

Neutral Citation no. [2008] NICA 8

Ref: **MOR7061**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **05/02/08**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

**APPEAL BY WAY OF CASE STATED FROM A DECISION OF A
RESIDENT MAGISTRATE**

**CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN
IRELAND**

Complainant/Respondent;

And

THOMAS O' DONOVAN

Defendant/Appellant

Before Campbell LJ, Girvan LJ and Morgan J

MORGAN J

[1] This is an appeal by way of case stated from a decision of the resident magistrate, Liam McNally Esq, sitting at Strabane Magistrates' Court on 6 April 2006 and 13 April 2006 when he convicted the appellant of three charges:

- (a) driving a mechanically propelled vehicle on a road or other public places while unfit through drink or drugs contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995 ("the Order");
- (b) failing to stop at the scene of an accident contrary to Article 175 of the Order;
- (c) failing to report an accident contrary to Article 175 of the Order.

The question is whether the resident magistrate was correct in law in finding that the evidence at the close of the prosecution case was sufficient to raise a prima facie case against the appellant.

Facts

[2] This case first came before the resident magistrate on 16 October 2004 and in a reserved judgment delivered on 21 October 2004 the appellant was convicted on all charges. Pursuant to article 146(1) of the Magistrates Court (Northern Ireland) Order 1981 he applied to the court to state a case in respect of the admissibility of verbal statements allegedly made by him to a police officer before the administration of a caution. The resident magistrate agreed to state a case and set out the following facts:

- (a) On 26 May 2003 at Branch Road, Strabane a Vauxhall Vectra CNZ 9015 crashed into and became embedded upon a road sign.
- (b) The vehicle was discovered by Sergeant Emerson and Constable McConville.
- (c) The police attended at 4 Lisnafin Park, Strabane, the home of the appellant, who was on record as the registered owner of the vehicle.
- (d) The appellant spoke to the police at the door of his home and confirmed his identity. He also confirmed that he was the owner of the vehicle.
- (e) It was obvious to the police officer that the appellant was in an intoxicated state.
- (f) Sergeant Emerson told the appellant that he had found a vehicle registered in his name which had crashed into a road sign at Safeways, Branch Road, Strabane.
- (g) Sergeant Emerson asked the appellant if he had been driving the vehicle. He did not ask him any other questions.
- (h) The appellant replied to Constable McConville that the vehicle was his, that he had been driving the vehicle that evening and had walked home after he had been involved in a collision.
- (i) On receipt of this reply, Constable McConville formed a suspicion that the appellant had committed the offence of driving a motor vehicle while unfit through drink or drugs and arrested him.

- (j) Up until this point Constable McConville was conducting an investigation into a road traffic accident and did not have grounds to suspect that the appellant was the driver of the vehicle.

The Court of Appeal found that the resident magistrate was not correct to admit the alleged admission and remitted the case to him (see Orde v O'Donovan and McGonagle [2006] NICA 49).

[3] When the case was remitted to him the resident magistrate heard further submissions from the parties and then delivered a reserved judgment in which he convicted the appellant on all charges. The appellant again applied to state a case this time on the issue set out in paragraph 1 above. The facts found by the resident magistrate were as follows:

- (a) On 26 May 2003 at Branch Road, Strabane a Vauxhall Vectra CNZ 9015 crashed into and became embedded upon a road sign.
- (b) When the vehicle was discovered by Sergeant Emerson and Constable McConville the driver's door was open and the engine was still warm.
- (c) The police officers went to 4 Lisnafin Park, Strabane, the home of the appellant, who was recorded as being the registered owner of the vehicle.
- (d) The appellant spoke to the police officers at the door of his house and confirmed his identity and that he was the owner of the vehicle.
- (e) It was obvious to the police officers that the appellant was in an intoxicated state.
- (f) Sergeant Emerson told the appellant that he had found a vehicle registered in his name and that it had crashed into a road sign at Safeways, Branch Road, Strabane.
- (g) Constable McConville formed a suspicion that the appellant had committed the offence of driving a motor vehicle while unfit through drink or drugs and arrested him.
- (h) The appellant produce the keys of his Vauxhall Vectra CNZ 9015 from his trouser pocket.

Submissions of the parties

[4] In his submissions on behalf of the appellant Mr McCann relied first on a letter of 5 January 2005 from the resident magistrate to his solicitors concerning the terms of the original case stated. The resident magistrate was dealing with his decision to require oral evidence to be given in relation to the alleged admissions and continued:

"Mr O'Donovan denied the charges and I am firmly of the view that it would have been a serious omission on my part in the quest for a just outcome of the proceedings to deny myself the advantage of having oral evidence on an issue which was central to the determination of the case."

It was submitted that once the confession which was central to the determination of the case was ruled out by the Court of Appeal it followed that the prosecution had not established a prima facie case. Secondly it was argued that the production of the keys by the appellant was either part of the original confession or a separate confession which should also have been excluded.

[5] For the respondent Mr Valentine submitted that the evidence that the keys were in the trouser pocket was a piece of real evidence upon which the court was entitled to rely in order to conclude that the appellant was the driver at the time of the accident. In any event no application was made at any stage before the resident magistrate to exclude that evidence. He also pointed out that the Court of Appeal had remitted the case to the resident magistrate without giving any direction as to the determination of the charge.

Conclusion

[6] The evidence that the keys of the car were in the trouser pocket of the appellant on the night of his arrest is clearly evidence of a fact relevant to the matters in issue in this case. No challenge was ever made before the resident magistrate to the admissibility of that evidence. The facts disclosed in the case stated indicate that the appellant produced the keys of the vehicle from the trouser pocket after his arrest and consequently after he had been cautioned. No issue was taken prior to the hearing about that formulation within the case. In his original written decision the resident magistrate dealt with the matter as follows:

"At that stage, Constable McConville, the investigating officer, formed a suspicion that he had been driving a vehicle whilst unfit through drink or drugs and arrested him for that offence. The

defendant when cautioned replied "I'm stupid". He produced the keys from his trouser pocket."

This account again notes that the keys were located in the trouser pocket after the caution had been administered. Mr McCann accepted that if he was to pursue an argument that the evidence about the keys being in the pocket should be excluded it would be necessary for the case to be remitted for findings to be made which essentially conflict with the findings already contained in the case. He sought support for that approach in some of the written statements served in the proceedings but one has to remember that the resident magistrate had the advantage of listening to the oral evidence of the witnesses and there is no reason to doubt his findings. The resident magistrate was entitled to rely upon the evidence of the location of the keys in determining whether there was a *prima facie* case to answer.

[7] The first case stated was concerned only with the admissibility of the confession. The substance of that confession is set out at (h) in paragraph 2 above. The independent matters known to the police officer at the time of their arrival at the appellant's home were that the appellant was the registered owner of the vehicle, that the vehicle had been abandoned in a collision not apparently involving any other vehicle and that the engine was still warm indicating that the event had occurred recently. Upon arrival at the appellant's home it was apparent that the appellant was in an intoxicated state. The admission that the appellant had been driving the vehicle and had walked home after being involved in the collision created an overwhelming case against the appellant. It is not surprising, therefore, that having relied upon that admission the resident magistrate should have concluded that it was a matter central to the determination of the case.

[8] Once the matter was remitted by the Court of Appeal it was the resident magistrate's duty to review all the evidence before him and to determine whether it established a *prima facie* case in respect of the matters charged. The remittal of the case by the Court of Appeal was recognition that the only issue upon which their opinion was sought was the question of admissibility. In considering the different question as to whether the evidence established a *prima facie* case the resident magistrate might well have to examine other relevant facts.

[9] The substance of the evidence against the appellant is that he was the registered owner of the vehicle, that it had very recently been involved in a collision involving no other vehicle, that shortly thereafter the appellant was found in an intoxicated state at home and that the keys of the vehicle were in his trouser pocket. In our view this constituted a strong *prima facie* case that the appellant drove the vehicle when intoxicated, failed to stop at the scene of the accident and failed to report the accident. We would answer the question posed "Yes".