THE HIGH COURT

JUDICIAL REVIEW

[2022] IEHC 435

Record No.: 2021/110 JR

BETWEEN:

DECLAN CORCORAN

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTONS

RESPONDENT

Record No.: 2021/154 JR

BETWEEN:

EDEL DOHERTY

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

Record No.: 2020/982 JR

BETWEEN:

KYLE ROONEY

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 8th day of July, 2022

INTRODUCTION

1. The Applicants in these proceedings are each charged with offences contrary to ss. 252(1)(b) and 252(4) of the Children Act, 2001 (as amended) arising from the alleged publication of a matter identifying the accused boys namely Boy A and Boy B, both of whom are children, tried in respect of the murder of Ms. Anastasia Kriégel, also a child.

2. The alleged publication occurred in breach of reporting restrictions imposed by a court direction and arising as a matter of law pursuant to s. 252 of the Children Act, 2001 (as amended) which provides in relevant part:

> ***"***252***.***—*(1) Subject to this section, in relation to any proceedings for an offence against a child or where a child is a witness in any such proceedings—*
>
> *(a) no report which reveals the name, address or school of the child or includes any particulars likely to lead to his or her identification, and*
>
> *(b) no picture which purports to be or include a picture of the child or which is likely to lead to his or her identification,*
>
> *shall be published or included in a broadcast…*
>
> *….*
>
> (4) *Subsections (3) to (6) of Section 51 shall apply, with the necessary modifications, for the purposes of this section."*

3. A breach of s. 252(1) of the 2001 Act is an offence under s. 51(3)(b) of that Act and it is provided that a person who publishes in breach of s. 252(1) shall be guilty of an offence and

shall be liable under s. 51(3)(c)(i) and (ii) of the 2001 Act on summary conviction, to a fine not exceeding £1,500 (euro equivalent) or imprisonment for a term not exceeding 12 months or both, or on conviction on indictment, to a fine not exceeding £10,000 (euro equivalent) or imprisonment for a term not exceeding 3 years or both.

4. The core issue for determination is whether, where a judge of the District Court has heard an outline of the facts for the purpose of determining jurisdiction in respect of a hybrid offence (that is an offence triable summarily or on indictment), has accepted jurisdiction and adjourned the prosecution for entry of plea or for a date, it is open to a different judge sitting on the adjourned date to re-hear an outline of the facts for the purpose of determining jurisdiction afresh before taking any further step in the proceedings. In addition, I must determine whether the decision to refuse jurisdiction for summary disposal in respect of the offences with which the Applicants are charged was made in breach of fair procedures consequent upon an absence of notice or a failure to properly reason the decision in each case.

BACKGROUND

5. On the 28th of October, 2020, charges against the Applicants came before the District Court sitting at District Court No.8, Criminal Courts of Justice (CCJ), Parkgate Street, Dublin 8 on foot of summonses issued pursuant to s. 1 of the Courts (No. 3) Act, 1986 returnable to that date. On that date the Applicants were among a number of other persons listed to appear before the Court accused of similar offences concerning the publication of various material allegedly identifying Boy A and Boy B. The consent of the Respondent to summary disposal was conveyed to the Court in each of the Applicants' cases.

6. The sitting Judge (Judge O'Shea) heard the facts in each case and ruled on each case individually. He indicated that he would not proceed to refuse jurisdiction in the absence of an accused person because of the significance of the decision for them but would make a decision to accept jurisdiction with the consent of their legal representatives as there was no prejudice arising to them from such a decision. In each case he confirmed agreement with the Respondent that the matters were suitable for trial summarily and accepted jurisdiction. In each of the three cases the sitting District Judge addressed issues of disclosure and legal aid and adjourned proceedings to the 2nd of December, 2020 for a plea of guilty or to assign a hearing date or as the order drawn recites "*for plea or date*". He made identical orders in each of the other six cases, having heard an outline of the facts and ruling on each case in turn.

7. When the matter came before the District Court on the 2nd of December, 2020, specifically for the purpose of entering a plea or assigning a date, a different Judge was sitting (Judge Hughes). At the outset, of his own motion and without application from the parties, the District Judge requested to hear the alleged facts. He heard the facts in each case sequentially without ruling on them individually. When he was reminded that the Respondent had directed summary trial and that District Judge O'Shea had accepted jurisdiction previously, he confirmed that he wished to rehear the facts for the purpose of determining jurisdiction and he pointed out that Judge O'Shea had not "*retained seisin*".

8. Judge Hughes then proceeded to refuse jurisdiction in respect of all ten cases in a single ruling in which he confirmed that he was satisfied that "*the offences before the Court are not, in my opinion, minor in nature and are unfit for trial in the District Court summarily."* The District Court Judge maintained this position notwithstanding objections on behalf of the various accused persons, including the Applicants, that the Court had no jurisdiction to embark on a second hearing for the purpose of determining jurisdiction where this question had already been determined by another court and where the Court was not engaged in proceeding to hear the case or determine any substantive issue when arriving at a different decision as to jurisdiction. It is noted that in the *Kyle Rooney* case, the accused was not present in Court and the ruling regarding jurisdiction was made without notice to him and in his absence.

9. The learned Judge rejected these objections ruling, with express reference to *State (O'Hagan) v. Delap* [1982] I.R. 213, that the presiding judge has jurisdiction to determine whether the cases are fit for trial in the District Court as minor offences "*at any stage*", notwithstanding a previous determination to the contrary. The Judge did not address the facts in each case individually to explain why he was refusing jurisdiction in that case, nor did he elaborate on any particular feature of the cases which led him to conclude that the offences were not minor.

10. Having refused jurisdiction on the basis that none of the cases were suited to be disposed of as minor matters, the Court adjourned the matters to the 18th of January, 2021 for the Respondent's directions as to whether she consented to the accused being sent forward for trial to the Circuit Criminal Court before a judge and jury indicating that if the Respondent did not consent then the appropriate order would be one striking out the cases. The Orders drawn recite that:

"Judge John Hughes refused jurisdiction and case adjourned for DPP Directions".

11. The within proceedings were commenced in each case before the Respondent had indicated whether she was consenting to the matters being sent forward for trial on indictment. Applications for leave to proceed by way of judicial review were moved first in the cases of *Edel Doherty* and *Kyle Rooney*. In consequence of these applications, the Respondent wrote inviting Mr. Corcoran to consent to an adjournment of the criminal proceedings pending a determination of the judicial review proceedings. Mr. Corcoran, through his solicitor, did not acquiesce in this course of action instead advising that he would proceed to seek leave to proceed by way of judicial review absent confirmation within a period of seven days of the Respondent's intentions regarding consent to sending forward for trial on indictment before judge and jury.

EVIDENCE

12. There are some factual differences between the three cases. I will outline these differences insofar as material briefly before summarizing the evidence as to what transpired in the District Court on each of the two occasions when the issue of jurisdiction was considered.

Kyle Rooney

13. In the *Rooney* case, it is alleged that on the 19th of June, 2019, the day after the guilty verdicts were returned in the relevant murder trial, Mr. Rooney published images on Twitter. One image was of Boy A in a school uniform, and the second image was of the two minor defendants in a classroom setting. Both have their faces circled in red with the letters "A" and "B" beside them with a comment attached to the effect *"Boy A and B ladies and gentlemen! They deserve everything they're gona get, scumbags'.* One of the pictures had text attached stating *'Meet the horrible cunt that killed the 14 year old on Leixlip'.* The tweet is said by the Respondent to be the only time the investigation had observed the images in the format of a collage.

14. Mr. Rooney did not attend the District Court on the 28th of October, 2020, in circumstances where due to the COVID-19 pandemic, accused persons were not required to attend the District Court in the CCJ save for where a guilty plea was being entered or a Book

of Evidence served. Mr. Rooney instructed his solicitor, to appear on his behalf on the 28th of October, 2020. Judge O'Shea proceeded to hear a summary outline of the alleged facts in his case on the basis that he would not decline jurisdiction in his absence but that there was no disadvantage to the Applicant in the Court accepting jurisdiction and making it clear that were he minded to decline jurisdiction he would adjourn the matter to ensure that the Applicant was present. Having conducted an *inter partes* hearing (during which the Mr. Rooney was legally represented) and consideration of the matter and heard a summary of the alleged facts, Judge O'Shea ruled as follows:

> *"Again, in this case, I'll accept jurisdiction. The disclosure has been made in court; is that correct?"*

15. As before, the Applicant did not attend the District Court on the 2nd of December, 2020 but he was legally represented before the Court and objection was taken on his behalf to the District Judge revisiting the question of jurisdiction which had already been determined by District Judge O'Shea.

16. The Applicant was granted leave (by Order of Simons J on the 25th January 2021) to seek various reliefs by way of judicial review including an order of *certiorari* of the order of the District Court made on the 2nd December 2020 at District Court No. 8, Criminal Courts of Justice, Parkgate Street, Dublin 8, purporting to refuse jurisdiction for summary disposal of the offences contrary to s. 252(4) and s. 51(3)(b) of the Children Act, 2001, with which the Applicant is charged.

Declan Corcoran

17. The prosecution's case against Mr. Corcoran is that on the 19th of June, 2019, the day after the guilty verdicts were returned, he shared/published two images on Twitter. The first image was of Boy A, and the second image was the two convicted children, Boy A and Boy B. He made several comments on his social media profile which are as follows. The first was:

> *"[BOY A's NAME] and [BOY B'S NAME] for anyone who doesn't know their names ... . Sick murdering perverts"*

18. Another was: "*Horrible little runts*.", in relation to an image posted by another social media user "*anto @muggles2 l* ", depicting an image of Boy A. Mr. Corcoran was interviewed on the 10th of July, 2019 at Mountjoy Garda Station. He made no comment to all questions. It is not part of the prosecution case against the Mr. Corcoran that he either created or doctored/tailored any of the images that were shared.

19. Mr. Corcoran appeared before Judge O'Shea in the Dublin District Court on the 28th of October, 2020. The consent of the Director to summary disposal was conveyed to the Court. Judge O'Shea heard an outline of the alleged facts from Gardaí. The District Judge was satisfied that the allegations constituted a minor offence fit to be tried summarily. Having conducted an *inter partes* hearing and consideration of the matter and having heard a summary of the alleged facts, Judge O'Shea ruled as follows:

> *"All right. I accept jurisdiction in this case also. Is the disclosure in a position to be made in court?"*

20. The Applicant attended the District Court on the 2nd of December, 2020. He was legally represented before the Court. An objection was taken on his behalf to the District Judge revisiting the question of jurisdiction.

21. Following some *inter partes* correspondence in which the Respondent initially indicated that it was considering its position and subsequently alerted the Applicant's solicitor to the fact that other parties had been granted leave to proceed by way of judicial review, it was mooted by the Respondent that the matter be adjourned to await the outcome of the judicial review proceedings. In response, the Applicant's solicitor wrote to the Respondent and called on the Respondent to confirm whether or not the Respondent was consenting to the Applicant being sent forward for trial within the meaning of s. 4A(2) and (3) of the Criminal Procedure Act, 1967, as amended by s. 9 of the Criminal Justice Act, 1999. The Respondent was advised by letter dated the 2nd of February, 2021, that the Applicant would seek leave to proceed by way of judicial review in the event that it was indicated that the Respondent was so consenting. In the absence of a response to this correspondence, on the 1st of March, 2021, this Honourable Court (Hyland J.) granted leave to seek relief by way of judicial review.

22. In respect of Edel Doherty it is alleged that on the 19th of June, 2019, the day after the guilty verdicts were returned in the murder trial, the Applicant published material on Facebook. It is alleged that she shared/published an image of Boy A and Boy B with added circle marks around their heads, and the letters "A" and "B" added to the image beside their heads. She added the comment "*there ya go there A the scum and B the scum".* She attended Mountjoy Garda Station on invitation and provided a voluntary memorandum of interview.

23. The Applicant appeared before Judge O'Shea in the Dublin District Court on the 28rh of October, 2020. The consent of the Respondent to summary disposal was conveyed to the Court. Judge O'Shea heard an outline of the alleged facts from members of An Garda Síochána. The District Judge was satisfied that the allegations constituted a minor offence fit to be tried summarily. Having conducted an *inter partes* hearing and consideration of the matter and having heard a summary of the alleged facts Judge O'Shea's ruling was as follows:

> *"All right. I'm going to accept jurisdiction. I am satisfied that it's a matter that can be dealt with in this court within the sentencing regime in this court"*

24. The matter was then adjourned, and the accused remanded to 2nd of December, 2020 for indication of plea. Disclosure was furnished.

25. On the 2nd of December, 2020, the Applicant did not attend the District Court but was legally represented before the Court. An objection was taken on her behalf to the District Judge revisiting the question of jurisdiction.

26. On the 1st of March, 2021, this Honourable Court (Meenan J.) granted leave to seek the reliefs by way of judicial review.

Consideration of Jurisdiction by the District Court

27. A full transcript of the hearing before the two District Court Judges on the 28th of October, 2020 and the 2nd of December, 2020 were available as exhibits to Affidavits before the Court.

28. As regards the transcript of the 28th of October, 2020, it is apparent that the sitting District Court Judge dealt with each case individually, hearing the alleged facts, noting the position of the Respondent and ruling on the question of jurisdiction in each case before proceeding to deal with the next case.

29. It is clear from the DAR transcript that the District Judge sitting on the 2nd of December, 2020, of his own motion, requested to hear the facts for the purpose of consideration of jurisdiction. He requested to hear the allegations in respect of each one of the 9 (or 10) prosecutions for offences relating to the identification of Boy A and Boy B in turn before dealing with all matters in one ruling.

30. When reminded that facts had been heard for jurisdiction on a previous occasion, the Judge stated: *"I wish to rehear the facts for the purpose of determining jurisdiction."*

31. Counsel appearing for one of the accused persons before the Court indicated *"my understanding is...that Judge O'Shea accepted jurisdiction on the last occasion"* to which the Court responded *"He did, he did, he did, but he hasn't retained seisin of the matter. Okay, thank you."*

32. Later when dealing with re-hearing facts in respect of a further accused, the Judge was asked to note that jurisdiction had been accepted on the first date and the Judge simply responded *"noted"* without further elaboration. The Judge then delivered a ruling as follows:

> *"The Court is now embarking on an exercise of considering jurisdiction. I've noted that the jurisdiction was previously accepted. I have now reheard the allegations. I stress that all of the defendants in this case have the presumption of innocence. The DPP has consented to the two -- each of the accused being prosecuted in the District Court. The venue and mode of trial for these defendants is a matter for the Director of Public Prosecutions and also for the District Court Judge. In these cases, the DPP has directed that the defendants be prosecuted summarily. The Court must now determine as to whether it will accept jurisdiction of these cases or, if it considers that the cases aren't fit to be tried summarily, the District Court Judge should refuse jurisdiction. And thereafter it will be a matter for the DPP to decide whether the Director consents to the accused being sent forward for trial on indictment before a judge and jury.*

Now, it's that in these cases the accused have been prosecuted with offences contrary to section 252 of the Children Act 2001 as amended. The penalties for the alleged offence are set out in section 53(3) for the District Court and also for the Circuit Court. The maximum term of imprisonment is 12 months in the District Court together with a financial penalty and on indictment before a judge and jury on conviction a maximum sentence of three years together with a significant fine. Conroy v. the Attorney General (1967) set out that when determining whether or not an offence was considered to be fit to be tried summarily a Court should consider or may consider the severity of the punishment prescribed for the offence and the moral quality of the act constituting the offence.

I have considered a broad outline of the alleged facts. I am satisfied that the offences before the Court are not, in my opinion, minor in nature and are unfit for trial in the District Court summarily. My order is that I am now refusing jurisdiction..."

33. Representatives for several of the accused then made submissions to the effect that it was highly unusual for the court to re-hear the alleged facts for the purpose of considering jurisdiction where it had been accepted previously and where no substantive steps were sought to be taken. It was acknowledged in submissions that where a matter proceeded to hearing, the District Court Judge presiding could lawfully refuse jurisdiction where he came to the view that the matter was not minor.

34. In response to the submissions made, the presiding District Court Judge stated as follows:

"I have noted the objections that have been made on behalf of the various accused, Hazel Fitzpatrick, Kyle Rooney, Robert Murphy, Declan Corcoran, Gareth Cunningham, and Edel Doherty, to the Court's decision to refuse jurisdiction. This is in the back of the previous decision by Judge O'Shea to accept jurisdiction. Today the Court embarked on a hearing of the alleged facts in these various cases. I am of the view that the presiding judge has jurisdiction in such matters to determine as to whether the cases are fit for trial in the District Court. And I have noted what my colleague, his previous order. The authority is not limited to, but I refer also to the case of the State

(O'Hagan) v. Delap [1982] where Judge O'Hanlon held that a judge can at any stage decide that an offence is not minor in nature. Quite frankly, I don't share the views of the practitioners who have stated that I don't have jurisdiction in circumstances where another judge has already accepted jurisdiction. I don't share that view. I am not varying my order…"

35. The DAR transcripts establish that no new evidence or distinguishing material was put before the District Court in December, 2020 as compared to October, 2020.

36. The evidence further establishes that there was a degree of commonality between the alleged facts in each case but there were also distinctions between the actions of the various accused person and their level of culpability. Some accused had published photographs of Boy A and Boy B and others had published names. Some had added comment and added comment differed as between the accused persons. Notwithstanding this, the District Court Judge did not give a separate rationale in each case and instead, at the conclusion of the summary provided by the prosecuting Garda in all of the cases, determined that the offences collectively were not minor and were, therefore, unfit for summary trial in respect of all accused including the Applicant.

37. The Orders drawn in each case appear in exhibits to the affidavits grounding the proceedings in each case.

PRELIMINARY ISSUE

38. The District Judge whose orders are sought to be impugned was not joined as a party to these proceedings, nor was the District Court. In Opposition papers filed in each of the three cases the Respondent advanced as a ground of opposition that the proceedings were irregular and improperly constituted by reason of the failure to join the court as a respondent to the proceedings even though the order was sought as against orders of that Court. Although applications to amend the proceedings to join a Judge of the Dublin Metropolitan District Court was returnable before me by reference to the decision of the Court of Appeal in *Brady v. Revenue Commissioners & Ors.* [2021] IECA 8, the issue as to the constitution of the proceedings was not pursued in written submissions filed on behalf of the Respondent and

counsel confirmed to the Court that the Respondent was not relying on this argument and was anxious that the issue of substance in the proceedings would be determined.

39. In *Brady v. Revenue Commissioners & Ors.* it was found that there had been non-compliance with O. 84, r. 2A of the Rules of the Superior Court occasioned by the failure to join the Court Judge by naming the institution generically. It was contended that the import of O. 84, r. 2A introduced by an amendment to the Rules in 2015, was to preclude the identifying by name of the Judge concerned but not the naming generically or the institution or the legal entity. However, the decision in *Brady* is the subject of a positive determination granting leave to appeal to the Supreme Court. Furthermore, the decision of that case runs counter to a further decision of the Court of Appeal in *M v. M* [2019] IECA 124 to which no reference is made in *Brady*.

40. As apparent from the judgment of the Court of Appeal, in *M v M*, the High Court judge hearing an application for judicial review in respect of an order of the Circuit Court in family law proceedings concluded that the appellant should have joined the judge, at least anonymously, as Respondent and was wrong to name the Respondent as the Respondent in the judicial review proceedings. The proceedings were struck out on the ground that they had been improperly constituted pursuant to O. 84, r. 22, the High Court Judge having determined that the provisions of O.84, r. 22(2A) of the Rules of the Superior Courts required an Applicant, even in proceedings brought to challenge an order of a Circuit or District Court judge where no allegation of *mala fides* or misconduct was advanced, to join that judge as a named Respondent to the proceedings, albeit on an anonymous basis. This ruling of the High Court was the subject of appeal to the Court of Appeal. The principal grounds of appeal are summarized in the judgment of the Court of Appeal (Irvine J.) as follows (para. 16):

> *"(a) The High Court Judge erred in law when she dismissed the application on the ground that it had not been properly constituted by reason of the fact the presiding Circuit Court Judge had not been joined as a respondent in the case, that the judge had not been anonymously joined and that the respondent had been the sole respondent in the High Court proceedings.*
>
> *(b) The judge misconstrued the stipulations set out in O. 84, r. 22(2A) RSC, that a judge must be anonymously joined as a respondent where no mala fides or misconduct has*

been asserted, this being the case in this appeal. In such a case, the correct respondent is the party who was the respondent in the High Court, not the judge.

(c) The dictum of Humphreys J. in Hall v. Stepstone Mortgage Funding Ltd. [2015] IEHC 737 applies in that the onus to defend the proceedings falls on the original respondent and not the judge, save in circumstances where flagrant and deliberate allegations are raised against the reviewed judge.

(d) Order 84, r.22(2A) RSC is to be interpreted in line with the dictum in O.F. v. O'Donnell [2012] 3 I.R. 453, a case explaining the rationale for the rule change in 2015."

41. Having recited the grounds of appeal and the submissions of the Respondent, the Court of Appeal in *M v. M* (Irvine J.) stated (paras. 20 to 22):

"20. Therefore, it is clear that in circumstances where a determination of the Circuit or District Court is to be judicially reviewed, the judge must not be named, neither by name or anonymised, as respondent and that in its place, as substitute for the judge, the other party or parties in the Circuit or District Court should be joined as respondents - unless allegations of mala fides or other misconduct against the presiding judge form part of the grounds of review.

21. What must follow is that the other party is the legitimus contradictor, and it is up to them to decide whether or not they wish to support the correctness of the decision sought to be challenged. This is so in spite of the fact that they are not the party against whom relief is sought or who made the decision which is sought to be reviewed. This is an exception to the original rule. In Hall , Humphreys J. held similarly:

"A judicial review action must relate to an underlying public law function being carried out by somebody, but not necessarily by the respondent. It is not the law that the respondent must itself be a public law entity. In the present case, the action clearly relates to a public law function, namely an order made by a judge of the Circuit Court. Order 84, r. 22(2A)(a) says expressly that "the judge of the court concerned shall not be named in the title of the proceedings" . However, some entity should normally be a legitimus contradictor, and in a case where the action relates to a challenge to a

judicial proceeding, that entity is the other party to the underlying proceeding. The onus falls on such a party to defend the decision made by the court, if it wishes to do so, and that is what Mr. Hall is giving [the respondent] the opportunity to do."

This exception finds its limits, however, where allegations of mala fides or other misconduct against the presiding judge underpin the application for judicial review. The rationale for this is that, if such an allegation is made against a judge, they must be named as a respondent and served with the proceedings so that they can participate in the proceedings to defend their good name."

42. It is my view that, as there are now two conflicting judgments from a Court of equal jurisdiction, it will be a matter for the Supreme Court to pronounce finally on the proper interpretation of Order 84 rule 2A. For my own part, I favour the reasoning of the Court of Appeal in *M v. M* to that of the same Court (differently constituted) in *Brady*. It seems to me that the interpretation adopted in *M v. M* is more consistent with the language used in the Rule itself and also with the rationale for the rule change as expressed in *O.F. v. O'Donnell* [2012] 3 I.R. 453. In this case there is no allegation of *mala fides* or misconduct against a judge. On one interpretation of the rules, I believe the better one, there was no requirement to include the Judge in some way in the title to the proceedings.

43. For present purposes and pending clarification of the law by the Supreme Court and noting that the Respondent advised the Court that it was not pursuing an argument in this case in relation to the constitution of the proceedings but seeks a ruling on the substantive issue, I do not consider that it would be a proper exercise of my discretion to dismiss a case by reason of non-joinder of the Court whose decision is challenged where that the non-joinder arises from an interpretation of O. 84, r. 2A which is manifestly open from the language of the Rule and where there is clear confusion as to its proper application which remains unresolved. Nor do I consider it necessary to ensure observance with the requirements of O. 84, r. 2A to join the District Court as a party to the proceedings. It is nonetheless clear to me that it is mandatory under O. 84, r. 2A(c), not least having regard to the public law element of the proceedings, that in all proceedings wherein it is sought to challenge an order made by a judge of the Circuit Court or District Court that the proceedings be served in accordance with O. 84, r. 22(c) RSC on the clerk or registrar of that court regardless of whether or not any allegation of *mala fides* or

misconduct is made. In *M v. M* the Court of Appeal explained the importance of such service as follows (paras. 23 to 25):

> *"This provision is particularly important having regard to the rule change in 2015 which removed the requirement to join as a respondent to the proceedings the judge who made the order under challenge. It is only by service of copies of the proceedings that a judge may determine whether they ought, by reason of the nature of the nature of the claim advanced, to have been added as a respondent to the proceedings.*
>
> *Therefore, the appellant had been correct to join the respondent as respondent in the judicial review proceedings and not the Circuit Court Judge pursuant to O. 84, r. 22 RSC. The appellant was also correct not to join the Circuit Court Judge, anonymously or otherwise, as a respondent to the proceedings given that O.84, r.22 (2A)(a) RSC specifically precludes such joinder given the absence of any alleged mala fides or misconduct. That is not to say that the appellant was not obliged to serve the registrar of the Circuit Court with copies of the proceeding by reason of the mandatory provisions of O. 84, r. 22(2A)(c) RSC."*

44. When I raised the question of service during the hearing, it was indicated that there had been service in accordance with O. 84, r.22(2A)(c). It was clear from the evidence that related proceedings stand adjourned before the District Court pending a determination of the issues arising in these proceedings with the result that the District Court is clearly on notice in that sense of the existence of the within challenges. Nonetheless, I requested that the parties furnish affidavits of service confirming the position so that I could be satisfied as to compliance with O. 84, r.22(2A)(c). Compliance with O. 84, r.22(2A)(c) in these cases requires service of the proceedings on the District Court Clerk. Affidavits confirming service of the proceedings on the District Court Clerk were subsequently filed in each case. In the circumstances, I am satisfied that it is appropriate to proceed to deal with the substantive issues in the cases.

JURISDICTION OF THE DISTRICT COURT

45. The District Court only has jurisdiction to try offences that are minor and fit to be tried summarily. This arises from the Constitution itself.

46. Article 38, ss. 1 and 2, of the Constitution state:

"1. No person shall be tried on any criminal charge save in due course of law.
2. Minor offences may be tried by courts of summary jurisdiction."

47. Article 38, s. 5, of the Constitution states:

"5. Save in the case of the trial of offences under section 2, section 3 or section 4 of this Article no person shall be tried on any criminal charge without a jury."

48. Section 77(B) of the Courts of Justice Act 1924 gave jurisdiction to the District Court to try certain indictable offences summarily. It provides:

"…if the Justice shall be of the opinion that the facts proved against the accused constitute a minor offence fit to be tried summarily and the accused (inquiry having been made of him by the Justice) does not object to being so tried."

49. In the Criminal Justice Act 1951, a more extensive jurisdiction was conferred on the District Court and together with the Criminal Justice (Miscellaneous Provisions) Act 1997, a District Judge can deal with indictable offences so long as they are minor and fit to be tried summarily. Section 2(2) of the Act of 1951, as substituted by s.8 of the Criminal Justice (Miscellaneous Provisions) Act 1997, provides:

"The District Court may try summarily a person charged with a scheduled offence if -

(a) the Court is of opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily;

(b) the accused, on being informed by the Court of his right to be tried with a jury, does not object to being tried summarily, and

(c) the Director of Public Prosecutions consents to the accused being tried summarily for such offence."

50. Accordingly, the statutory jurisdiction to try indictable offences summarily remains subject to the constitutional requirement that those offences are minor offences and the statutory requirement that in addition to being minor they are also suitable for trial summarily.

51. The offences with which the Applicants are charged are of a category known as '*hybrid offences*' in that they are offence created by statute which can be prosecuted either summarily or on indictment and in respect of which the accused person has no right of election for trial by jury. In *Freeman v Governor of Wheatfield Prison* [2016] IECA 177 Mahon J stated as follows (para. 25):

> *"A simple, perhaps overly simple, definition of a hybrid offence is one which is capable of being tried summarily or on indictment, on the election of the Director of Public Prosecutions, subject to the District Court judge satisfying himself or herself that the offence is of a minor nature, and an offence which does not require the election of the accused as to whether he or she should be tried summarily or on indictment"*

SUBMISSIONS

52. Although the Applicants were separately represented, there was a commonality in the position adopted by each with some differences of emphasis or nuance or fact-based submission.

53. Generally stated, it was accepted on behalf of the Applicants that a District Court Judge may be entitled to refuse jurisdiction at any point up to and including the conclusion of a summary trial, but it was contended that the District Court Judge should not do so of his own volition at an interlocutory stage during a procedural listing and when jurisdiction does not require to be addressed. The Applicants' position is that once the issue of jurisdiction is dealt with by one District Court Judge, another District Court Judge (or the original Judge) may not review or reconsider that issue at any stage until such time as the matter is substantively before him or her once more by way of an accused person being on trial for the offence when the court receives evidence or where an accused person pleads guilty and the court has to determine the issue of sentence. Judge Hughes' approach was said to be unlawful because, in the absence of new material or information and in circumstances where he was not required to receive evidence or re-visit the question of jurisdiction, it was contended that it was not open to him to simply substitute his view for that of another District Court Judge and thereby assume a quasi-appellate role.

54. It was further contended that in the absence of notice that the matter was before the District Court for a determination on jurisdiction, proceedings were conducted in a manner which failed to comply with the requirements of fair procedures.

55. It was complained that in approaching the cases collectively and in failing to elaborate on his reasons for concluding that none of the cases involved minor offences which were suited for trial summarily, the Learned Judge was in breach of his duty to give reasons. To this end, counsel in the *Rooney* case, in particular, sought to distinguish between the facts of the different cases pointing to a difference in culpability which warranted separate and individual treatment depending on whether the accused had simply retweeted a post authored by another (which it was suggested was the position in *Rooney*) or had engaged in a more active form of publication.

56. The Respondent's position in response may be summarised as follows: a District Court Judge is entitled, of his or her own volition or otherwise, to re-visit the question of jurisdiction notwithstanding that jurisdiction had previously been accepted by a different District Court Judge and this may occur either prior to or during the trial of an offence. The District Court is under a continuing and ongoing obligation to ensure that it only deals with minor offences fit to be tried summarily and there is no requirement in law for there to be a change in circumstances and/or a change in the nature of facts alleged and/or "*new information*" for there to be a lawful decision that an alleged offence is not a minor one fit to be tried summarily. It was further contended that as no issue was raised either as regards notice or individual treatment of the applications by way of separate, reasoned rulings, that these issues cannot now be properly pursued by way of judicial review proceedings.

DISCUSSION AND DECISION

57. As set out above, in the present cases, the Respondent opted for summary trial and conveyed that decision to the District Court on the 28th of October, 2020. The sitting District Court Judge heard an outline of the alleged facts for the purpose of considering whether the offence was '*minor'* and he thereafter accepted summary jurisdiction and dealt variously with disclosure and legal aid in order that the accused persons would be aware of the evidence it was intended to proffer against them and would be legally advised prior to indicating whether they intended to plead guilty or not guilty to the offences.

58. It is established that jurisdiction to try a hybrid offence is vested in the District Court rather than an individual judge of the District Court, such that it is not necessary for the trial judge to personally address the issue of whether or not the case involves a minor offence fit to be tried summarily where a decision as to jurisdiction has already been made. Once a judge of the District Court has determined that the offence is minor, any District Court judge is entitled to proceed with the case (*O'Keeffe v. Governor of St. Patrick's Institution* [2006] 1 I.R. 228) without revisiting the question of jurisdiction. It is common case, however, that the fact that summary jurisdiction was accepted by one District Court Judge does not prevent the same judge or another District Court judge subsequently coming to the view that the offence is not '*minor'* in the context of adjudicating on the matter at a future hearing. It is also common case that a District Judge who embarks on the exercise of jurisdiction is entitled to refuse summary jurisdiction notwithstanding that a colleague has accepted jurisdiction on a previous occasion. This flows from the fact that a judge called upon to potentially convict and sentence an accused for the offence must be satisfied that the offence is minor and suitable for trial summarily. If the judge in question is not so satisfied, he or she must refuse jurisdiction and adjourn the matter for ultimate disposal on indictment (where the Respondent consents to a return for trial).

59. It is submitted on behalf of the Applicants that the case-law cited by the District Court judge in the course of refusing jurisdiction on the 2nd of December, 2020 and the other decisions in the area are authorities which demonstrate the lawfulness of the exercise of a power to revisit the question of jurisdiction by a District Judge who is called upon to exercise "*substantive*" or "*necessary*" jurisdiction in respect of a matter, either in order to accept a plea of guilty, or by way of adjudicating at trial. In this way the Applicants seek to distinguish between the exercise of a "*substantive*" or "*necessary*" jurisdiction as opposed to what they term a "*procedural*" jurisdiction. This is not a distinction expressly made in the case-law cited before me.

60. Turning then to consider that case-law, the Learned District Court Judge referred expressly to *State (O'Hagan) v. Delap* [1981] I.R. 125 as one authority for the existence of a power to revisit jurisdiction. Counsel for the Applicants placed significant emphasis on the facts in that case to identify its true ratio. In that case, the accused was before the District Court charged with an offence of indecent assault in respect of which the Director of Public Prosecution consented to summary disposal. The District Court judge formed the opinion that

the facts alleged against the accused constituted a minor offence which was fit to be tried summarily. The accused had initially indicated that he intended to plead not guilty. The accused requested that the matter be adjourned to later in the same day for further consideration. At that point he indicated that he wished to plead guilty and at the resumed hearing the District Court judge heard that the accused had previously been charged and pleaded guilty to an offence of indecent assault committed two weeks prior to the commission of the indecent assault under consideration and that it was during the accused's period of release on bail on that first indecent assault that the new indecent assault was committed. Thereupon the District Court Judge revised his opinion that the second offence was a minor offence fit to be tried summarily, refused jurisdiction and sent the accused for trial in the Circuit Court.

61. In the judicial review proceedings arising, O'Hanlon J held that the initial acceptance by the District Court Judge of jurisdiction to try the accused summarily on the second charge, being the result of an opinion formed by the Judge upon alleged facts disclosed to him at the time of such acceptance, was not a bar to a subsequent disclaimer by him of such jurisdiction when he was informed of additional relevant facts. The High Court further held that the new facts disclosed to the District Court on the afternoon of the relevant date justified (a) the Judge's revised opinion that the offence charged in the second charge was not a minor offence which was fit to be tried summarily and (b) the Judge's disclaimer of jurisdiction to proceed with the summary trial of the prosecutor on the second charge.

62. At p. 217 of the judgment, O'Hanlon J. stated as follows:

> *"I am of opinion that when a District Justice has elected to try a case summarily, and has embarked on the trial, circumstances may arise which entitle him, or may even make it necessary for him, to reverse his previous decision and allow the case to go forward to the Circuit Court where a higher range of sentence may be imposed…. if a District Justice embarks upon a summary trial and is then led to believe, by the evidence he hears, that the facts disclose a major rather than a minor offence, he would find himself in a situation where it would be constitutionally impossible for him to try the case summarily within his jurisdiction; in my opinion he would be bound to discontinue the summary trial and to allow the matter to be dealt with on the basis of a preliminary hearing intended to lead, in due course, to trial on indictment.*

Even where such constitutional infirmity does not appear in the proceedings, I am of opinion that the situation is the same in any case where the District Justice, in the course of a summary trial, comes to the conclusion on proper grounds that the matter is not one which is fit to be tried summarily; in such circumstances he is entitled to discontinue the summary trial, notwithstanding the fact that he has previously formed the opinion [that it is fit for summary trial]"

63. It is contended that there is a material difference between what occurred in these cases and the circumstances in the *State (O'Hagan) v. Delap*. I agree. It seems to me that the decision of O'Hanlon J., viewed in its context, is authority for the proposition that a judge who receives new information during the course of a trial (noting that the hearing had not commenced in that case in the sense that no formal evidence had been given) which causes him to revise his decision as to the offence being of a minor nature triable summarily may discontinue the summary trial notwithstanding his prior determination to the contrary. It is not authority for a power to revise a determination absent any new evidence or material because the terms in which the ratio is expressed do not extend that far and that was not the situation in that case.

64. I was referred by the parties to a number of other cases, however, in relation to the refusal of summary jurisdiction by a District Judge following the communication of directions for summary disposal by the prosecutor, most particularly *Reade v Judge Reilly & the DPP* [2010] I.R. 295. The decision in *Reade* was concerned with the effect of a refusal of summary jurisdiction in terms of the procedure to be adopted but also addresses the issue of the lawfulness of such a refusal where there has previously been an acceptance of jurisdiction by the District Court. In that regard, the applicant in *Reade* appeared before the District Court charged with assault causing harm and false imprisonment contrary to s.3 and s.15 of the Non-Fatal Offences Against the Person Act, 1997, which are hybrid offences. The DPP directed summary disposal and the District Judge, having perused the statements in the case, formed the view that the offences were minor, accepted jurisdiction and listed the matter for summary trial. At the trial, following the evidence of the victim of the alleged crimes, the District Judge changed his mind and ordered that the offences in question were not minor offences and that the matter did not fall within his jurisdiction. The first respondent sent the accused forward for trial at the next sitting of the Circuit Criminal Court and directed the service of a book of evidence.

65. It is noteworthy that in *Reade* the District Court Judge accepted summary jurisdiction and there were then several adjournments before the matter eventually came on for hearing more than eight months later, at which stage the accused pleaded not guilty and the District Court Judge commenced hearing the evidence. During the course of the complainant's evidence, the District Judge interrupted, saying that he did not consider he had jurisdiction to deal with the matter and requested the garda inspector for his opinion and the latter indicated that he had been "*taken aback by the contents of the statement*". The solicitor for the applicant then addressed the court, in effect, complaining that the judge was only then indicating he could not proceed with the trial. The inspector confirmed, upon inquiry of the court, that the DPP had directed that the matter be disposed of summarily. The District Judge then requested sight of the medical report and having considered the matter briefly, said he would continue with the trial, at which point the complainant resumed her evidence. The District Judge shortly thereafter again indicated that he would not hear further evidence, being of the view that the case did not fall within his jurisdiction and adjourned the matter for preparation of a book of evidence.

66. The applicant in *Reade* instituted judicial review proceedings, arguing, *inter alia,* that the District Judge's original decision as to jurisdiction was binding on him and that he had no power to reverse it. In the High Court, Charleton J. refused the relief sought and held that even if a judge in the District Court took a preliminary view that the papers in a case disclosed a minor offence, the court was still under a constitutional duty to ensure that the case was tried with a jury should it emerge on a further perusal of the facts, or on hearing the evidence at the actual trial itself, that the case involved a non-minor offence. Charleton J. concluded (at para. 22):

> *"Even if a judge in the District Court takes a preliminary view that the papers he has before him or her discloses a minor offence, the court is still under a constitutional imperative to insure that the case is tried with a jury should it emerge on a further perusal of the facts, or on hearing the evidence at the actual trial itself, that the case involves a non-minor offence. That duty continues up to the point of conviction, at which time the power to decide that an offence being tried summarily is not a minor one is spent."*.

67. He clearly found that this did not require an additional hearing or a change in the nature of the evidence stating at para. 23 of his judgment*:*

> *"The District Judge was not only at liberty, but was obliged, to change his mind on realising that what was before him could not be disposed of summarily as a minor offence. This did not require an additional hearing, or a change in the nature of the evidence."*

68. The applicant in *Reade* appealed to the Supreme Court, which affirmed the order of the High Court refusing *certiorari*. In affirming the High Court order refusing *certiorari,* the Supreme Court held that if on the facts proved or on hearing details of the offence, it became clear to a District Court Judge that a hybrid offence was not, in fact, minor, he or she was obliged to decline jurisdiction and discontinue the hearing. Giving judgment for the Supreme Court, Macken J. stated (at p. 311) that:

> *"If the evidence discloses, either prior to the trial or during the trial, that the offence is a non minor offence, the District court is not entitled, for the above reasons to try such an offence. Once that is the case, the District Judge has no actual or inherent jurisdiction to dispose of non minor offences and is obliged, of his own motion, to decline jurisdiction in respect of any such offence."*

69. The Supreme Court did not disturb Charleton J.'s finding that revisiting the question of jurisdiction did not require an additional hearing or a change in the nature of the evidence.

70. There is no doubt that the underlying facts in *Reade* are in marked contrast to the within cases. What is abundantly clear is that the District Judge was engaged in a substantive fashion in hearing evidence in the case when he formed the view that the matter was not one which could properly be disposed of summarily. Be that as it may, it seems to me that *Reade* is authority for a broader proposition than arose directly from the specific facts of that particular case. I take this view because of the approach taken by Charleton J. to the issue and the terms in which he expressed his decision. In the course of his decision (subsequently approved by the Supreme Court), Charleton J. approached the issue on the basis that Article 38.5 of the Constitution requires the District Court to ensure that an accused is afforded his or her constitutional right to a trial by jury where, on a judicial assessment of the facts, the charge is

not a minor one. Charleton J. quoted the following passage from *The State (McDonagh) v. O'hUadhaigh (Unreported, High Court, 9th March 1979) (*at para. 17 of the judgment)*:*

> *"If the facts proved indicate that the offence is not a minor offence, then clearly it is the duty of the court to discontinue the trial. If the statement of the facts alleged to the Justice indicate a minor offence he has jurisdiction to enter upon a summary trial of the offence but in my view if the evidence shows that in fact that the offence is not a minor one he would be acting in excess of jurisdiction if he continued the trial."*

71. Charleton J. went on to quote the following passage from *The State (McEvitt) v Delap* [1981] I.R. 125 with approval (para. 19 of the judgment of Charleton J.):

> *"If this were a case where it had not been agreed that the offence was a minor one, the Distinct Justice could make a provisional or prima facie ruling that it was a minor one, if the prosecution's opening statement of the circumstances justified such a tentative conclusion. But if, as the hearing proceeded, it appeared that the offence was not a minor one, the District Justice would have to desist from the summary hearing and, instead, take the necessary steps to allow a conversion of the case into the procedure laid down by the Criminal Procedure Act, 1967 for the preliminary examination of an indictable offence."*

72. The learned High Court Judge summed up the position as follows (para. 21):

> *"The fundamental duty, however, is a duty to the accused to ensure that his right to trial by jury is upheld. In The State (O'Hagan) v. Delap [1982] LR. 213, O'Hanlon J. reached the same conclusion as Henchy J. in The State (McEvitt) v. Delap as to the duty of the District Judge where it appears, on the hearing of a case, that any prior view that was held that the charge a minor one becomes misplaced."*

73. Counsel for the Applicants seek to distinguish between the circumstances in *Reade* and in these cases on the basis that there was no constitutional imperative at play in the within matter in that the District Judge was not being called upon to embark on any act that would

require him to be satisfied that it was necessary to vindicate the appellant's right to trial by jury.

74. Manifestly, in both *State (O'Hagan) v. Delap* and *Reade v. Reilly*, the District Judge in each case made the subsequent, contrary, decision as to jurisdiction at a stage in the proceedings when called upon to exercise a substantive jurisdiction in respect of the offences which were then at hearing. It was in such circumstances that it was found in subsequent judicial review proceedings that the District Judge was obliged to refuse jurisdiction if of the opinion the offence was not minor. Nonetheless, Macken J., in upholding the dicta of Charleton J. in *Reade*, made it clear that a decision to refuse jurisdiction, reversing an earlier decision to accept jurisdiction could occur prior to trial. It is also clear that it could occur without any change in the information available to the Court. Accordingly, it seems to me that the ratio of the decision in *Reade* extends beyond its own particular facts and establishes a wider proposition, namely that a judge is under a continuing obligation to be satisfied that what was before him could be disposed of summarily as a minor offence and while he can rely on a previous decision as to jurisdiction without revisiting the question of jurisdiction, where he entertains a concern he is entitled to reconsider the matter of jurisdiction at any time.

75. While I readily accept, as already set out above, that the circumstances were different in both the *State* (*O'Hagan) v. Delap* and *Reade v. Reilly* cases to the circumstances arising in these judicial review proceedings, a question which has troubled me is whether it is correct, as the Applicants have contended, that the District Judge was not called upon to take a substantive or necessary step in these cases on the 2nd of December, 2020 in a manner which so distinguished these cases from the *State* (*O'Hagan) v. Delap* and *Reade* v. *Reilly* cases as to make those authorities inapplicable. I have concluded that the position maintained on behalf of the Applicants as to the non-exercise of a "*substantive*" or "*necessary*" jurisdiction such as to remove from the Judge the obligation to be satisfied as to his continuing jurisdiction on the 2nd of December, 2020 is incorrect.

76. It is common case that the matters were listed before the District Judge for a plea of guilty and sentencing or for a date in the event of a not guilty plea. I am not satisfied that it is proper to characterize the function of the Court in receiving a plea in such circumstances as being merely "*procedural*". It seems to me that before accepting a plea of guilty or not guilty

from any party, the sitting judge is required to be satisfied that if a guilty plea is entered, the Court is properly acting within jurisdiction in proceeding to convict and sentence as it was envisaged it would do. While a judge is not required to revisit the question of jurisdiction on each occasion a matter is listed before the Court where this question has already been determined by a different judge of the Court, neither is the Court precluded from doing when called upon to take a step in the proceedings such as record a plea of guilty and proceed to sentence or not guilty and fix a date for trial where the Judge entertains a concern as to jurisdiction.

77. In view of the authorities, including *Sweeney v. District Judge Lindsay* [2013] IEHC 210 which was cited on behalf of the Respondent**,** I do not accept that the fact that Judge O'Shea had accepted jurisdiction on the previous occasion was in any way binding on a subsequent District Court judge called upon to exercise a jurisdiction such that the subsequent judge's decision might be likened to the improper exercise of an appellate function *vis-a-vis* a judge of the same jurisdiction as argued on behalf of the Applicants. In the *Sweeney* case, Peart J. stated that (para. 29):

> *"But the fact that Judge Fahy had already accepted jurisdiction would not be sufficient to bind the first named respondent, either in the case of the co-accused or the applicant. He could decide that matter himself in the light of his own assessment. Neither in my view is the fact that he continued with the trial of the co-accused having been informed that jurisdiction had been accepted by Judge Fahy, sufficient to prevent the first named respondent from reaching a different decision in respect of the applicant when given an outline of the facts alleged against the applicant."*

78. Peart J. also stated (para. 32):

> "*I do not consider that the first respondent was bound to accept jurisdiction because Judge Fahy had already made such a determination. The first named respondent was entitled to form his own view of the matter, since he is without any jurisdiction to hear the case summarily unless he considers that the case is a minor offence."*

79. It is unclear whether any of the Applicants in the cases before me intended to enter a plea of guilty, but it seems to me that it was a fair and proper course of action for the District Court Judge to satisfy himself as to jurisdiction before requesting the accused to enter a plea rather than inviting a plea in reliance on a determination already made with the heightened risk that he would thereafter arrive at the opinion that the subject matter exceeded his jurisdiction.

80. I was also referred on behalf of the Applicants to the more recent case of *Ryan v. the DPP* [2020] IEHC 53. In that case the Court (O'Regan J.) made an order quashing the decision of the District Court to refuse jurisdiction in proceedings where summary jurisdiction had been previously accepted. The facts in *Ryan* were quite different, however. The applicant was before the court charged with an offence of Assault Causing Harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997. The sitting judge heard that the DPP had directed summary disposal in relation to the matter and having satisfied himself that the accused was present in Court the District Judge heard an outline of the alleged assault and was furnished with a medical report on the alleged injured party. On the basis of the foregoing, the District Court Judge stated that he would accept jurisdiction. The matter was then adjourned for hearing and, on the date of that listing, it was not reached and was adjourned for mention to a later date for the purpose of setting a new trial date. The accused was excused from attending. In advance of the mention date, a new date for hearing was agreed with the prosecution.

81. On the for mention date the Applicant was represented by an agent solicitor standing in for his solicitor. On that date, the District Court Judge asked the inspector prosecuting the case '*what the matter was about again will you just remind me?'* and on hearing an outline of the alleged facts and receiving the same medical report as before, the District Judge indicated that the matter was too serious and declined jurisdiction. The Judge was not, however, advised that he had previously accepted jurisdiction nor was he advised that the DPP had consented to summary disposal of the charge. The Judge declined jurisdiction in the absence of the accused and without being advised that the accused had been excused from attending on that date.

82. The Court (O'Regan J) did not find the complaint of a failure to give reasons for the decision to be substantiated. She proceeded to find, however, that the refusal of jurisdiction had been made in circumstances which were in breach of the applicant's rights to natural and constitutional justice and made an order quashing the said decision and an order remitting the

matter to the District Court for further consideration. In doing so, she held as follows (at para. 40):

> " *When the court inquired of the Inspector as to what the matter was about, it does appear to me that it was appropriate for the Inspector to advise the court that the matter was in for mention to seek an alternate date of trial, having not been reached on the previous occasion. In my view, in affording the selective factual background, including failure to advise that the accused was excused from being present on that particular date, and that the court had previously accepted jurisdiction, unfairness in the process was triggered."*

83. There are obvious points of distinction between what occurred in the within matter and in *Ryan.* As I read it the decision in *Ryan* it is authority for the grant of relief in judicial review proceedings quashing a finding on jurisdiction where that finding was made in circumstances which amount to a breach of the rules of natural justice sufficient to ground the quashing of the order. In these cases, however, it cannot be said that an incomplete account was given to the District Judge. The District Court Judge presiding in respect of the within matter on the 2nd of December, 2020 was informed that jurisdiction had been accepted previously and that the DPP was consenting to summary disposal. Insofar as there is a similarity with the *Ryan* case, therefore, it extends only to the fact that the District Judge made no enquiry as to whether the accused was present in Court and proceeded without ensuring the presence of the accused in all cases.

84. Furthermore, while O'Regan J. found that the complaint that there had been a failure to give reasons was not substantiated in *Ryan*, this was in circumstances where the Judge was dealing with one case only and had not been made aware of his own previous decision to contrary effect. In these cases, the District Court Judge was made aware of the previous decision of a fellow judge but proceeded to reach a different decision as to jurisdiction having re-heard the alleged facts in all cases sequentially, albeit in the absence of any request to do so, in the absence of any request to accept a plea of guilty and in the absence of any matter proceeding to hearing. Having proceeded in this manner the District Judge clearly articulated his reason for refusing jurisdiction in respect of all cases as being: "*I am satisfied that the*

offences before the Court are not, in my opinion, minor in nature and are unfit for trial in the District Court summarily."

85. As regards the duty to give reasons, I was referred in submissions to the decision of the Supreme Court in *Oates v. Judge Browne* [2016] 1 I.R. 481, where Hardiman J. stated at para 47:

> *"It is a practical necessity that reasons be stated with sufficient clarity that if the losing party exercises his or her right to have the decision reviewed by the Superior Courts, those Courts have the material before them on which to conduct such a review. Secondly, and perhaps more fundamentally, it is an aspect of the requirement that justice must not only be done but be seen to be done that the reasons stated must "satisfy the persons having recourse to the tribunal, that it has directed its mind adequately to the issue before it."*

86. The duty to give reasons in the context of summary criminal proceedings has been considered in a number of decided cases. These include *Lyndon v. Judge Collins* [2007] IEHC 487, *Sisk v. District Judge O'Neill* [2010] IEHC 96, and *Kenny v. Judge Coughlan* [2014] IESC 15. These authorities acknowledge that busy District Court judges do not enjoy the luxury of crafting detailed judgments except where the issues in the particular case so require and that there is no requirement to state the obvious or to give reasons to a high standard of academic excellence.

87. It is contended on behalf of the Respondent that the District Judge in this case gave a clear and reasoned basis for his decision and given the similarity of subject matter across the various prosecutions, he was entitled to treat of them in a single ruling. It is contended that he was not required to itemize each aspect of each prosecution case against each accused person. I do not accept this contention as being correct in law.

88. If the ruling made by the District Judge were made in respect of the facts of any one particular case having heard an outline of the alleged facts in that case, I would not consider there to be a requirement for any further expansion by the District Judge. A separate question arises, however, where the facts of some nine separate cases are heard together and then ruled on together as occurred in this case. In my view, it was not open to the Judge to form the view

that every breach of s. 252(1) was not minor as this would not only breach the requirement of constitutional justice to give individual consideration to each case but would also frustrate the statutory intention in creating a hybrid offence. I am satisfied that the facts and circumstances of each of the cases before the District Court, while similar, were different and the question of jurisdiction required individual consideration in each case. The way in which individual consideration is demonstrated is through addressing cases on a case-by-case basis with reasoning referable to the facts and circumstances of that case, where appropriate. In this way, constitutional justice requires a level of reasoning in the communication of a lawful decision in each case in a manner which demonstrates that the decision is made with regard to the particular circumstances of that case.

89. Allowing for the fact that there is no requirement to give detailed reasons and acknowledging that there is a similarity of subject matter between the ten cases, it remains the case that the offence of its nature is not automatically beyond the jurisdiction of the District Court and therefore each case requires individual consideration. It seems to me that by dealing with all cases in a single ruling without acknowledging, still less addressing differences between each of the ten cases, the requirement that justice not only be done but be seen to be done is not met in this case in that the Applicants cannot be satisfied from the reasons stated in the manner in which they were stated in a single ruling applied to all ten cases that the District Judge directed his mind adequately to the issue of jurisdiction in each individual case.

90. The Respondent has argued that as no point was made as regards the absence of notice and no point was made subsequent to the ruling that reasons had not been given in individual cases, it should not now be open to the Applicants to challenge the District Court Judge on matters not argued before that Court. It was further submitted that these complaints ring hollow in circumstances where the Applicants were legally represented and were in position to make or adopt submissions on the issue arising. It has been pointed out that if the issue did arise during the trial of the alleged offences, the District Court would have been obliged to discontinue the hearing in any event, regardless of any question of notice.

91. In written submissions, the Respondent relied on the very recent case of *DPP v. Dublin Metropolitan District Court & DA* [2021] IEHC 705**.** In that case, the District Court had accepted jurisdiction under s.75 in respect of a sexual assault charge in circumstances where a charge of oral rape arose out of the same alleged incident. The oral rape was required by statute

to be tried in the Central Criminal Court but the District Court had to consider the question of jurisdiction on the sexual assault charge. The solicitor appearing for the DPP had submitted to the District Court that it should refuse jurisdiction as the potential outcome of two trials arising out of the same incident would be traumatic for both the complainant and the accused. The solicitor had not specifically cited the legal rule against sequential trials arising out of the same set of facts. Ferriter J. held that where the solicitor for the DPP appearing in the District Court had not made a submission on the legal rule against sequential trials, that point could not then be taken in the High Court. Ferriter J. held at (para. 51):

> *"51. In my view, it was unfair to the District Judge to advance this submission in circumstances where no submission in relation to the legal rule against sequential trials was advanced to her in the District Court at the hearing on 19 April, 2021. Indeed, as set out earlier in this judgment, one of the reasons advanced by the DPP in correspondence subsequent to 19th April, 2021 for the proposal to invite the District Court to revisit its Order was that the Court had not considered that rule (CPS letter of 11th May, 2021).*
>
> *52. It is not open to the DPP to seek to challenge the lawfulness of the District Court's decision of 19th April, 2021 on a ground not advanced to the Court at that time."*

92. The circumstances here are quite different to those considered by Ferriter J. because it is quite clear that the District Judge was aware from the representations made to him that the parties objected to his approach in revisiting the question of jurisdiction. In the light of those objections there is an onus on the District Judge to be satisfied as to the fairness of the process both as regards participation by the parties and as regards the reasoning of decisions as both are essential components of constitutional justice in decision making.

93. Having said that I do not consider the complaint of lack of notice to be well-founded. Each of the Applicants were represented in Court. No Applicant has claimed that he or she would have given evidence on the issue of jurisdiction, still less what evidence, if any, would have been given if on notice that the issue might arise. At least one of the Applicants had been absent on the previous occasion in circumstances where it must have been understood that the question of jurisdiction would be or was likely to be considered. In circumstances where I have concluded that the authorities establish that the District Court is under a continuing duty to be satisfied as to its jurisdiction, it seems to me that the Applicants should be taken to be on notice

that the District Court might revisit the question of jurisdiction at any stage and in the absence of any particular or identified basis for claiming unfairness arising from a lack of notice, I do not consider the complaints advanced to be made out on the facts and circumstances of these cases.

94. I do not, however, accept the contention that the Applicants are debarred from pursuing a complaint regarding a lack of adequate reasoning arising from a decision given in judicial review proceedings where the Judge has not been asked to elaborate on his reasoning. It is clear from the transcript that the District Judge was made aware that the parties, through their separate legal representatives, objected to the Judge revisiting the issue of jurisdiction. Once the District Judge had pronounced his decision in the global rather than individual manner, as he did, it does not seem to me that in the circumstances of these cases, it would be realistic to require the legal representatives for accused persons to engage with the Judge in relation to the adequacy of the reasons given in respect of each individual case after he had pronounced his decision. Whilst there may be circumstances in which it is appropriate or even necessary for a decision to be pronounced and the reasons given subsequently, no such circumstances presented before the District Court on the 2nd of December, 2020. Nor did the Judge purport to pronounce his decision with the intention of providing reasons later.

95. I am satisfied that the approach taken by the Judge in determining the issue of jurisdiction in all cases together rather than on an individual basis or at least with reference to the differences existing between the cases means that individual accused persons cannot be satisfied that the decision taken had proper regard to the particular circumstances of his or her case and consequently the decision as to jurisdiction made on the 2nd of December, 2020 was taken in a manner which breaches the Applicants' rights to constitutional justice.

96. The Respondent contends that there is no prejudice to the Applicants arising from the determination of the District Court Judge to decline jurisdiction on 2nd of December, 2020 as this amounts to a vindication of their rights to trial by jury in the case of a non-minor offence under the Constitution. In my view this is an overly simplistic approach to the situation. While the Applicants are entitled to a trial by jury in the case of a non-minor offence, it is equally the case that the Applicants are each now exposed to trial on indictment, subject to the decision of the Respondent on whether to direct a return for trial. A trial on indictment is only necessary if the Learned District Judge has properly determined that the District Court has no jurisdiction

because the offences are not minor offences triable summarily. In addition to vindicating a right to a jury trial where an offence is non-minor, the effect of the determination of the District Court is undeniably to give rise to a significant increase in the severity of the penalties available. It is unrealistic to view the effect of the decision only in terms of a vindication of a constitutional right to a trial by a jury when it also has the effect of exposing the Applicants to an increase in the severity of the penalties available. I am satisfied that the Applicants have an interest to protect in ensuring that the decision as to jurisdiction is taken lawfully such as to warrant interference by this Court in judicial review proceedings where legal grounds for doing so have been established.

CONCLUSION

97. Given my findings in relation to the unfairness of the manner in which the District Judge approached the issue of jurisdiction without addressing the cases individually or acknowledging the differences between the cases in deciding on jurisdiction in all cases and therefore without demonstrating due consideration of whether the offence in the individual case was minor and triable summarily, I propose to make orders of *certiorari* quashing the orders of the Court made on the 2nd of December, 2020 in respect of the Applicants.

98. I will remit the matters to the District Court for a plea or a date. It is a matter for the District Judge assigned to deal with the matters on remittal to consider any issues as to jurisdiction decided to be necessary by that Judge. To be clear, I make no order precluding a reconsideration of jurisdiction where the District Judge seised of the matters on a given day considers it necessary or appropriate to do so before taking a step in the proceedings. This follows on an application of the Supreme Court decision in *Reade v Judge Reilly & the DPP* where it was clearly found that if the evidence discloses, either prior to the trial or during the trial, that the offence is a non-minor offence, the District Court is not entitled, to try such an offence. Once that is the case, the District Judge has no actual or inherent jurisdiction to dispose of non-minor offences and is obliged, of his or her own motion, to decline jurisdiction in respect of any such offence.