

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Article 146: Rule 160)

Case Stated by Magistrates' Court

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

On Appeal by way of Case Stated under the
Magistrates' Courts (Northern Ireland) Order 1981

BETWEEN:

**I WILLIAMSON
SUPERINTENDENT OF
ROYAL ULSTER CONSTABULARY**

Complainant/Appellant

AND

DAVID WIN ROWLANDS

Defendant/Respondent

Case Stated by W B McIvor, Deputy Resident Magistrate,
in respect of his adjudication at a Magistrates' Court
sitting at Lisburn, on the 29th day of November 1995.

C A S E

1. The following complaint was made against the defendant:

"Whereas a complaint has been made before me that on the 26th day of November 1994, in the said County Court Division, you the said defendant unlawfully assaulted Gavin John McErlane, contrary to Section 42 of the Offences Against the Person Act 1861".

The charge was contested by the Defendant.

2. The following evidence was given:-

- 2.1 The Defendant, a soldier in 'A' Company, 2 Parachute Regiment, was one of a 4-man Army patrol on the Stewartstown Road, Belfast, on the 26th day of November 1994.
- 2.2 Constable Black of Woodbourne RUC Station was accompanying the patrol. By agreement he was called at the outset as a defence witness to facilitate his appearance as a witness in another court.
- 2.3 Between 4.30 am and 5.00 am, following a complaint from Woodbourne Nursing Home, the patrol was called to the grounds of a derelict Church opposite the Nursing Home, where four youths, including Gavin John McErlane, were drinking and being generally rowdy, and when asked to keep the noise down they became abusive and hostile.
- 2.4 Constable Black said he saw McErlane swinging at and grabbing one of the soldiers. He shouted at him to stop and grabbed him. McErlane struck Constable Black and a scuffle took place between them, which ended up with both of them on the ground.
- 2.5 Gavin John McErlane alleged that he was walking behind Constable Black when he felt a blow to the back of his head and fell to the ground. When he got up he became involved in a scuffle with Constable Black.
- 2.6 McErlane was not sure which soldier had struck him, but he thought it was the soldier with the moustache.
- 2.7 Gerard Johnston alleged that he saw two soldiers kicking McErlane on the road or the footpath and that one of the soldiers had a moustache.

3. At the end of the prosecution case Mr Michael Dunn, Counsel for the Defendant, submitted that there was no evidence linking the Defendant with the assault on McErlane and that I should dismiss the summons.
4. Mr Peter Sefton for the Prosecution submitted that the Defendant had a case to answer and that it should proceed.
5. I accepted Mr Dunn's submission.

The question for the Court of Appeal is -

"Was I correct in law on the evidence before me in dismissing the summons
"against the Defendant on the ground he had no case to answer?"

The following documents are attached to this Case Stated:-

- (a) Copy Summons;
- (b) Certificate of Order;
- (c) Copy Application to State a Case;
- (d) Copy Court of Appeal Order to Re-State Case.

Dated this 26TH day of JULY 1996.



Deputy Resident Magistrate