



# Cúirt Uachtarach na hÉireann Supreme Court of Ireland

## **IN THE MATTER OF SECTION 34 OF THE CRIMINAL PROCEDURE ACT 1967**

**The People (At the suit of the Director of Public Prosecutions) v A.C.**

**On appeal from: [2020] IECA 362**

The Supreme Court today decided that it was correct in law for a trial judge to exclude evidence tendered by way of a certificate pursuant to s.25 of the Non-Fatal Offences Against the Person Act, 1997 on the grounds that the medical practitioner who prepared the said certificate had not personally performed the examination referred to in the said certificate.

### **Composition of Court**

O'Donnell, MacMenamin, Charleton, O'Malley, Woulfe JJ.

### **Background to the Appeal**

In February 2018, Mr. AC stood trial at Dundalk Circuit Criminal Court charged with two offences: one count of assault causing harm contrary to s.3 of the 1997 Act, and one count of assault causing serious harm contrary to s.4 of the same Act. The prosecution sought to introduce evidence of a certificate provided by a consultant ophthalmic surgeon and relied on s.25 of the 1997 Act, which provided that in any proceedings for an offence alleging the causing of harm or serious harm to a person, the production of a certificate purporting to be signed by a registered medical practitioner and relating to an examination of that person, shall unless the contrary is proved, be evidence of any fact thereby certified without proof of any signature thereon or that any such signature is that of such practitioner. The defence objected on the grounds that the doctor who had signed the certificate had not personally seen the injured party, and that the certificate was based upon the clinical notes collected in the hospital on the dates in question. The trial judge excluded the certificate as inadmissible hearsay. He felt that s.25 required that the certificate be prepared by the person who had carried out the examination of the injured party. The respondent referred a question of law to the Court of Appeal, and that Court held that the trial judge was incorrect in excluding the certificate.

### **Judgment**

The Supreme Court allowed the appeal, with all of the judges agreeing that the trial judge was correct to exclude the evidence tendered by way of the certificate.

### **Reasons for the Judgment**

Giving judgment, Woulfe J. (with whom the other members of the Court agreed) held that the Court of Appeal had failed to give adequate consideration to the inherent nature of the certificate pursuant to s.25, which certificate must involve the medical practitioner having "certified" certain facts relating to an examination of the injured party. [para. 46] To certify, one must be in a position to state that something is true. In this case the practitioner could not be in a position to state that the facts recorded in the clinical notes by another practitioner, relating to that other practitioner's examination of the injured person, are a true record of the findings on examination. In those circumstances, the Oireachtas could not have intended that such a statement would be evidence, but not open to cross-examination. [para. 47] O'Donnell C.J. (with whom the other members of the Court agreed) delivered a concurring judgment, holding that s.25 was, in context, ambiguous. He was of the view that a number of indicators suggested a narrow scope for the application of the section. [para. 16] Charleton J. also delivered a judgment concurring with Woulfe J. and O'Donnell C.J. on this central issue.

A second possible issue which could be seen as arising regarding the ambit of s.25, although not directly within the scope of the question of law referred to the Court of Appeal, was whether any such certificate evidence is confined to certified facts as opposed to evidence of opinion. Woulfe J. stated that s.25 provides only for certified facts, and he did not think that it was the intention of the Oireachtas that evidence of opinion could be given by certificate, and not be subject to cross-examination. [para. 56] O'Donnell C.J., while noting that this issue was not the subject of the appeal, agreed with Woulfe J. that an expression of an opinion in relation to the severity of the harm is not a "fact" which is capable of being certified and becoming evidence under s.25. [para. 21] MacMenamin J. and O'Malley J. agreed with Woulfe J. and O'Donnell C.J. on this issue. Charleton J. took a different view on the distinction between opinion evidence and testimony as to fact, while noting that his remarks were not determinative of the appeal. He stated that a statute could draw a distinction between an opinion that a witness might give and a statement of fact, by way of a definition or description, but in his judgment s.25 did not do so. [para. 15]

### **Note**

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

### **Case history**

6<sup>th</sup> July, 2021  
[\[2021\] IESCDT 45](#)  
[\[2020\] IECA 362](#)  
13<sup>th</sup> February 2018

Oral submissions made before the Court  
Supreme Court Determination granting leave  
Judgment of the Court of Appeal  
Ruling of the Circuit Criminal Court