



18th January 2017

The Supreme Court

DPP v. Barry Doyle

Information Note

1. Barry Doyle, the accused/appellant, referred to as “the appellant”, was granted leave to appeal to this Court from the decision of the Court of Appeal of the 8th June, 2015: [2015] IESCDT 45. The Director of Public Prosecutions, the prosecutor/respondent, is referred to as “the DPP”.

2. The issues upon which leave to appeal was granted were:-

(i) Whether or not the appellant was, in the circumstances of this case, entitled to consult with a solicitor, and have a solicitor present, prior to and during the 15th interview with the Garda Síochána, during which admissions were alleged to have been made. This raises the question of whether the right to have a solicitor present during questioning is a matter of right of the detained person, or a matter of concession by the Garda Síochána.

This will be referred to as “the presence of a solicitor” issue.

(ii) Whether the appellant, in all the circumstances, including that he was convicted in the Central Criminal Court on the 15th February, 2012, and the decision of the Supreme Court in *DPP v. Damache* was delivered on the 23rd February, 2012, can rely on that decision on his appeal.

This will be referred to as “the Damache” issue.

(iii) Whether the matters set out in the appellant’s application under the heading “Relevant facts considered not to be in dispute”, or any of them, constituted threats or inducements made to the appellant and calculated to extract a confession from him. This is a matter not decided by the Court of trial or the Court of Appeal. Secondly, if they do constitute such threats or inducements, whether their effect had “dissipated” or “worn off” by the time of the admissions relied upon by the State, as held by the trial judge; and whether or not there was any evidence on which it could have been determined that the effect of the said threats or inducements (if any) had “dissipated” or “worn off” by the time of the alleged admissions.

This will be referred to as “the threats and inducement” issues.

3. On the first issue, as to whether the appellant was entitled to have a solicitor present during the 15th Interview, 6 members of the Court would dismiss the appeal, although on different bases; a majority of the Court (Denham C.J., O’Donnell J., Laffoy J. and Charleton J.) hold that the constitutional right is to have access to legal advice, and that it was not required that the appellant, in the circumstances of the case, have a solicitor present during the 15th Interview.

4. MacMenamin J. concurring, holds in principle that the Constitution requires in future that a lawyer be present for the interrogation. But, applying *DPP v J.C.* [2015] IESC 31, he holds that the admissions would not be excluded. He does not consider that the right asserted is recognised in ECHR jurisprudence.

5. O’Malley J. reserved her position as to the existence of a constitutional right, on the basis that it does not properly arise as an issue on the facts of this case.

6. McKechnie J. dissenting, both as to reasons and result, holds that the presence of a lawyer is required under the Constitution and would allow this ground of appeal. However, in light of his conclusion on the third issue, he did not find it necessary to determine the consequences of a breach of such a right in this case.

7. On the second issue, the Damache issue, the Court held that the appellant, in all the circumstances, could not rely on the decision in *DPP v Damache* [2012] 2 I.R. 266, on his appeal.

8. On the third issue, the issue of threats or inducements, the majority of the Court dismiss this ground of appeal.

9. McKechnie J., dissenting, holds that each of the three limbs of the test in *People (DPP) v. McCann* [1998] 4 I.R. 397 has been satisfied and, accordingly, that the admissions made result from an inducement. As a result, the admissions so made were inadmissible and on such basis he would order a retrial.

10. For the reasons given, the Court dismisses the appeal.