

THE STATE (FINBARR O'CONNOR)

.v.

DISTRICT JUSTICE CLIFFORD

Judgment of Mr. Justice Barron delivered on the 30th day
of January 1987.

In this case the Prosecutor was charged with four offences. He was charged that he did on the 30th July, 1985 assault David Guilfoyle and did on the same date use language calculated to cause a breach of the peace. He was charged with the same offences in relation to Dr. Michael Kelleher on the 10th September, 1985.

The Prosecutor was not legally represented before me. Although not put on affidavit, he made submissions indicating the background to the facts of the charges. Apparently some ten years ago he and his wife were dispossessed of their home something which he continues to dispute. More recently his daughter was involved as a Plaintiff in a personal injuries action.

On the 30th July, 1985, he attended the offices of David Guilfoyle, his daughter's solicitor, in those proceedings. He was there with her approval and the approval of her solicitor. The question being discussed was the question of an appeal having regard to the fact that damages awarded to

the Plaintiff were inadequate. In the course of this meeting at which he was accompanied by his son Kenneth the question of the contents of a report furnished by Dr. Michael Kelleher, a Psychologist, were discussed. David Guilfoyle did not want to show this report to the Prosecutor, but ultimately he agreed to do so. The Prosecutor gave it to his son who then left the office with it. David Guilfoyle did not agree with this and ran after Kenneth O'Connor to try to get it back. Apparently he did not succeed in doing so but the report was returned the following day.

When the Prosecutor saw the medical report he was upset and realised why David Guilfoyle had wanted to keep it from him. In the body of the report which was a psychological assessment of the Plaintiff in the proceedings Dr. Kelleher had referred to the fact that the Prosecutor and his wife were well known to the legal profession and that the Plaintiff took after her mother. He was apparently referring to the attitude adopted by the Plaintiff and his wife in relation to their being dispossessed of their home. Following his discovery of the contents of this report the Prosecutor decided to bring proceedings against Dr. Kelleher. These were served personally on the 10th September, 1985. The charges against the Plaintiff in relation to Dr. Kelleher arise from allegations as to what occurred on that occasion.

These matters are not material to the issue which I have to deal with in the present instance and accordingly I am not taking these matters into account.

The Prosecutor complains that he was not granted legal aid on the hearing of these charges even though he had asked for

it. The substance of his complaint is that on the 4th of November, 1985 the Respondent was informed that no blows were struck in either case and that the prosecution was not seeking a prison sentence, whereas when the cases came on for hearing on the 14th November, 1985 in both cases evidence was given of blows being struck and personal violence being used. He avers that the Respondent refused legal aid because he decided the case was not of a serious nature.

An affidavit was filed on behalf of the Respondent. This was sworn by the Inspector of the Garda Siochana who appeared on behalf of the prosecution on the 4th November, 1985. He averred that he gave the Court a brief outline of the facts and informed the Court that the alleged assaults were not of a serious nature. He denied that he told the Court that no blows were struck in either case or that he would not be asking for a prison sentence. He averred that the matter had been adjourned to the 14th November, 1985 and in paragraph 4 of his affidavit averred:

" The evidence in the proceedings was then heard and the Respondent herein at the conclusion of the case convicted the Prosecutor and imposed the penalties as set out in the District Court Orders the subject matter of these proceedings."

When the matter came on for hearing the Prosecutor objected to this latter paragraph on the ground that the Inspector was not in Court on the 14th November, 1985. The matter was adjourned and the Inspector was cross-examined on his affidavit. He agreed that he personally was not present in Court on the 14th November, 1985. Dealing with the events of the 4th November, 1985 he said that he had no exact

recollection of what he had said to the Court, but was satisfied that he had not said that the evidence would be to the effect that no blows were struck nor that he was not seeking a prison sentence.

It seems to me that the Prosecutor had a much greater reason for recollecting what occurred on the 4th of November, 1985 than the Inspector. He clearly established that he was aware that the Inspector appearing on behalf of the prosecution on the two dates was a different Inspector on each occasion. The Inspector on the other hand accepted that he had no exact recollection of what he said even though he was satisfied that he had not said the words upon which the Prosecutor in effect relies. On the probabilities it seems to me that the Prosecutor is more likely to be correct on these matters.

On this basis of fact, it is clear that the Respondent refused legal aid on the basis of an inaccurate statement of the facts of the case. Further, he does not appear to have given any consideration to the circumstances that two apparently separate and distinct matters were being heard together, something which might well have indicated to him that the matter might be more complex than a simple assault.

In the circumstances I will disallow the cause shown and make the Conditional Orders absolute.

Henry Barron
30/1/87