

THE DIRECTOR OF PUBLIC PROSECUTIONS

THE CHIEF JUSTICE.
GRIFFIN J.
HEDERMAN J.

COMPLAINANT/
APPELLANT

AND

(187/83)

OWEN R. O'NEILL

DEFENDANT/
RESPONDENT

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JUDGMENT OF HEDERMAN J. Delivered the 30th day of July. 1984.

New. diss

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This is an Appeal by the Director of Public Prosecutions from the Order of the High Court of 19th May 1983 to set aside and discharge the said Order and in lieu thereof to answer the question posed by the Justice of the District Court in a Case Stated pursuant to Section 2 of the Summary Jurisdiction Act 1857 as extended by Section 51 of the Courts (Supplemental Provisions) Act 1961, and to answer the question posed by the District Justice in the Case Stated in the negative.

The Case Stated by the District Justice assigned to the District Court Area of Dundalk is set out as follows:-

"1. At the sitting of the District Court held in Dundalk in the said Court Area and District on 4th November 1982 the Defendant appeared before me on Summons charged with an offence as follows:

'WHEREAS a complaint has been made to me that you the said Defendant on the 27th day of March 1982 at Joycelyn Street, Dundalk in the County of Louth a public place within the Court Area and District aforesaid, did drive a mechanically propelled vehicle, to wit a motor car registration number LZY 972, in the said public place, while there was present in your body a quantity of alcohol being such that within three hours after so driving, the concentrate of alcohol in your blood exceeded a concentration of 100 milligrams of alcohol per 100 millilitres of blood, contrary to S. 49(2) and (4)(a) of the Road Traffic Act, 1961, as inserted by S. 10 of the Road Traffic (Amendment) Act 1978'.

2. The facts, as proved or admitted, were as follows:-

(i) Colm Murray, a Member of An Garda Siochana stationed at Dundalk, was on mobile patrol at Roden Place, Dundalk, on 27th March 1982 at 12.15 a.m. He saw motor car registration number LZY 972 Renault 18 come from the direction of Crowe Street. The vehicle went in the direction of Distillery Lane. Garda Murray decided to check the vehicle as he considered that it was being driven too fast as there was a heavy fog in the area. He turned his patrol car and followed the vehicle which was driven down Distillery Lane along the Ramparts and then on to Jocelyn Street. He succeeded in stopping the vehicle. It was being driven by Owen Roe O'Neill of Avenue Road, Dundalk. Garda Murray saw that the Defendant's eyes were bleary and he got a strong smell of intoxicating liquor from the Defendant's breath. He asked the Defendant if he had been drinking and he said he had had a couple of drinks earlier and that he was going to a party. Garda Murray assembled an alcolyzer in his presence and required the Defendant to provide him with a specimen of his breath. He provided a specimen and it proved positive. From Garda Murray's observations he formed the opinion that the Defendant was incapable of exercising proper control over a mechanically propelled vehicle due to the consumption of an intoxicant. He informed the Defendant that he was arresting him under the provisions of S. 49(6) of the Road Traffic Act 1961 - 1978 for drunken driving. He then took him to Dundalk Garda Station arriving there at 12.30 a.m.

(ii) He then informed the Defendant that he was calling in a designated registered medical practitioner to examine him. The designated registered medical practitioner Dr. Michael G. Salter arrived at the Garda Station at 12.40 a.m. Garda Murray brought the Defendant and the doctor to the examination room where he introduced them to each other. Garda Murray then required the Defendant to permit the doctor to take from him a specimen of his blood or at his option to provide the doctor with a specimen of his urine. The Defendant consented to give a blood sample. Garda Murray handed Dr. Salter a sealed box from the Medical Bureau of Road Safety bearing the letter 'B' on the outside. The doctor opened the box in the presence of Garda Murray and of the Defendant. The doctor took a sample of blood from the Defendant's arm at 12.50 a.m. on 27th March 1982. He then divided the specimen into two parts and placed each part into a glass container which he closed and identified each by fixing a white adhesive label containing the Defendant's name and date. He then placed each specimen into a separate protective cylindrical container which he identified in the same manner. The doctor then sealed the container with the adhesive red coloured seal of the Medical Bureau placing it along the join in a horizontal lengthwise position on the container so that the seal adhered to both parts of the container.

(iii)/

(iii) The doctor then completed the doctor's form and handed both containers and form to Garda Murray. Garda Murray offered either of the containers to the Defendant and at the same time handed him a statement in writing indicating that he could retain either of the containers. The Defendant retained one of the containers. Garda Murray then placed the remaining container and form into the original cardboard box which he closed with the adhesive label already forming part of the box which contained the name and address of the Medical Bureau for Road Safety. He posted it by registered post from Dundalk Post Office on 27th March 1982. He retained the receipt of registration. He later received Certificate No. 820099AC from the Bureau which showed that the specimen of blood contained a concentration of 119 milligrams of alcohol per 100 millilitres of blood. The said form completed by the doctor and the Certificate from the Medical Bureau of Road Safety were both produced in evidence and are attached to form part of this Case Stated.

3. The Defendant through his Solicitor sought and was given a direction because I was of the opinion that the said form was unsatisfactory in that the answer given to Question 5 therein is '12.50' and does not indicate whether or not it was 12.50 at night or 12.50 during the day, and it did not therefore in my opinion conform with the statutory requirement that the time at which the sample was taken should be stated. It seemed to me that since the contents of the Certificate, once admitted, are conclusive, the Certificate should be completed and unambiguous on its face. I was also unsatisfied with the signature of the designated registered medical practitioner on the said form which I considered to be illegible. Accordingly I dismissed the case.

4. The opinion of the Court is sought as to whether I was right in law in dismissing the said complaint".

The Form accompanying the Case Stated sets out the following matters:

- | | |
|---|---|
| 1. Name and address of the person from whom the specimen to which this form relates was taken or who provided the specimen: | OWEN R. O'NEILL
AVENUE RD
DUNDALK |
| 2. Nature of specimen.
(Insert "blood" or "urine" as appropriate) | BLOOD |
| 3. Garda station at which specimen was taken or provided. | DUNDALK |
| 4. Date on which specimen was taken or provided. | 27.3.82. |

5. Time at which specimen was taken or provided. 12.50.

I, the under signed designated registered medical practitioner -
took from the person named at 1 above the blood specimen
or (delete whichever is not appropriate)
obtained from the person named at 1 above the specimen of his urine.

to which this form relates.

I divided the specimen into two parts. I placed each part in a container which I forthwith sealed. I labelled each container with the name of the person and the date. I gave both containers to a member of the Garda Siochana."

There was a signature opposite the specified part of the form which stated "Signature of designated registered medical practitioner".

Section 21 of the Road Traffic (Amendmnt) Act 1978 provides:

(1) Where under this Part a designated registered medical practitioner has taken a specimen of blood from a person or has been provided by the person with a specimen of his urine, the designated registered medical practitioner shall divide the specimen into two parts, place each part in a container which he shall forthwith seal, and complete the form prescribed for the purposes of this section.

(2) Where a specimen of blood or urine has been divided into two quantities as required by subsection (1) a member of the Garda Siochana shall offer to the person one of the sealed containers together with a statement in writing indicating that he may retain either of the containers.

(3) As soon as practicable after subsection (2) has been complied with, a member of the Garda Siochana shall cause to be forwarded to the Bureau the completed form referred to in subsection (1), together with the relevant sealed container or, where the person has declined to retain one of the sealed containers, both relevant sealed containers.

(4) In a prosecution under this Part it shall be presumed until the contrary is shown that subsections (1) to (3) have been complied with.

It is to be noted that pursuant to Section 21(4) there is a presumption until the contrary is shown that subsections 1 to 3 have been complied with.

The/

The District Justice dismissed the case on two grounds - firstly that the time of 12.50 did not have the letters a.m. or p.m. after it, and therefore in his opinion did not conform with the statutory requirement that the time at which the same was taken should be stated, and secondly he was not satisfied with the signature of the designated medical practitioner on the said form which according to him was illegible.

These are the only two issues to be determined by the Court.

That the omission of the letters a.m. or p.m. after the figure 12.50 is a defect rendering the presented form incomplete is, in the instant case, a contention which cannot be sustained.

The time as set out in the Form is a matter of which the accused must have been well aware. Further the District Justice had evidence of all the facts leading up to the bringing of the Defendant/Respondent to the Garda Station from the time of his arrest until after the completion of the form by the Doctor. There was evidence also before the Court that after the Doctor had completed the form, the form and both containers were handed to Garda Murray who offered either of the containers to the Defendant and at the same time handed him a statement in writing indicating that he could retain either of the containers. The Defendant did in fact retain one of the containers.

Whilst ordinarily the time 12.50 might be referable to either 12.50 a.m. or 12.50 p.m., in the circumstances of this case it is and can only be referable to 12.50 a.m. the time at which, as established by the evidence, the sample of blood was taken from the defendant. The defendant cannot have been under any misapprehension as to whether 12.50 a.m. or p.m. was in issue, nor could he be in any way prejudiced by the omission (if such it be) to state on the relevant form whether it was a.m. or p.m.

Since/

Since it is clear from the evidence that the Defendant was fully aware of his situation while in the Garda Station and did exercise his rights in retaining one of the containers, the only rational inference that can be drawn from the numbers 12.50 as the time of taking the specimen is that it was 12.50 a.m.

Different considerations might well arise under other parts of the Road Traffic Acts if there was not precise evidence from which it must be inferred that an accused had notice of the time of the happening of any particular event, e.g. a driver might otherwise be at a disadvantage in meeting an allegation that at a given time, in a given place, he was alleged to have driven at an excessive speed or dangerously, because he was not apprehended and there and then informed of such alleged breaches.

In my view, therefore, the form was in this case properly completed in accordance with the Regulations and Statutory Provisions insofar as the time element is concerned.

Neither the District Justice nor Mr. Justice Doyle was referred to the case of the Director of Public Prosecutions -v- Collins, Judgment of this Court, 1981 Irish Law Month Reports 447, in which the second point in this case arose. The fifth question for determination by the Court in that case was:

"5. Since the Circuit Court Judge found one of the signatures on the certificate issued by the Bureau to be illegible, and since the capacity of the persons who attested the affixing of the Bureau's seal to the certificate is not precisely stated, has the certificate the evidential effect provided for by S. 23(2)"?

Henchy J. in his Judgment at page 454 states:

"The Circuit Court judge found 'as a fact' that the signature of the person who purported to sign the certificate as Director or deputy Director or other officer duly authorised by the Bureau to act in that behalf. With respect, all the Circuit Court judge could find as a fact was that he found the signature illegible. Whether it is illegible to others is a matter of opinion. For that reason the judge's purported finding of fact in this respect is not binding on this Court; see the judgments in this

Court/

"Court given in Northern Bank Finance Corporation -v- Charlton (1979) I.R. 149. For my part I find the signature in question eminently legible. It is that of 'M.D. Hickey', but even if I agreed with the judge's finding of illegibility, that finding would not detract from the validity of what is clearly intended to be a handwritten signature. Legibility is not a hallmark of an effective signature. What the minimum requirements for an adequate signature are have been the subject of many judicial pronouncements. I do not propose to refer to those decisions beyond pointing out that they show that even though a propounded signature be no better than an illegible scrawl, if its authenticity is not in question and if it is not shown to be other than the accustomed mode of signature of the alleged signatory, it will not be rejected as a signature merely because of its illegibility".

That case determines the point raised here.

Accordingly, the fact that the District Justice was of opinion that the signature of the designated medical practitioner on the form was "illegible" does not invalidate the document.

I would answer the question asked in the negative, and allow the appeal on the grounds argued, and remit the case to the District Justice to enter continuance.

Wally J. K. de

DIRECTOR OF PUBLIC PROSECUTIONS

V

OWEN R. O'NEILL

JUDGMENT OF HEDERMAN J.

Delivered the 3rd day of *July* 1984

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