THE HIGH COURT

JUDICIAL REVIEW

[2022] IEHC 602

[Record No.: 2021/647 JR]

BETWEEN

ZBIGNIEW ZADECKI

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 1st day of November, 2022

INTRODUCTION

1. The Applicant is a Polish national who was charged with a number of offences which came before the District Court for hearing in April, 2021. While he was acquitted on some of the charges coming before the District Court, he was convicted on others. A full transcript of the hearing before the District Court is available.

2. Leave to proceed by way of judicial review was granted by the High Court (Simons J.) on the 25th of August, 2021 on foot of a written judgment ([2021] IEHC 553).

3. Under the terms of the order granting leave the Applicant was limited to pursuing a challenge in respect of only two of the charges which had been before the District Court in April, 2021, namely two charges of possession of stolen property contrary to s. 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 [hereinafter "the 2001 Act"]. These convictions are challenged on the dual basis that there was no evidence the items were stolen

before the District Judge thereby depriving him of jurisdiction and it was wrong to proceed to convict the Applicant notwithstanding the agreement of the prosecuting guard with the Applicant's solicitor's submissions at direction stage as to the said lack of evidence that the items were stolen.

LEAVE APPLICATION

4. In refusing leave to pursue a challenge in respect of other convictions handed down by the District Court, Simons J. proceeded on the basis that an application for judicial review will not normally be appropriate where an applicant has an adequate alternative remedy by way of an appeal. With reference to the Supreme Court decision in *E.R. v. Director of Public Prosecutions* [2019] IESC 86 and *Sweeney v. District Judge Fahy* [2014] IESC 50, Simons J. reiterated that judicial review is about process, jurisdiction and adherence to fair procedures and is not a reanalysis of the case. He pointed out that it is not enough to ground a successful application for judicial review that the trial judge might have made an error of fact or an incorrect decision of law. On an application of these principles to the case advanced on behalf of the Applicant, Simons J. found that many of the errors alleged against the District Court were precisely the types of errors in respect of which an appeal to the Circuit Court represents an appropriate remedy and, if errors at all, then they constituted errors of law within jurisdiction which are not properly amenable to judicial review.

5. Despite the restricted circumstances in which judicial review is available as a remedy where the complaint relates to the evidence adduced, leave to proceed by way of judicial review was granted by Simons J. in respect of two charges related to possession of an allegedly stolen PPS (Personal Public Service) card and a Leap (public transport) card. As set out in the judgment, leave was granted because (para. 29):

> *"29. I am satisfied that the applicant has made out arguable grounds for judicial review in this regard, and that an appeal to the Circuit Court would not represent an adequate alternative remedy. The gravamen of the applicant's case is that the District Court exceeded its jurisdiction in purporting to convict the applicant of the offences in circumstances where the prosecuting garda did not oppose the application for the direction. If this ground is made out at the full hearing of the judicial review*

proceedings—and this is a matter for another day—it would appear to represent a significant breach of fair procedures in that the District Court judge might be perceived as having descended into the arena. This is enough to bring this aspect of the present proceedings within the category of cases in respect of which judicial review is appropriate notwithstanding the pending appeal to the Circuit Court."

6. In granting leave, Simons J. allowed the proceedings to be maintained on the following grounds:

i. Having regard to all the circumstances, including the multiple refusals by the learned Judge to apply the law to the evidence and the failures by the learned Judge to provide any or any sufficient or rational reasons for his decisions on the aforesaid matters, the Applicant's right to a trial in due course of law in which justice was seen to be done has been breached;

ii. The learned Judge erred in fact and in law in convicting the applicant of possession of stolen property without evidence that the property in question was stolen;

iii. The learned Judge erred in fact and in law in convicting the applicant of possession of stolen property when the prosecution conceded the legal arguments made on the applicant's behalf in support of a directed acquittal and;

iv. In all of the circumstances, the conduct of the proceedings lacked the appearance of justice and fairness required of a trail in due course of law pursuant to Article 38.1 of the Constitution.

7. It appears from the grounds allowed, if not from the terms of the judgment, that leave was granted to proceed not only in relation to the failure to accede to a directed acquittal in the face of agreement from the prosecution but also in relation to the want of evidence to ground a conviction and the absence of reasons.

ISSUES

8. By virtue of the considered judgment of Simons J. at leave stage, the issues in these proceedings are now relatively net. The essence of the Applicant's complaint is that the Learned District Court Judge erred in fact and in law in convicting the Applicant of possession of stolen property when there was no evidence that the property in question was stolen and

when the prosecution conceded the legal arguments made on the Applicant's behalf in support of a directed acquittal. It is claimed that in all the circumstances, the conduct of the proceedings lacked the appearance of justice and fairness required of a trial in due course of law pursuant to Article 38.1 of the Constitution. While leave was also granted to challenge the decision to convict for want of sufficient or rational reasons, a lack of reasons was not pressed in written or oral submissions.

9. The Respondent does not accept that there was no evidence before the District Court to support a conviction and relies on what is accepted to be weak circumstantial evidence as being sufficient to vest the District Judge with jurisdiction to proceed to conviction on the two theft charges. It is contended that in proceeding to convict in the face of the prosecuting guard's apparent acceptance that there was no evidence that the cards were stolen in response to an application for a directed acquittal, the Respondent says that the Judge did not "*enter into the arena*" but rather this was instead an instance of him not accepting a legal submission, albeit one agreed in by both parties, which it is contended he is entitled to do in his role as judge.

CHARGES OF POSSESSION OF STOLEN PROPERTY

10. The charges which are now relevant to these proceedings are two charges relating to offences of possession of stolen property contrary to section 18 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

11. In respect of the first theft charge (on charge sheet number 19860718), the learned District Court Judge convicted the Applicant and imposed a three-months' term of imprisonment consecutive to the sentence of six months imposed on a separate charge in respect of an offence contrary to section 9 of the Firearms and Offensive Weapons Act, 1990 (as amended) dating to the same arrest as the theft charge. In respect of the second theft charge (on charge sheet number 19860694), the learned District Court judge convicted the Applicant and took that offence (along with a number of other offences) into consideration in imposing the foregoing sentence of three months.

12. Section 18 of the 2001 Act provides as follows:

"18.—(1) A person who, without lawful authority or excuse, possesses stolen property (otherwise than in the course of the stealing), knowing that the property was stolen or being reckless as to whether it was stolen, is guilty of an offence.

(2) Where a person has in his or her possession stolen property in such circumstances (including purchase of the property at a price below its market value) that it is reasonable to conclude that the person either knew that the property was stolen or was reckless as to whether it was stolen, he or she shall be taken for the purposes of this section to have so known or to have been so reckless, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he or she so knew or was so reckless.

(3) A person to whom this section applies may be tried and convicted whether the principal offender has or has not been previously convicted or is or is not amenable to justice.

(4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both, but is not liable to a higher fine or longer term of imprisonment than that which applies to the principal offence."

13. The interpretation section of the 2001 Act, s. 2(1) defines *"stolen property"* in the following terms: "*stolen property" includes property which has been unlawfully obtained otherwise than by stealing, and cognate words shall be construed accordingly*."

EVIDENCE BEFORE DISTRICT COURT

14. The prosecution case was advanced on the evidence of Garda Holmes. In her evidence she confirmed that the Applicant had been in possession of the allegedly stolen cards when searched by her. Each of the two cards was made out in the name of an individual other than the Applicant. The Prosecuting Garda's evidence before the District Court might be summarised as follows:

i. On the 16th of April, 2019, Garda Holmes attended McDonald's on Grafton Street and observed the Applicant asleep in a booth;

ii. She approached the Applicant and informed him that he was committing an offence contrary to s. 5 of the Criminal Justice (Public Order) Act, 1994 [hereinafter "the 1994 Act"] and asked him to desist from his activities and to leave the premises. The Applicant refused to do so;

iii. Garda Holmes then issued a direction pursuant to s. 8 of the Criminal Justice (Public Order) Act, 1994, which the Applicant also refused to comply with;

iv. Garda Holmes escorted the Applicant out of the premises and onto Grafton Street and demanded his name and address pursuant to s. 24 of the 1994 Act. The Applicant refused to provide these details and was told he was going to be arrested and searched;

v. Over the course of the search, Garda Holmes found a PPS card in the name of 'Grzegorz Wasik' and a Leap card in the name of 'Aaron Flannery O'Sullivan' on the Applicant's person. Garda Holmes cautioned the Applicant and asked him to provide an explanation for the cards. The Applicant stated that they belonged to his friend but he was unable to provide any details in respect of this;

vi. He was then arrested and brought to Pearse Street Garda station where he was charged;

vii. In cross-examination, Mr. Quinn (who represented the applicant) simply asked Garda Holmes if she spoke Polish.

15. At the conclusion of the prosecution case, the Applicant's solicitor applied for a directed acquittal on the basis that there was no case to answer. This application was made on the basis that there was no evidence before the Court that the cards were stolen.

16. In response to the application, the prosecuting Garda expressly stated that she accepted the Applicant's solicitor submission in relation to the possession charges and the transcript records simply (Transcript, page 54):

> *"in relation to the section 18 charges, I accept Mr. Quinn's submission".*

17. The District Judge refused to grant the application for a directed acquittal and indicated, on the basis of the lower standard present at the direction stage, that the Applicant had a case to answer.

18. When Mr. Quinn complained that Garda Holmes had accepted his submissions, the District Judge stated that Garda Holmes had accepted a point that Mr. Quinn had made but continued:

> *"…I'm here to ensure that justice is administered and I believe that the proof to which you have alluded as a possible proof is not a proof that's required."*

19. This was a reference to an earlier question the District Judge had asked of Mr. Quinn in respect of how the State were to prove the cards were stolen. In answer to that question, Mr. Quinn had stated that the State could have called the individuals named on the cards to give evidence that the cards had been stolen from them.

20. From the transcript it appears that the District Court judge may have considered that it would be unreasonable to require the prosecution to have called the owners of the two cards as witnesses in the proceedings. He rejected the suggestion that there was no evidence before the Court. He pointed out that there was evidence before the Court of two cards in the name of 'Grzegorz Wasik' and 'Aaron Flannery O'Sullivan', not being the defendant's name. He added that when the Applicant was asked for an explanation as to why he had these, he said they belonged to a friend but when asked to name the friend, he was unable to do so. The District Judge then held:

> *[T]his is an application for a direction. I haven't convicted him. I have to determine as to whether he has a case to answer on the Galbraith standard and as to whether there is an absence of an essential proof. And I believe that the defendant has a case to answer. That's as far as I've gone with it.*

21. The Applicant did not go into evidence and Mr. Quinn repeated his submissions on the higher standard. The District Judge rejected this submission and stated:

> *"I'm not with you in relation to those matters, Mr Quinn. I believe that the prosecution have proved their case beyond a reasonable doubt in relation to the two section 18s and I am convicting him of those matters."*

22. While the Applicant's solicitor maintained throughout the hearing that there was no evidence that the cards were stolen, this was not accepted by the District Judge who pointed to the two cards in the names of third parties and the Applicant's response when asked for an explanation when he said they belonged to a friend but was then unable to name the friend.

WANT OF EVIDENCE GOING TO JURISDICTION

23. In *Sweeney v. DPP*, the Supreme Court acknowledged that a want of evidence may deprive a Court of jurisdiction in the "*broader*" sense. It is clear from the judgment, however, that in a case where want of evidence is the issue the court will only intervene by way of judicial review in an "*extreme case*". Clarke J. stated (para. 3.7 to 3.8):

> *"it is not a matter for the High Court (or this Court on appeal), in considering whether to quash a conviction thus arising, to, to use the language of Keane CJ in DPP v. Kelliher [2000] IESC 60 inquire "…into the merits into the decision and inquiring whether on the facts before him the District Judge was right or wrong in the course that he took. That is not a course which is open to the Superior Courts to take in judicial review proceedings. …" Thus, there are very significant limitations on the extent to which it is appropriate for the superior courts to exercise their judicial review jurisdiction arising out of allegations that the evidence before a lower court or other decision maker was insufficient to justify the conclusions reached rather than insufficient to establish that the decision maker had any lawful capability to make the relevant decision in the first place. Absence of a lawful power to make the decision would render the decision unlawful. Save in an extreme case, absence of sufficient evidence as to the merits would only render the decision incorrect and, thus, not amenable to judicial review. "*

24. He continued (para. 3.16):

> *"At a minimum, it requires a fundamental error to raise the prospect that the decision is not merely incorrect but also unlawful. It is unnecessary, for the purposes of this case, to attempt any exhaustive examination of what might be said to be the type of error which is sufficiently fundamental to render a decision unlawful in all types of*

cases. For present purposes, it can at least be said that issues concerning the adequacy of evidence before a decision maker (as opposed to a complete absence of evidence as to a necessary matter) will not render a decision unlawful."

25. The position is summarized succinctly in Dunne's Judicial Review of Criminal Proceedings, Second Edition, where it is stated at 1-225:

> *"the starting point in cases where it is alleged that the evidence before the lower court was insufficient o support the decision is that it is a cardinal principle of judicial review that judicial review is not concerned with the correctness of decisions. There s a fundamental distinction between unlawfulness, which can result in the remedy of judicial review, and incorrectness, which cannot. The issue of whether an accused person is guilty of an offence is a question of fact (or, in many cases, a mixed question of law and fact) to be decided by the court on the evidence. As set out above, a finding of unreasonableness… will not be made unless there is a complete absence of evidence to support a finding. Given the burden and standard of proof in criminal matters, the circumstances in which there will be no evidence whatsoever to support a verdict in a criminal case will be rare. Further, as discussed elsewhere in this text, the court will not grant certiorari in respect of a conviction and sentence on the basis of an alleged insufficiency of evidence to support the finding of the court on the merits. In situations where it is alleged that there was insufficient evidence to support a finding of guilty in a criminal matter, the appropriate remedy is an appeal."*

26. So, I must now determine if it can truly be said that this is an extreme case in which there is a complete absence of evidence as to a necessary matter, namely the fact that the cards were stolen.

27. I accept that the prosecution is required to prove beyond a reasonable doubt that the cards were stolen before a Court ought properly to convict. It is well established that in a prosecution for theft of goods it is necessary to prove the fact of criminal origin (*the People (DPP v. McHugh* [2002] 1 IR 352). How this burden is discharged, however, does not always require evidence from the owner of the goods to establish that they have been stolen. The issue of proof of ownership as an essential ingredient in the offence of larceny was considered by the High Court in *Valentine v. DPP* [2007] IEHC 267 where Birmingham J. said (at p. 6):

> *"So far as the obligation to prove the property was owned and that the appropriation was without the owner's consent it is the case of course that from time to time there may be difficulties in establishing an owner, the pickpocket in the crowded street being an obvious example and there the jury or judge will have to consider whether the evidence is such that the property in question is proved to be owned by the person unknown and that an absence of consent can be inferred."*

28. Proving that goods are stolen may be established by circumstantial evidence (the People (*DPP) v. O'Hanlon* (Unreported, Court of Criminal Appeal, 1st of February, 1993). In *The People (DPP)* v. *O'Hanlon* O'Flaherty J. held:

> *"Indeed, it is probably likely that it is not an essential proof at all to establish that the goods were the property of any particular person or firm; the essential proof is that they have to be shown to have been stolen goods…the court would wish to say that the proof that goods are stolen may be proved by circumstantial evidence and on occasion there may be no direct evidence such as from the actual owner or the thief but each case must depend on its particular circumstances."*

29. The Respondent relies on the decision of Noonan J. in *DPP v Cooney* [2015] IEHC 239 to make the case that there was no want of evidence before the District Judge such as would deprive him of all jurisdiction in this case because there was circumstantial evidence. The facts in the *Cooney* case require to be considered briefly. The prosecuting Garda in *Cooney* had stopped the defendant's vehicle and noticed a gent's bicycle in the rear of the van. The defendant stated firstly that it was his friend's bicycle and subsequently that he had bought the bicycle from an unknown youth for €30. On examination of the bicycle, the Garda found that the chassis number had been filed away. On questioning, the defendant admitted that he had reservations as to whether or not the bicycle was stolen and signed Garda Murray's notebook to this effect. In the subsequent case stated proceedings, Noonan J. found that, in the circumstances of the case, there was ample circumstantial evidence to allow the District Judge to conclude that the bicycle was stolen. Helpfully, in his judgment, Noonan J. addresses the ingredients of the offence and the evidence required in clear terms as follows (para. 17):

"…in order to sustain a conviction under s. 18 of the 2001 Act, the prosecution must establish four essential ingredients of the offence. It must establish first that the accused was in possession of property, second that the property was stolen, third that he or she had no lawful authority or excuse for possessing the property and fourth that he or she knew that the property was stolen or was reckless as to whether it was stolen. As the authorities discussed above demonstrate, it is clearly insufficient to establish the fourth element only in the absence of the second. Thus, as Fennelly J. pointed out in McHugh, the accused's erroneous belief that the property is stolen cannot constitute an offence.

18. In the present case, if the only evidence against the defendant was that he had reservations as to whether or not the bicycle was stolen, that would not be a sound basis for sustaining a conviction. Without more, it would not amount to satisfactory proof beyond a reasonable doubt that the bicycle was stolen.

19. However, it seems to me that the evidence in this case goes significantly further. When challenged, the defendant gave mutually contradictory accounts of his possession of the bicycle, the latter of which was clearly highly suspicious i.e. that he had purchased the bicycle from an unknown youth for €30. In addition to that, there was objective evidence that the bicycle was highly likely to have been stolen at some point having regard to the fact that the identification markings on it had been deliberately obliterated.

20. In my view, there was more than ample evidence of a circumstantial nature before the District Court which could justify any reasonable person in coming to the conclusion that the property in question was in fact stolen. To borrow the words of O'Flaherty J., that fact does not have to be proved to a mathematical certainty and therefore there is no requirement for "irrefutable" evidence as suggested by the first question. The standard of proof is beyond a reasonable doubt, not beyond a shadow of a doubt."

30. It is clear from *Cooney* that notwithstanding the absence of direct evidence from the owners of the property in question, proof that the property was stolen, or the absence of consent from said owners, can be inferred from the evidence. On the authority of *Cooney*, the question

for me is whether there was evidence in this case, by reason of circumstantial evidence, that the cards were stolen such that it cannot be successfully contended in these proceedings that there was a complete absence of evidence thereby depriving the district judge of jurisdiction to convict.

31. I accept that this case is distinguishable on its facts from the *Cooney* case. In that case, the available circumstantial evidence was to the effect that the accused had given contradictory accounts as to how he came by the bicycle (initially it was his friend's bicycle but subsequently he claimed to have bought it from an unknown youth for €30.00) and the chassis number had been filed away. The position here is very different. Insofar as the four ingredients of the crime is concerned it is clearly established that the accused was in possession of property. The evidence that the property is stolen is limited to the fact that the cards are in the names of two individuals other than the Applicant. The Applicant said they belonged to his friend but has not named his friend. A PPS card is an official State issued card. No evidence was adduced as to whether it was a valid card or whether enquiries had been made to establish if it had been lost or stolen. There is little argument, therefore, but that the evidence is weak. The real question is whether the evidence is so weak that a judge convicting on the basis of it would be acting in excess of jurisdiction.

32. It seems to me that the fact that the two cards were in the Applicant's possession and that he did not name the friend he claimed to have received them from is very suspicious and constitutes circumstantial evidence which might be relied upon to convict. In the circumstances, it would be wrong for me to conclude that there was no evidence whatsoever before the District Judge that the cards were stolen. The test I must apply is not whether I would have arrived at the same conclusion on the evidence but rather whether, in judicial review proceedings, I ought properly to intervene to quash a conviction obtained on the basis of this type of evidence in circumstances where an appeal to the Circuit Court is available to the Applicant. As I am satisfied that this is a case of weak evidence as opposed to no evidence, the authorities do not support any interference by this Court in judicial review proceedings where the remedy of an appeal is available. It is well established that a District Judge is quite entitled to make a wrong decision on the law, once he retains jurisdiction to make that decision and has not erred in a manner which deprives him of jurisdiction.

IMPROPER REFUSAL OF DIRECTED ACQUITTAL

33. The Learned Judge at leave stage concluded that there were arguable grounds that there was a breach of fair procedures arising on the facts of this case because the District Judge might be perceived as having entered into the arena by proceeding to convict in this case.

34. It is submitted on behalf of the Applicant that when the Prosecuting Garda agreed with the Applicant's solicitor's submission in support of an application for a directed acquittal on the basis that there was no evidence that the cards were stolen that this should be understood as the prosecution accepting that there was no evidence before the court to the effect that the cards represented stolen property and that accordingly the application for a directed acquittal should have been allowed. It seems clear from the transcript, however, that the Judge did not construe the Prosecuting Guard's agreement with the Applicant's solicitors' submission as agreement to a directed acquittal. It is noteworthy that when challenged by Mr. Quinn that the prosecuting guard had agreed with his submission, the District Judge characterizes her response as indicating agreement to a point that had been made by Mr. Quinn as opposed to agreement to a directed acquittal.

35. While I do not understand the exchange in court between Mr. Quinn and the prosecuting Garda as recorded on the transcript to amount to an unopposed application for a direction or to a withdrawal of the charge, I note that on Affidavit in opposing these proceedings, the prosecuting Garda does not seek to limit her concession in response to the claims made in these proceedings. Instead, she states that she does not have any formal legal training and while she may have agreed with the submission made by Mr. Quinn, it is the role of the District Judge to determine issues of law and "*my erroneous acceptance of Mr. Quinn's submission does not displace that function*".

36. It is difficult to construe the prosecuting guard's response as recorded on the transcript as other than agreement on her part with the submission that there was no evidence before Court that the cards were stolen. She did not, however, indicate in terms that she was agreeing to a directed acquittal, nor did she indicate that the charges were being withdrawn. In the circumstances, it remained necessary for the District Judge to determine the application. In proceeding to refuse the application for a directed acquittal the District Court judge expressly stated that he was there to ensure that justice is administered; and that a possible form of proof

alluded to by the Applicant's solicitor, i.e. the calling of evidence from the owners of the cards, is not a proof that is required. It is clear that the District Court Judge that it was for him to determine whether evidence to show the cards had been stolen had been adduced in circumstances where it was his function to administer justice by making a decision based on that evidence.

37. I agree with the submission on behalf of the Respondent that it is the role of the Judge to weigh the evidence and to make a decision based on the evidence. In finding for one side or the other on the basis of his assessment of the evidence, it cannot be said that the District Judge is entering the arena. The submissions of the parties as to the weight to be accorded to that evidence in the context of an application for a direction or conviction requires to be considered but does not bind the Judge. Furthermore, the Judge is required to determine the application unless the application or the proceedings are withdrawn.

38. In circumstances where there was no consent in terms indicated to the Court to a directed acquittal in this case and where it is clear that the charges were not withdrawn, I am satisfied that the District Judge was entitled to proceed to make a determination on the basis of his assessment of the evidence and remained so for so long as the prosecution case remained before him. Until such time as the application for a direction and a conviction was withdrawn, it is my view that the District Judge was entitled to refuse to accept a legal submission which he considered to be incorrect even if it was agreed in by both parties before him.

39. It is not the position that a District Judge, or any judge, is required to accept a submission simply because it is supported by both parties to the dispute, albeit the agreement of the parties in a submission is something which would weigh heavily on any judge and would normally prevail unless the judge is satisfied the submission is wrong. In this case, it is clear that the District Judge did not agree with the submission. The fact that many other judges might have reached a different conclusion on the same legal submission does not in my view mean that the Judge has entered the arena by deciding the point against the submissions presented to him.

40. I do not consider the Applicant to have established that by deciding a point against the weight of the submissions presented, the District Judge in this case should be perceived as entering the arena. It is relevant to any perception issues that the District Judge held against

the prosecution in respect of a number of the prosecutions being pursued against the Applicant on that day such that there can be no suggestion that the District Judge was generally pre-disposed to convicting the Applicant as the evidence does not bear this out.

WANT OF REASONS

41. While a challenge on grounds of want of reasons was not pressed during the hearing before me, it was not abandoned.

42. In terms of the reasons given, at the initial direction stage, the following interaction occurred:

> *"JUDGE: In relation to the two section 18 matters, I'm not with Mr Quinn's application in respect of that that the prosecution are obliged to prove any more than they have done. So I believe that the defendant has a case to answer on the lower standard.*
> *MR QUINN: I think the guard accepted my - she accepted what I said in relation -*
> *JUDGE: She accepted a point that you had made.*
> *MR QUINN: Yes.*
> *JUDGE: But I'm here to ensure that justice is administered and I believe that the proof to which you have alluded as a possible proof is not a proof that's required.*
> *MR QUINN: I didn't say that was. You said name a possible proof; I just gave a possible.*
> *JUDGE: Yes.*
> *MR QUINN: But there's actually nothing whatsoever to say it's stolen.*
> *JUDGE: But there*
> *MR QUINN: Nothing.*
> *JUDGE: No. And in relation to it, what there is, as the evidence before the Court, is that there are two cards before the Court -MR QUINN: Yes.*
> *JUDGE: - which are in the name of Aaron Flannery and in the name ofGregors Wasik and not being in the defendant's name. He was asked for an explanation as to what - why he had these. He gave an explanation that they belonged to a friend. He was asked to name the friend; he was unable to do so.*
> *MR QUINN: Yes.*

JUDGE: That is the evidence that is before the Court in respect of the matter.
MR QUINN: But in relation to that, even that, of itself, Judge, at its highest
JUDGE: Yes.
MR QUINN: - and there is an issue with that. When she said - she just simply said she caught him, the client. She never told him in relation to it what the caution was or anything or explained to him in Polish. But even leaving all that aside, even if you take
it at its height and he gives that explanation, that doesn't show they're stolen.
JUDGE: No, but this is an application for a direction. I haven't convicted him. I have to determine as to whether he has a case to answer on the Galbraith standard and
as to whether there is an absence of an essential proof. And I believe that the defendant
has a case to answer. That's as far as I've gone with it.
MR QUINN: Okay. Well, I don't see how he has a case to answer, be honest with you, Judge.
JUDGE: That's a matter -
MR QUINN: But you've made your view.
JUDGE: Yes. That's - and you have yours.
MR QUINN: I don't see how - there's nothing to say they-were stolen.
JUDGE: I know, I know, Mr Quinn, but we're not having an argument here in relation to it.
MR QUINN: Yes, very well.
JUDGE: There's a process involved. Now, okay. Is that the State - the State's case is complete?
GARDA HOLMES: Yes, Judge.
JUDGE: Now, Mr Quinn.
MR QUINN: I'm not going into evidence. Judge.

43. After indicating that the Applicant was not going into evidence, Mr. Quinn addressed the Court again on the higher burden of proof. The following interaction occurred:

"MR QUINN: I say there's no evidence whatsoever in relation to it being stolen. I repeat that.

JUDGE: Yes.

MR QUINN: There is none whatsoever and if the Court decides to convict on that, I say, I think the Court is falling into error in my view. I believe that's the case.

JUDGE: Yes, okay.

MR QUINN: He has given an explanation which is, you know - in any event, that's not on the basis of what's there before the Court, it's insufficient evidence to convict my client. It clearly says possess stolen property. And the Court has no evidence to show that this is stolen; none whatsoever.

JUDGE: Yes, okay. I'm not with you in relation to those matters, Mr Quinn. I believe that the prosecution have proved their case beyond a reasonable doubt in relation to the two section 18s and 1 am convicting him of those matters. Now, I think that completes the cases before the Court; is that correct?"

44. This was a straightforward District Court prosecution. The District Judge heard evidence of the Applicant having possession of two cards in suspicious circumstances. As already set out, the explanation given was that the Applicant got them from a friend who he could not name. On the authority of cases such as *Lyndon v. Judge Collins* [2007] IEHC 487 and *Connors v. DPP* [2017] IECA 196, I am satisfied that the District Judge has discharged the duty on him to give reasons for his decision. The District Judge indicated that he was not with Mr. Quinn and that the prosecution had proved its case beyond a reasonable doubt having engaged in the evidence immediately prior to this and explained during the directions hearing his position with regard to this evidence. As the District Judge stated there was a case to answer and the Applicant put nothing further in the mix, it is clear that the reason for rejecting Mr. Quinn's application was the evidence referred to in rejecting the directions application.

CONCLUSION

45. For the reasons set out above, I conclude that the Applicant has not established an entitlement to relief by way of judicial review on this application. Accordingly, I will make an order dismissing these proceedings.