

THE HIGH COURT

IN THE MATTER OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

COMPLAINANT

AND

RONNIE WALSH

DEFENDANT

CASE STATED

Judgment of Mr. Justice Gannon, delivered the 26th November, 1984.

District Justice Dunleavy sitting in the District Court area of Wicklow on the 6th of March, 1984 heard a complaint laid against the defendant Ronnie Walsh by the Director of Public Prosecutions charging him with an offence contrary to section 49 (2) and (4) (a) of the Road Traffic Act 1961 as amended by section 10 of the Road Traffic (Amendment) Act 1978. Having dismissed the complaint the District Justice stated a case for the opinion of this Court on the question, as stated therein, whether he was right in law in dismissing the complaint. The particulars of the offence as set out in the charge were that the defendant -

"on the 7th October, 1983 at Rathmore, Ashford, Co. Wicklow

"within the Court area and district aforesaid did drive a mechanically propelled vehicle, to wit, a motor car registered numbers BSI 608 in a public place while there was present in your body a quantity of alcohol being such that within three hours after so driving the concentration of alcohol in your blood exceeded a concentration of 100 milligrams of alcohol per 100 millilitres of blood contrary to section 49 (2) and (4) (a) of the Road Traffic Act 1961 as inserted by section 10 Road Traffic (Amendment) Act 1978."

It appears from the facts set out in the case stated as having been proved or admitted that Garda Declan McCarthy on the night in question stopped the defendant's motor car, the driving of which he had been observing and, because of the opinion he formed, requested the defendant to submit to a breath test which proved positive. He arrested the defendant under section 49 of the Road Traffic Act 1961 required him to give a blood sample for analysis. The defendant gave the blood sample which was taken by Dr. Byrne but declined to take the duplicate sample offered to him. The samples were sent to the Medical Bureau for Road Safety the next day and the doctor's certificate and the Bureau's certificate thereon were produced in

Court and showed a concentration of alcohol in the blood in excess of the statutory limit. The case stated says that Garda McCarthy was not cross-examined and does not show that any evidence was offered by or on behalf of the defendant. The course of the proceedings before the District Justice which followed the end of the evidence are set out in paragraphs 2 (g) and (h) of the case stated as follows:-

"(g) Mr. John Jay, solicitor, appearing for the defendant applied for a direction on the grounds that the defendant did not receive a copy of the Medical Bureau certificate in accordance with section 22 (3). The prosecuting Garda Superintendent Thomas Neagle handed into me a registered envelope addressed to the defendant with a copy of the Bureau certificate in it. This envelope (and certificate which are annexed hereto is marked "not collected" by which I understood that there was no one available in the house when a postal official called, that a notice to this effect was left, but no one came to the Post Office to collect it. As a result the said envelope and contents were returned to the Bureau.

"(h) I enquired of the Superintendent if any effort had been made by the prosecution to have the copy certificate handed to or forwarded to the defendant. I was informed that no effort was made, that there was no obligation and that the provisions of section 22 (3) had been complied with."

The District Justice sets out in the case stated his determination in the following manner:-

"I formed the opinion that this was not sufficient, that the prosecution should have made some effort to effect delivery of the certificate and accordingly I dismissed the summons."

The question submitted in the case stated to this Court is: "the opinion of the Court is sought on whether I was right in law in dismissing the complaint".

Counsel for both parties in this Court agreed that it was not clear what is the point of law that arises from such determination. The question of law as thus submitted to this Court for its opinion is expressed in a form which, regrettably, is becoming a standard form. A standard form by which the District Justice stating a case expresses his ultimate conclusion upon all issues of law and fact as a verdict of conviction or dismissal of a criminal charge leaves room for doubt:

to what legal proposition he accepted or rejected. The difficulty of identifying the particular question of law upon which the guidance of this Court is required will be increased when there is an absence from the case stated of a statement of the submissions of law put before the District Justice for his consideration. Counsel for the Director of Public Prosecutions submits that the only issue for determination on this case stated is whether on the true construction of section 22 (3) of the Road Traffic (Amendment) Act 1978 there is imposed upon the Bureau a duty to ensure the delivery of a copy certificate issued by the Bureau to a person named on the relevant form to whom it has been forwarded, and the receipt thereof by such person. Counsel for the defendant submits that in addition to such question of law there arises the further question, namely, whether in omitting to prove the delivery to and receipt by such person of such copy certificate so issued by the Bureau the prosecution has failed to discharge the onus of proof necessary to establish the guilt of the defendant of the offence charged in the summons. It was contended on behalf of the defendant that the return undelivered by the Post Office to the Bureau of the copy certificate sent to the defendant was "evidence to the contrary" such as to deprive the

prosecution of the benefit of the presumption prescribed in section 23 (2) of the Road Traffic (Amendment) Act 1978 in relation to compliance by the Bureau with the requirements prescribed in section 22 (3) of Part III of that Act.

Section 21 of the 1978 Act prescribes that when a designated medical practitioner has taken a specimen of blood from a person and divided it into two parts and put them into sealed containers he then completes a prescribed form. Subsection (3) of section 21 provides that after a person has been offered by a garda one of the sealed containers with a statement in writing the garda shall as soon as practicable thereafter send to the Bureau the completed form and, when the person has declined to retain one of them, both sealed containers. Section 22 provides in subsections (1) and (2) that as soon as practicable after receipt of the samples of blood the Bureau "shall analyse the specimen and determine the concentration of alcohol" in one of the two specimens received.

Subsection (3) of section 22 of the Road Traffic (Amendment) Act 1978 is as follows:-

"As soon as practicable after compliance with subsection (1), the Bureau shall forward to the Garda Station from which the specimen analysed was forwarded a completed certificate in the

"form prescribed for the purpose of this section and shall forward a copy of the completed certificate to the person who is named on the relevant form under section 21 as the person from whom the specimen was taken or who provided it."

The correct interpretation of this subsection, it seems to me, is the question of law upon which the District Justice requires to be advised in this case stated.

The correct approach to the construction of this subsection is firstly to take the words used in their ordinary meaning, and in case of difficulty by reason of any ambiguity or lack of clarity, to consider the other provisions of the Road Traffic Acts 1961 to 1973 as far as they relate to this subject-matter. I have been afforded considerable assistance in this matter by a judgment of the President of the High Court in The Director of Public Prosecutions -v- McGuoy (unreported) delivered 5th July 1983). I have also considered the cases referred to by the President in the course of that judgment. At page 6 of the available copy of the unreported judgment of the President in D.P.P. -v- McGuoy he says:-

"Firstly, the obligation imposed on the Bureau is an obligation to forward a copy of the certificate of analysis. I must construe this as imposing upon them an obligation to take

"appropriate and practical steps to send or cause to be delivered to a person whose sample of blood has been analysed a copy of the certificate. Clearly the evidence before the Learned District Justice in this case with regard to these steps was that the Bureau transmitted a copy of the certificate by registered post presumably on the facts as stated in the case to the correct address of the respondent. Whilst there was evidence which in my view the Learned District Justice was entitled to accept as admissible evidence that the copy certificate did not reach the respondent, there was no evidence before him that the non-delivery of it became known to any person in the Bureau. I cannot construe the obligation to forward a copy of the certificate as being equivalent to an absolute obligation to ensure its receipt by the party concerned. Having regard to the presumption contained in section 23 it, in my view was not possible for the Learned District Justice to reach a conclusion that the Bureau had failed as soon as practicable to forward a copy of the certificate in the absence of evidence that prior to the date on which a copy of the certificate was apparently required by the solicitor on behalf of the respondent



"they, the Bureau, were aware that the copy which they had

forwarded by registered post had not been delivered."

As a matter of understanding the ordinary and common use of words, and adopting the opinions of the President. I find no difficulty in understanding that the subsection requires the Bureau to forward, in the sense of send or dispatch, to the person named on the relevant form a copy of the completed certificate which relates to such person. The subsection is not expressed to, and does not require, the Bureau to do anymore than take reasonable steps to deliver such copy to such person. Neither is the wording of the subsection open to the construction of imposing an obligation on the Bureau to seek and find such person. An examination of the other pertinent sections of the Road Traffic Acts 1961 to 1978 shows that the function of the Bureau is to provide by the application of scientific skills evidence of a technical nature which may be available and put to use as and when required for the purpose of a prosecution of offences under Part III of the Road Traffic (Amendment) Act 1978. There is nothing in these Acts which casts upon the Bureau any function or duty of initiating or advancing or participating in (other than in that limited evidential area) the prosecution of such offences. I do not think it should be inferred from what the President said in

D.P.P. -v- McGuoy that the provisions of section 22 (3) put on the Bureau some function in the nature of the service of documents as part of the procedure for a prosecution. Such steps would have to be undertaken by the Gardaí in appropriate cases upon being notified by the Bureau of the non-delivery of a copy certificate forwarded in compliance with section 22 (3).

The interests of justice undoubtedly require that the person, from whom a sample or specimen has been obtained and sent to the Bureau, be notified at the earliest practicable opportunity of the nature of the evidence available from the Bureau if and when required for a prosecution. But it lies with the Director of Public Prosecutions and the Gardaí but not with the Bureau to decide whether and when a prosecution should be commenced. Whether the statutory requirements in relation to the taking of a sample or specimen, and in relation to the analysis thereof, and in relation to the results of such analysis, have been complied with are matters of proof which, but for section 21 (4) and section 23 (2) of the 1978 Act would have to be undertaken by the prosecution. Section 21 (4) is as follows:-

"In a prosecution under this Part it shall be presumed until the contrary is shown that subsections (1) to (3) have been complied with."

The subsections referred to therein relate to the requirements for the taking of specimens and the sending of them to the Bureau.

Section 23 (2) is as follows:-

"A certificate expressed to have been issued under section 22 shall, until the contrary is shown, be sufficient evidence of the facts certified to in it, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the Bureau with all the requirements which the Bureau is obliged to comply with by or under this Part or under Part III of the Act of 1968."

This subsection also relates only to prosecutions in Court under the 1968 and 1978 Acts. Its provisions are in relief of the onus of proof which, because of the presumption of innocence in favour of an accused person, would otherwise be borne by the prosecution. It does not affect in any way the nature or performance of the functions of the Bureau. It does have the effect of casting upon the accused person the onus of establishing either from the evidence adduced by the prosecution or by evidence given or called by him that there was a failure by the Bureau of compliance with the statutory requirements relating to its functions. Because this onus is thus cast upon an accus

person and having regard to the procedures prescribed in section 16 (5) and section 21 it seems to me that an accused person who has not received delivery from the Bureau of the copy certificate cannot rely on that fact alone as showing the contrary for the purposes of avoiding the effect of section 23 (2).

In the absence of any evidence offered by or on behalf of the accused in this case it is not open to the accused to call in aid or to rely upon the principles applied in the State (Walshe) -v- Murphy and the Attorney General 1981 IR 275 as stated in the judgment of the President at page 293 thereof, and in the State (O'Regan) -v- Plunkett D.J. (unreported, Gannon J. 29th July, 1983) which were cited in argument. In both of those cases there was evidence given by or on behalf of the accused from which the Court could infer that an injustice might be done despite the apparent compliance with formal procedures.

The advices to the District Justice on this case stated therefore must be that for the foregoing reasons he was not correct in law in dismissing the complaint before him. The complaint, therefore, should be re-entered before him for continuances whereupon it will be open to him to hear whatever evidence may be offered by and on behalf of the defendant and to consider any submissions

whether of law or on the facts the parties may wish to address

to him.

Sg.  
22/11/84

Costs reserved to DJ. for his ruling  
thereon.

Sg.  
26/11/84