

THE HIGH COURT

[2020 No. 185 SS]

**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

APPELLANT

AND

MARESSA BRADLEY

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 30th day of July, 2020

Introduction

1. This is a case stated by Judge Colin Daly, President of the District Court, pursuant to s. 2 of the Summary Jurisdiction Act, 1857 as extended by s. 51 of the Courts (Supplemental Provisions) Act, 1961 and the Rules of the District Court 1997, as amended on the application in writing by the appellant (the Prosecutor in the District Court) being dissatisfied with the determination of the District Court on the matter as being erroneous in point of law.

2. The matter in question was the prosecution of the respondent on a charge that the respondent: -

“On the 01/09/2019 at South Circular Road, Dublin 8, a public place, in the said District Court area of Dublin Metropolitan District, did use or engage in threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace might have been occasioned. Contrary to section 6 of the Criminal Justice (Public Order) Act, 1994 [the Act of 1994] as amended by section 22 of the Intoxicating Liquor Act, 2008.”

3. The President of the District Court found as follows: -

- (a) On 1 September 2019, Garda O’Reilly and Garda Conor Kelly received a call to attend at South Circular Road, Dublin 8. Upon arrival at the scene, Garda O’Reilly and her colleagues met a female who is now known to them as being the respondent. The respondent was outside her property and verbally shouting at her former partner so much as to cause a breach of the peace. The respondent began telling the Gardaí to “F- off” and also to “do your F- jobs” and that the Gardaí were “not to be annoying me”. Garda O’Reilly asked the respondent to refrain from swearing, at which point the respondent told her to “F- off”. Members of the public were present;
- (b) Garda O’Reilly directed the accused to leave the area under s. 8 of the Act of 1994. She outlined the consequences of failure to comply with the direction. The accused failed to comply with this direction and was abusive to Gardaí. The District Judge was satisfied that the direction issued was lawful and that no issue arises in respect of the direction for the purposes of this case stated; and

- (c) The accused told Garda O'Reilly to "*F- off*" on numerous occasions and she also stated "*ye are all useless P-*". Garda O'Reilly arrested the accused at 19:45 on the South Circular Road, Dublin 8 and informed her that she was being arrested for failure to comply with the direction issued under s. 8 of the Act of 1994. The accused was conveyed to Kevin Street Garda Station where she was later charged with the offences set out on the charge sheets and was released on recognisance to appear before the District Court. All of the evidence relevant to the commission of the offences charged relate to what happened before the arrest and no relevant evidence in respect of the offences relates to what happened after the arrest.
4. At the close of the prosecution case, the Solicitor for the accused sought a dismissal of the charges on the basis that Garda O'Reilly had not stated in evidence what power of arrest was used where she had stated she arrested the respondent. This was fatal to the prosecution, it was argued. The District Judge was only concerned with the issue raised on behalf of the respondent that the power of arrest was not stated in evidence by Garda O'Reilly.
5. The District Judge accepted the arguments made on behalf of the respondent and held that proof of a valid arrest was required and that it was fatal to the prosecution case that Garda O'Reilly did not state the power of arrest used to arrest the respondent. The District Judge dismissed both charges.
6. The appellant has appealed by way of case stated and seeks the opinion of this Court on the following questions: -
- (1) Was the District Judge correct in holding that proof of a valid arrest is required as an essential ingredient in a prosecution for offences contrary to ss. 6 and 8 of the Act of 1994?;
- (2) Was the District Judge correct in holding that the prosecution in this case was required to adduce evidence stating the power of arrest?; and
- (3) Was the District Judge correct in law in dismissing the case against the respondent on this basis?

Relevant statutory provisions

7. Section 6 of the Act of 1994 provides: -

"(1) It shall be an offence for any person in a public place to use or engage in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned."

- Section 8 of the Act of 1994 provides: -

"(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)

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."

Section 24 of the Act of 1994 provides: -

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

(5) In this section 'relevant provision' means section 4, 6, 7, 8..."

Submissions of the appellant

8. Mr. Conor McKenna BL, on behalf of the appellant, submitted that proof of a valid arrest is an essential proof only in certain cases. For example: proof of a valid arrest is a necessary component in the offence of drunken driving. To establish the admissibility of the certificate that an accused was in excess of the alcohol limit, the prosecution is required to prove that the person was arrested under the relevant provision of the Road Traffic Act. However, no similar proof is required in the instant case.
9. Counsel referred the Court to a number of authorities. In *DPP v. Delaney* [1997] 3 I.R. 453, O'Flaherty J. stated: -

"It appears that the submissions made in the District Court and also in the High Court and, to a degree, in this Court proceeded on the basis that the matter of arrest had some relevance to the charges here.

Whether an arrest is illegal or not, can only be of relevance where proof of a valid arrest is an essential ingredient to ground a charge, such as under s. 49 of the Road Traffic Act, 1961... It was not necessary in the case of any of the charges brought against these appellants to prove a lawful arrest."

In *DPP (Ivers) v. Murphy* [1999] 1 I.R. 98, Keane J. (as he then was) stated: -

"It has been repeatedly pointed out that, as a general rule, the jurisdiction of the District Court to embark on any criminal proceeding is not affected by the fact, if it be the fact, that the accused person has been brought before the court by an illegal process."

10. Mr. McKenna also referred to the following passage from the judgment of Charleton J. in *Mulligan v. DPP (Garda Ryan)* [2009] 1 I.R. 794 at p. 799: -

“13. In the specific context of the Criminal Justice (Public Order) Act 1994, s. 8 empowers members of An Garda Síochána to require a person to desist from misbehaving in a specified manner, such as shouting out loud or banging on drums, or to immediately leave the vicinity of the place concerned. Section 8(2) of the Act makes refusal to comply with such a direction an offence. In *Director of Public Prosecutions (Sheehan) v. Galligan* (High Court, Unreported, Laffoy J., 2nd November, 1995), Laffoy J. held that a person in respect of whom a s. 8 direction was made was entitled to be informed of his legal obligation to comply with such direction and of the penal sanction applicable in the event of non-compliance...

14. I am satisfied that these principles apply equally to the power of compulsion under s. 24(2) of the Criminal Justice (Public Order) Act 1994. However, out of caution, I need to add to what has already been said. It cannot, however, be expected that the Gardaí should be turned into walking repositories of sections and sub-sections of various Acts of the Oireachtas. That has never been the law. A citizen is not obliged to submit to a demand pursuant to police powers unless information is provided to the citizen that such a power exists. This is the theoretical foundation whereby an arrest is lawful only where the reason for arrest is stated. In *Christie v. Leachinsky* [1947] A.C. 573 at pp. 587 and 588, Viscount Simon reduced the law on arrest to the following propositions:-

- ‘(1) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized.
- (2) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment.
- (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.
- (4) The requirement that he should be so informed does not mean that technical or precise language need be used. This matter is a matter of substance, and turns on the elementary proposition that in this country a person is, *prima facie*, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be so imposed.’

This passage was cited with approval in the Supreme Court by O’Higgins C.J. in *The People v. Walsh* [1980] I.R. 294, at p. 306 and again by Blayney J. in *Director of Public Prosecutions v. Mooney* [1992] 1 I.R. 548, at p. 553.

15. In arresting someone for murder, for instance, a garda does not have to mention s. 4 of the Criminal Justice Act 1964. He or she need merely specify the offence of murder and its occasion. ..."

Submissions of the respondent

11. Mr. Karl Monahan BL, on behalf of the respondent, submitted that the District Judge was correct in dismissing both charges. Mr. Monahan relied, to a considerable extent, on the decision of the Supreme Court in *DPP v. Gaffney* [1987] I.R. 173. In that case, the accused had failed to stop at a Garda checkpoint, subsequent to which he was chased by the Gardaí. In the course of the chase, the accused drove dangerously and at speed, but made his way to his home address. The Gardaí called to the house but were refused entry. A Garda inspector then knocked on the open front door of the house and asked if anybody was inside. A male voice replied "yes, in here". The inspector then entered the house and arrested the accused. The District Court found that the Gardaí had no permission to enter the house. The District Judge asked by way of case stated whether that conclusion was correct and whether the arrest of the accused was lawful in the circumstances. The Supreme Court held that the arrest was not lawful. Mr. Monahan relied on the following passage from the judgment of Henchy J.: -

"The crucial question then is, were they trespassers? For if they were, the arrest was unlawful and in consequence the prosecution must fail. That follows because, as was pointed out by Lord Scarman in *Morris v. Beardmore* [1981] A.C. 446 at p. 463:

'When for detection, prevention or prosecution of crime Parliament confers upon a constable a power or right which curtails the rights of others, it is to be expected that Parliament intended the curtailment to extend no further than its express authorisation.'"

and: -

"... I think it is for the District Justice alone, for it was he who saw and heard the witnesses, to decide in the light of the nuances of the situation whether the gardaí were trespassers or licensees. ..."

Mr. Monahan further submitted that though the Supreme Court in *DPP v. Delaney* did consider the decision in *DPP v. Gaffney*, the Court did not have regard to the fact in *Gaffney* that not only was the arrest held to be invalid but also that the prosecution must fail in those circumstances.

Consideration of submissions

12. It is the case, as was found by the District Judge, that all of the evidence relevant to the commission of the offences charged relates to what happened before the arrest, and no relevant evidence in respect of the offences relates to what happened after the arrest. In my view, this finding engages the general rule as stated by Keane J. (as he then was) in *DPP (Ivers) v. Murphy* that "the jurisdiction of the District Court to embark on any criminal proceeding is not affected by the fact, if it be the fact, that the accused person

has been brought before the court by an illegal process". However, it should be noted that such a general rule has clear limitations (see *State (Trimbole) v. The Governor of Mountjoy Prison* [1985] I.R. 550).

13. I am of the view that the decision in *DPP v. Gaffney* is not of assistance to the respondent. In that case, the fact that the accused was arrested whilst the Garda inspector was, in fact, trespassing was clearly material. In that case, the arrest was effected in circumstances where the accused's Constitutional right to the inviolability of his dwelling was breached. These are not the circumstances in the instant case.
14. The District Judge found, as a fact, that the arresting Garda informed the respondent "*that she was being arrested for failure to comply with the direction issued under s. 8 of the Act of 1994...*". To my mind, this brings the matter within the judgment of Charleton J. in *Mulligan v. DPP*. The arresting Garda was not obliged to inform the respondent that she was being arrested under the provisions of s. 24 of the Act of 1994. By informing the respondent that she was being arrested for failure to comply with a direction issued under s. 8 of the Act of 1994 brought the arrest firmly within the propositions stated by Viscount Simon in *Christie v. Leachinsky*, a passage which was cited with approval in the Supreme Court (*The People v. Walsh*) subsequently.

Conclusion

15. By reason of the foregoing, in my opinion, the answers to the questions posed by the District Judge are as follows: -
 - (1) "Was I correct in holding that proof of a valid arrest is required as an essential ingredient in a prosecution for offences contrary to ss. 6 and 8 of the Act of 1994?"
- Answer: No.
 - (2) "Was I correct in holding that the prosecution in this case was required to adduce evidence stating the power of arrest?" - Answer: No.
 - (3) "Was I correct in law in dismissing the case against the respondent on this basis?"
- Answer: No.