

STATE (QUINN) v. CONNELLAN

THE HIGH COURT

STATE SIDE

Record No. 163 S.S. 1984

STATE (WILLIAM BRIAN QUINN)

Applicant

-and-

DISTRICT JUSTICE CONNELLAN

Respondent

Judgment of Mr. Justice Egan delivered on the 9th day of July, 1984

The Applicant William Brian Quinn was convicted by the Respondent herein on the 15th March, 1984 of driving a mechanically propelled vehicle while there was present in his body a quantity of alcohol such that within three hours the concentration in his urine exceeded a concentration of 135 milligrams of alcohol per 100 millilitres of urine contrary to sec. 49 (3) and 4(a) of the Road Traffic Act 1961 as inserted by section 10 of the Road Traffic (Amendment) Act 1978. A fine of £100 was imposed with a disqualification from driving for a period of 12 months.

Evidence has been given by the arresting Guard that he handed the designated Medical Practitioner a sealed jug and a cardboard box. He then stated that the doctor took a sample of urine from the Defendant and that the provisions of

section 21 of the Road Traffic Act 1978 were complied with by the doctor. The witness then handed into Court the original Certificate from the Medical Bureau of Road Safety completed by the doctor under the Road Traffic Regulations and the original Certificate from the Medical Bureau of Road Safety certifying that the concentration of alcohol in the Defendant's urine was 144 milligrammes of alcohol per 100 millilitres of urine. He also gave evidence of the transmission by registered post of the sample to the Medical Bureau of Road Safety.

Application was made to the District Justice for a direction on the following grounds:-

- (a) that the Prosecution had failed to prove in evidence that the equipment which was provided by the Garda to the Registered Medical Practitioner was equipment supplied by the Medical Bureau of Road Safety.
- (b) that the prosecution had failed to prove that the Doctor had used equipment provided by the Medical Bureau of Road Safety for the purpose of taking the urine sample.
- (c) that the evidence that the provisions of sec. 21 of the Road Traffic Act 1978 had been complied with did not encompass the procedure relating to the actual taking of the sample or the obligation by the Medical Bureau of Road Safety to provide the equipment for the taking of samples.

The application for a direction was refused by the District Justice as was

also an application that he ought to adjourn the matter and state a case for the opinion of the High Court.

As regards the application for a case stated (which the District Justice considered to be frivolous) I would be slow, in any event, to interfere with his discretion but both parties to this application appeared to prefer that I should deal here and now with the merits of the application for a direction as the matter has been fully argued, so I will proceed to do so.

Having regard to the decision of the Supreme Court dated 27th March, 1980 in the case of:-

The State (at the prosecution of Norbert Murphy) v. D.J. Johnson

it does not appear to me to be open to the Prosecutor to rely on the fact that no proof was adduced at the trial to establish that the Bureau had, in fact, provided such equipment.

It is conceded that there was no proof that the actual equipment which was provided by the Garda to the designated medical practitioner was equipment provided by the Bureau or that the designated medical practitioner had used any particular equipment for the purpose of taking the urine sample. Such proof is not listed among the requirements essential for a conviction under sec. 49 which are mentioned by the Supreme Court in the case of:-

D.P.P. v. Gilmore 1981 1.L.R. monthly at p. 102

I am satisfied that it is not an essential proof as it is not specifically required by the Act or by any regulations made thereunder. Cause shown will, therefore, be allowed and the Conditional Order of Certiorari will be discharged.

*S. F. Egan.*

(Signed) S.F. Egan