Counsel for the applicant then opened s. 103(2) of the Road Traffic Act, 1961 and submitted that Garda Ryan had not served or caused to be served the Notice, which had been the issue on which the first named respondent had refused to allow further cross-examination.

43. As discussed earlier, the reliance placed by counsel for the applicant on s. 21(4) of the Road Traffic Act, 2002, was plainly misplaced.

44. Section 103(2) of the Road Traffic Act, 1961, was replaced by s.11 of the Road Traffic Act, 2002 and in turn substituted by

s.15(h) of the Road Traffic Act, 2004 which contains the presumptions discussed above. Section 103(2) of the Road Traffic Act, 1961, had been repealed. The applicant's submission based on s.103(2) of the Road Traffic Act, 1961, was plainly wrong, failing as it did to have regard to the two presumptions discussed above as inserted by s.15(h) of the Road Traffic Act, 2004.

45. The applicant rejected the submissions without giving detailed reasons.

46. Following this, the applicant went into evidence; his evidence was to the effect that he was driving in a 60 kph zone. When asked by the respondent about his speed, his reply was to the effect that he did not think he was doing the speed alleged. He did not give evidence that he did not get the Notice and there was no evidence that if he had got the notice that he had paid the fixed fine with a duly completed Notice. It would appear that apart from the evidence of the applicant, no other evidence was called on behalf of the applicant.

47. Thus, the state of the evidence at the conclusion of the applicant's case was that there was evidence from Garda Ryan of having stopped the applicant, having showed him the speed recorded on the speed gun, which was sufficient proof of same pursuant to s.21(1) of the Road Traffic Act, 2002, as substituted by s.15(a)(1)(b) of the Road Traffic Act, 2004, and thereby rendering inapplicable s. 21(4) of the Road Traffic Act, 2002. There was also evidence given by Garda Ryan that the speed limit of the place was 50 kph. This was to be inferred from the fact that the area was a built up area. This speed limit is prescribed by s. 5(1) of the Road Traffic Act, 2004. In addition to that, there was the evidence of Garda Ryan that where he was standing he was looking at a sign showing the speed limit at 50 kph. There was no evidence at all offered by the applicant directed at rebutting either of the presumptions mentioned above to which the respondent had alluded in refusing the applicant's earlier submissions.

48. At the conclusion of the evidence, the first named respondent had asked the defence, namely the applicant, if the defence was finished. At that point, it appears that counsel for the applicant repeated the submissions he had previously made under s. 21(4) of the Road Traffic Act, 2002, and s. 103(2) of the Road Traffic Act, 1961.

49. Following this, the respondent stated that he was satisfied with the evidence presented and saw no reason to dismiss the prosecution.

50. The nature and extent of reasons which must be given by a District Judge for a decision has been considered by the Supreme Court in the case of *O'Malley v. Ballagh* [2002] I.R. 410. In that case, the proceedings before the District Court were a prosecution under s. 49 of the Road Traffic Act, 1961 as amended. Murphy J, with whom Hardiman J. and Geoghegan J. concurred, said the following at p.416:

> *"I would be very far from suggesting that Judges of the District Court should compose extensive judgments to meet some academic standard of excellence. In practice, it would be undesirable, and perhaps impossible, to reserve decisions even for a brief period. On the other hand, it does seem, and, in my view, this case illustrates that every trial Judge hearing a case at first instance, must give a ruling in such a fashion as to indicate which of the arguments he is accepting and which he is rejecting, and, as far as practicable, in the time available, his reasons for so doing, and further it does seem to me that in failing to rule on the arguments made in support of the application for a non-suit, he fell into unconstitutionality, to use the words of Henchy J. in the State v. Holland and Kennedy [1977] I.R. 193, 20".*

51. Immediately before the foregoing passage, the following was said by Murphy J.:

> *"At the conclusion of the State's case, the applicant and his legal advisors were required to decide whether they should go into evidence or not. To make that decision, it was essential to know which of the arguments were accepted and which rejected".*

52. Although it is not stated in the judgment why it was essential for that applicant to know which of his arguments were accepted and which rejected, for the purpose of deciding to go into evidence or not, and it is not at all apparent from the judgment why this was so, it is clear that this perceived need of that applicant was at the heart of the court's *ratio decidendi.*

53. I would be of opinion that the foregoing passage in the judgment of Murphy J. is confined to those cases, where that type of need exists, and, that case is properly to be distinguished.

54. In determining the extent of the obligation of a District Judge to give reasons for his decision, regard must be had to a number of factors. The first factor, in my view, is the particular need of a person appearing before the District Court to have specific reasons given for the decision made. The first situation which might be encountered is where an application is made for a non-suit on a submission that there is No Case to Answer. This will happen after the prosecution has given its evidence and the application will invariably be on the basis that either there is no evidence of the commission of the offence or that the evidence is defective or insufficient for legal reasons to warrant a conviction for the particular offence, or that the evidence is of such a contradictory or tenuous character, that a court could never be satisfied beyond a reasonable doubt of the guilt of the accused.

55. In general, the reasons for the rejection of a submission of No Case to Answer will invariably be immaterial. The critical question at that stage of the proceedings is whether or not the defendant needs to offer evidence to resist the prosecution. If his submission of No Case to Answer is rejected, it simply means that in order to resist prosecution, he must go into evidence. A reasoned analysis of the evidence or legal submissions that have arisen at that point of the case by the District Judge, will not, in general, alter the choices that have to be made by a defendant at that point.

56. At the close of the case, the District Judge will make the final decision. For the purposes of an appeal, any reasons given by the District Judge for his decision will not influence the subsequent appeal which will be a complete re-hearing. Invariably, a disappointed defendant can make his decision to appeal or not to appeal on the basis of the decision of the District Judge regardless of what his reasons for it are and in the light of the fact that an appeal will be a full re-hearing, the appellant does not have to be concerned or engage with the reasons for the decisions, as is the case in an appeal from the High Court to the Supreme Court.

57. In my view, it is not necessary for the purposes of appeal for a District Judge to state specific reasons for his decision.

58. Is it necessary for a District Judge to state his reasons for the purposes of enabling a party affected by the decision to decide whether to apply to the District Judge to state a case for the High Court? Cases stated arise in two circumstances in the District Court. The first of these is before a decision is made in the case, where an issue of law arises which is of such a nature as to leave the District Judge unable to reach a conclusion. Generally, this will arise where the point is a novel one in respect of which there is not a clear authority. In this circumstance, a consultative case stated can arise pursuant to s. 52 of the Courts (Miscellaneous

Provisions) Act, 1961 and a request for a case stated may come from the parties, or a District Judge of his own motion, may decide to state a case on a consultative basis to the High Court. Of course, in this situation, the District Judge has not yet made any decision: hence the reasons for that decision have not yet arisen.

59. The other situation in which a case stated may arise is pursuant to s. 51 of the Courts Supplemental Provisions Act, 1961 where after a District Judge has made a decision, a defendant may apply to the District Judge to state a case to the High Court on a point of law, which has arisen in the case and has been determined against the party seeking the case stated. This is a case stated by way of appeal. In this situation, a determination has been made with which a party is dissatisfied, as being erroneous on a point of law, and if there is some doubt on a legal point and as to the legal correctness of the conclusion of the District Judge, the party seeking the case stated may be able to persuade the District Judge of that, and to state a case for the opinion of the High Court. An invariable feature of these situations is that the party seeking the case stated is aware that a legal point has been determined against him and hence is either aware of any reasons given by the District Judge, which clearly give him dissatisfaction, or alternatively if no reasons are given, is of the view that the opinion of the High Court may lead to a reversal of the conclusion of the District Judge on the point in question. What is clear is, that in this situation, the giving of reasons for the decision by the District Judge, or the absence of such reasons, invariably will not be a critical factor in the seeking of a case stated. For a case stated to arise at all, necessarily, a legal point has to have arisen in the course of the case upon which either expressly, or by necessary implication, the District Judge has based his conclusion and decision. The giving of specific reasons for that decision, or indeed the absence of such reasons, could, in my view, have little or no bearing on the decision by the disappointed party to seek a case stated, given that the fundamental basis for applying for a case stated is that there is some uncertainty on the state of the relevant law justifying a recourse to the superior courts for their opinion as to the true state of the law.

60. Section 51(1) of the Courts (Supplemental Provisions) Act, 1961) requires the District Judge who has decided to accede to an application for a case stated:

> *"to state and sign a case setting forth the facts and grounds of such determination . . .".*

61. The section does not require that the reasons for such determination should be stated.

62. The long established practice is that the party seeking the case stated is required to draft the case stated, which is then approved and signed by the District Judge. This practice would be inconsistent with an obligation on the part of the District Judge to give reasons for his determination.

63. I am of opinion, therefore, that in general the giving of reasons by a District Judge for his decision is not required to enable or assist a party to apply for a case stated.

64. For the purposes of enabling a party in District Court proceedings to decide whether or not to seek judicial review, the failure by a District Judge to give reasons for his decision, can have little or no relevance in the sense that in the context of that jurisdiction, the reasons given would only be relevant to the irrationality ground. Unless the circumstances were entirely unusual, it could not be said that the absence of stated reasons amounts to irrationality in the sense that that term is understood in the judicial review jurisdiction. Otherwise, the absence of reasons for a decision would be immaterial to a decision whether to seek judicial review or not, unless it could be said that there was a general or universal obligation on a District Judge to state reasons for a decision.

65. A second factor to which regard must be had is the nature of proceedings before the District Court. In general, proceedings before the District Court are conducted in a summary manner, suitable for the disposal of prosecutions for minor offences. Proceedings are conducted on the basis of oral evidence and the outcome of the proceedings invariably depends on the decision taken by the District Judge on that evidence. In my opinion, it is not necessary for a District Judge to give analytical reasons for the acceptance or the rejection of any particular piece of evidence. It is sufficient to merely indicate an acceptance or rejection of the evidence offered on either side of the case.

66. Where legal submissions are made, it is not necessary that each submission should elicit from the District Judge a decision or judgment in which the merits or lack of merits of the submission are given in a reasoned legal analysis. In the context of summary proceedings, such a response could not be expected from a District Judge who has no written material in advance of the hearing upon which to prepare for such an exercise, and in the context of normal District Court lists, has no time to consider that kind of response. Bearing in mind the absence, in general, of a specific need on the part of the party for reasons for the decision, as discussed above, I am of opinion that this, combined with the summary nature of the jurisdiction, dictates that in giving decisions, District Court Judges need only make clear the nature of the decision they are making and in unambiguous terms, the basis for that decision. It could never be said that where a District Judge is presented with submissions on a series of legal points, he or she is obliged to provide a legal analysis of his/her reasons for accepting or rejecting any of them.

67. This is all the more so when a District Judge is called upon, as frequently happens, to adjudicate on weak, if not unstatable, legal points enthusiastically argued by inexperienced lawyers.

68. It is sufficient, in my view, for the District Judge to indicate an acceptance or rejection of the points raised. To require more than this, would, in effect be to require of the District Judge a fully reasoned judgment on each point, because it is very difficult, if not nigh on impossible, to find some kind of concise, succinct middle ground between a simple rejection or acceptance of a point and a fully reasoned judgment, if what is being attempted is a reasoned explanation of the decision.

69. It may often be the case, having regard either to the simplicity of the issue, or the fact that the point raised is a well settled one, and/or is one which frequently arises, that reasons for the decision can readily be stated by the District Judge, as frequently occurs. That does not mean that there should be a general obligation on District Judges to state reasons in all cases, regardless of the complexity of, or novel nature of the point in issue.

70. In this regard, I agree with the judgment of Charleton J. in the case of *Lyndon v. District Judge Mary Collins and Anor.* (Judgment delivered 22nd January, 2007), where he said:

> *"What is essential, however, is that people know going out of court what they have been convicted for and why they have been convicted . . .".*

71. In this context, one has to take what was said by the District Judge in giving his decision in conjunction with what has transpired in the proceedings. If evidence has been given by a number of witnesses for the prosecution, and contradictory evidence given by the defence and the Judge says he prefers the prosecution evidence or he accepts that the charge is made out on the prosecution

evidence, that is sufficient to convey to any reasonable person that the Judge has made his decision on the basis of accepting the prosecution evidence and rejecting the defence evidence and in my opinion, such a formulation of the decision is ample to convey to the defendant, the party affected the basis upon which the decision is reached i.e. the reason for the decision.

72. Returning to the circumstances of this case, it is clear that the first named respondent unambiguously rejected the submissions made by counsel for the applicant when, at the close of the prosecution case, a submission of No Case to Answer was made and similarly at the close of the defence case, but did not give reasons for rejecting these submissions. The submissions made on behalf of the applicant could rightly or fairly be regarded as weak or unstatable points, particularly when assessed in the light of the evidence which had been given by Garda Ryan. There was not, in my opinion, any breach of the applicant's constitutional right to fair procedures and natural justice in the manner in which the first named respondent rejected these arguments.

73. Insofar as the evidence in the case is concerned, the first named respondent expressed himself to the effect that he was satisfied with the evidence presented and saw no reason to dismiss the prosecution.

74. It must be borne in mind that what is said by a District Judge in giving his decision must be understood in the light of proceedings that have taken place before him. A statement of the District Judge giving his decision, looked at solely in isolation, may appear to explain very little, but when seen in the light of the proceedings that have occurred, will be fully understandable and unequivocally convey the basis for the decision, to those parties to the proceedings, and others who may have been in attendance and paying attention to the proceedings.

75. In my opinion, the statement of the first respondent in giving his decision in this case, in the context of the proceedings that had taken place before him, was readily understandable to the parties, and in my view, unequivocally conveyed, first of all, the decision, and secondly that the basis of that decision was that the first respondent accepted the evidence of the prosecution and his statement to the effect that he saw no reason to dismiss the prosecution, implied that he was satisfied that the applicant had failed to rebut the relevant presumptions, as discussed above, and that accordingly he was satisfied beyond a reasonable doubt that he should convict.

76. I have come to the conclusion, therefore, that the applicant has failed to demonstrate that there was any breach of his constitutional right to natural justice and fair procedures on the basis of what he contends was a lack of reasons given by the first respondent for his decision to convict him of the offence in question.