

D P P - McGuoy

1982 No. 706 S.S. ✓ 202

THE HIGH COURT

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

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

and

NUALA McGUOY

Respondent



Judgment delivered on the 25th day of July 1983 by

Finlay P.

This is a case stated by District Justice James O'Sullivan assigned to the District Court area of Kilmainham, pursuant to the provisions of the Summary Jurisdiction Act, 1857 as extended by the Courts (Supplemental Provisions) Act, 1961.

It arises from a charge brought by the Appellant against the Respondent which came for hearing before the learned District Justice that the Respondent on the 1st February 1980 was driving a mechanically propelled vehicle when there was present in her body a quantity of

alcohol such that within three hours after so driving the concentration of alcohol in her 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 the Road Traffic (Amendment) Act, 1978. During the course of the evidence on behalf of the Prosecution before the learned District Justice, a Garda witness who had been in charge of the proceedings leading to the prosecution gave evidence that a copy of the certificate of analysis of the blood sample issued by the Medical Bureau of Road Safety had been sent by the Bureau to the Respondent by registered post but it had been returned to the Gardaí with a note to the effect that it had been undelivered at the Defendant's address. Upon that evidence being given and upon an application on foot of that evidence for a direction in the case on behalf of the Respondent, the learned District Justice adjourned the hearing to enable the Director of Public Prosecutions to call evidence from the Bureau to prove the forwarding of the certificate.

At Paragraph 8 of the case, it is stated as follows:

"On the adjourned date, that is on the 5th January 1981, it was agreed by the parties and I found as a fact that the Defendant did not receive a copy of the Bureau's said certificate until six months after the sample was taken and that she obtained such because her Solicitors wrote to the Bureau requesting a copy. Further her said Solicitors did so write after her first appearance in court."

It further appears from the case stated that the Director of Public Prosecutions on the adjourned hearing did not call evidence from the Bureau but relied on the presumption of compliance contained in Section 23 sub-Section 2 of the Act of 1978.

The learned District Justice on this evidence came to the conclusion that the Bureau had not complied with sub-Section 3 of Section 22 of the Act of 1978 and dismissed the case. The Appellant before me, the Director of Public Prosecutions, then applied for and obtained a case stated

by way of appeal the question raised being as to whether the learned District Justice was right in law in dismissing the complaint.

The only other material finding of fact in the case stated before me having regard to the issue which is raised is that it was found as a fact that the Respondent upon the completion of the taking of the sample of her blood being offered a second specimen in accordance with the regulations refused to take the same.

In the Director of Public Prosecutions .v. Corrigan H.C. 1980 No. 274 S.S. 21/7/1980, I dealt with the question of the obligation of the Bureau to forward as soon as practicable a copy of the certificate of analysis following a decision which had been delivered by Mr. Justice Costello in Hobbs .v. Hurley H.C. 1980 No. 165 S.S. 10/6/1980.

The views expressed in these two judgments received the approval of the Supreme Court in the D.P.P. .v. Collins I.L.R.M. 1981 Page 447.

In particular Henchy J. in delivering the unanimous decision of the Supreme Court in that case gave express

approval and adopted the following passage from my judgment in the D.P.P. v. Corrigan -

"Having regard to the presumption contained in Section 23, it seems to me clear that it is not possible from a mere lapse of time without any other evidence and it certainly would not be possible from a lapse of time of approximately a month without any other evidence for a court properly to reach the conclusion that a specimen was either not analysed or a certificate was not sent as soon as possible. In order for the court to reach a decision to that effect, it would be necessary for it to have before it material indicating the practical difficulties and surrounding circumstances under which either or both of these activities were carried out by the Bureau on the one hand and the effect and consequence of any delay that occurred on the other. The onus of establishing the facts from which a court could

draw conclusions on these two topics is clearly, having regard to the terms of the Section, upon the Defendant".

Applying the principles set out in that portion of the judgment which has been approved of by the Supreme Court to the facts of the case before me, the following conclusions ensue.

Firstly, the obligation imposed upon 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 caused 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 those 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 that 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. The function and purpose of the use of a registered post is meant to be that the consignor of a mailed packet is informed by the return of the packet of its non-delivery. The evidence

before the learned District Justice in this case would seem to indicate that for some reason which is not explained information concerning the non-delivery consisting of the return of the mailed packet reached the Garda Síochána but not the Medical Bureau. In those circumstances, it seems to me that the learned District Justice was incorrect in law in holding that the presumption of compliance with sub-Section 3 of Section 22 of the Act of 1978 had been rebutted by the evidence of the Garda witness.

Furthermore I would point out that following the decision in Hobbs .v. Hurley, in the Director of Public Prosecutions .v. Corrigan I held that another material consideration for the making of a decision on a defence of non-compliance with sub-Section 3 of Section 22 is evidence of the consequences of any delay that occurred. It would not appear from the case stated before me that any such evidence was tendered on behalf of the Respondent. There was evidence that the Respondent before she had to face her trial by reason of what was described

as her first appearance in court and I assume an adjournment from that first appearance was in possession of a copy of the certificate. There is further evidence that she did not take with her a sample of the blood at the time when the specimen of blood was taken. One of the more obvious reasons why delay might prejudice the Respondent namely her inability if she had taken a specimen of the blood to have it analysed so as to check the result of the certificate, did not therefore arise in this case.

In these circumstances, I am satisfied that the answer to the question put before me in the case stated must be that the learned District Justice erred in law in dismissing the case on the evidence which was then before him. The case must therefore be entered before him for continuances but I would emphasise that it would appear to me clearly open to him now to hear evidence tendered on behalf of the Respondent in the continuance of the prosecution against her touching on the two matters which I have outlined in this judgment and if

the evidence rebutted the presumption of compliance
contained in Section 23 to reach a decision accordingly.

Approved
Va. Friel
3:10:1983