

STATE (HIGGINS)

THE HIGH COURT

1981 412 S.S.

THE STATE AT THE PROSECUTION OF SYLVESTER HIGGINS



.v.

SUPERINTENDENT N.M. REID

JUDGMENT of Mr. Justice Barrington delivered the 29th day of July 1982

This is an application to make absolute a conditional order of mandamus granted by Mr. Justice O'Hanlon on the 11th day of September 1981 directing the Respondent to make available to the Prosecutor a copy of the medical certificate referred to in the said order.

The background to the case is as follows -

On the 18th day of September 1980 the Prosecutor was driving his motor car at Cortober, Carrick-on-Shannon, in the County of Roscommon when he was stopped by a member of the Garda Siochana. He was arrested, taken to a Garda Station, introduced to a person described as a designated registered medical practitioner and invited to give a sample of his blood. The Prosecutor did not grasp the doctor's name but believed the doctor had a "foreign sounding surname".

Subsequently, on the 12th November 1980, the Prosecutor was served with a summons charging him with an offence under section 10 of the Road Traffic Act 1961 as amended by the Road Traffic (Amendment) Act 1978, returnable for Carrick-on-Shannon District Court on the 10th December 1980.

The Prosecutor retained Messrs Claffey, Gannon and Company of Castlerea in the County of Roscommon to conduct his defence. He was not able to inform his solicitor of the name of the doctor who had taken the blood sample because he was not aware of it.

Subsequently, Mr. Gerard Gannon, solicitor of the firm mentioned, wrote to the Superintendent of the Garda Síochána for the Carrick-on-Shannon area requesting a copy of the certificate completed by the doctor referred to pursuant to section 21 of the Road Traffic (Amendment) Act 1978.

The Superintendent refused to furnish the certificate saying that the certificate would be produced in Court when oral evidence would also be given of the despatch of the sample of blood to the Director of the Medical Bureau and all other relevant documents would be produced.

On the 16th January 1981 the Prosecutor's solicitors wrote to the Superintendent saying that at the hearing of the prosecution they would apply for an adjournment until such time as the certificate was produced and that they would, if necessary, apply for an order of prohibition.

The Chief Superintendent persisted in his refusal to furnish the certificate and it was this refusal which led ultimately to the Prosecutor applying for and obtaining the conditional order of mandamus in this case.

The Respondent showed cause to the conditional order by notice in the following form:-

1. There is no obligation on the prosecution to supply a Defendant with the original of, or a copy of, the form completed by a designated registered medical practitioner pursuant to sub-section 1 of section 21 of the Road Traffic (Amendment) Act 1978, in advance of the hearing.
2. In Courts of summary jurisdiction there is no obligation on the prosecution to provide copies of documentary evidence in advance of a hearing.

3. A Defendant's legal adviser can peruse the form when it is produced at the hearing. It is not necessary for him to see a copy of such in advance.
4. In contradistinction to the certificate which is required to be completed by the Medical Bureau of Road Safety pursuant to sub-section 3 of Section 22 of the said Act of 1978 there is no provision in the said Act that a Defendant be supplied with the original of or a copy of the said form in advance of the hearing.
5. At the hearing, and subsequent to the perusal of the form by a Defendant or by a Defendant's legal adviser at such hearing, if the Defendant wishes to call evidence to rebut the presumption in sub-section 4 of the said section 21 then he can apply for an adjournment for the purposes of so doing.
6. The Prosecutor has not been prejudiced in the preparation of his defence. The Prosecutor has not been denied adequate fair or reasonable means of preparing his defence. The Respondent is not in breach of any constitutional duty. The refusal is not harsh, capricious, arbitrary, unreasonable or

without justification.

7. The Prosecutor has not been denied his right to a fair trial in due course of law.

The matter came on for hearing before me on March 1st 1982 when Counsel for the Prosecutor submitted that he needed sight of the form completed by the designated medical practitioner pursuant to sub-section 1 of section 21 of the Road Traffic (Amendment) Act 1978, in advance of the hearing, to enable the Prosecutor properly to prepare his defence. This was all the more important in the circumstances of the present case where the Prosecutor did not himself know the identity of the alleged medical practitioner and was not therefore in a position to check, in advance of the hearing, whether the alleged medical practitioner was in fact a registered medical practitioner or not. In reply to the suggestion that he could always apply, at the hearing, for an adjournment, if embarrassed on this point, he replied that he might not get an adjournment and that, in any event, he would like to go into Court as well prepared, as possible, to meet the prosecution case.

Counsel for the Respondent referred to the certificate required

to be completed by the Medical Bureau of Road Safety pursuant to section 22 sub-section 3 of the 1978 Act and submitted that the fact that the Act provided that the person from whom a sample had been taken should receive a copy of the certificate under section 22 but was silent as to his rights to a copy of the certificate under section 21 indicated that he was not entitled to receive a copy of the certificate under section 21 in advance of the hearing.

I doubt if this is conclusive. Section 22 is an administrative provision and the person from whom a specimen has been taken will be entitled to receive a copy of that certificate whether there is or is not to be a prosecution.

The question of whether a person should or should not see the certificate under section 21 will usually arise only if there is a prosecution. He will then be entitled to see the certificate at the hearing. The submission put forward in the present case is that he has a right to inspect the certificate, or to receive a copy, in advance of the hearing. The fact that the Prosecutor claimed that he did not know the identity of the alleged medical practitioner and was not therefore in a position to check whether the medical

practitioner was or was not registered might be thought to lend some force to this submission in the actual circumstances of the present case.

After I had reserved my judgment on the point at issue Counsel for the Respondent sent me a copy of the judgment of Mr. Justice Gannon (unreported) delivered on the 13th March 1981 in the case of Clune and others .v. The Director of Public Prosecutions.

As the contents of this judgment appeared to me to be relevant to the decision which I had to make in the present case I had the case re-entered for further argument and the matter came on for hearing again on Monday the 19th July 1982.

In the interval the Prosecutor had been furnished with a copy of the certificate which he demanded so that the practical issue in the case had been resolved. Both parties, however, wish to have the point of law raised in the case decided, the Prosecutor because he claims to be entitled to his costs of the mandamus proceedings and the Respondent because the same issue of law has apparently arisen in other cases.

In the resumed argument Counsel for the Respondent relied on a

passage which appears at page 7 of the unreported judgment in Clune and others .v. The Director of Public Prosecutions in which

Mr. Justice Gannon says:-

"A summary trial is a trial which should be undertaken with some degree of expedition and informality without departing from the principles of justice."

Counsel for the Prosecutor however submits that while the offence charged in the present case is a minor offence nevertheless it is a criminal one and the consequences for the accused, if convicted, are serious. Where, as in the present case, he submitted there was no suggestion that there was any difficulty in furnishing a copy of the certificate and where the solicitor for the accused suggested that he was embarrassed in the conduct of the defence by reason of not having seen a copy of the certificate and not knowing the identity of the alleged medical practitioner, the prosecution should, in fairness, supply a copy of the certificate to the accused in advance of the hearing and, if the prosecution did not do so, the High Court should interfere by way of mandamus to direct the prosecuting authority to furnish the certificate or a copy.

It appears to me that there is a fallacy in this argument. At page 9 of the unreported judgment referred to Mr. Justice Gannon says:-

"The concept of guiding, directing, controlling, supervising or correcting lay magistrates which might have been inferred from proceedings of certiorari and prohibition and mandamus prior to the establishment of the State is not appropriate to courts established under our Constitution."

It appears to me that the decision whether, in the circumstances of the present case, the fair administration of justice requires that the accused should or should not be furnished with the certificate referred to or a copy is essentially one for the Court before which the prosecution is pending that is to say in this case, the District Court. It appears to me that the learned District Justice could deal with the matter either at the hearing or at a special application made before the hearing. But it appears to me that it would not be appropriate, or proper, for the High Court, in the circumstances of the present case, to interfere in the conduct of a prosecution pending in the District Court and to direct the prosecution, over the

head of the District Justice, as to how the case should be conducted.

In all the circumstances it appears to me that the issue raised is one for the consideration of the Court before which the prosecution is pending and that this Court should not interfere in the matter.

Done By
6/10/82