

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 493  
[2019 No. 187 JR]

**BETWEEN**

**WILLIAM FITZGERALD**

**APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS  
RESPONDENT**

**JUDGMENT of Mr. Justice Meenan delivered on the 2nd day of July, 2021.**

**Introduction**

1. On 22 February 2019, the applicant was convicted of an offence contrary to s. 4 (4) (a) and (5) of the Road Traffic Act 2010, drunken driving. He was fined €500 and disqualified from holding a driving licence for a period of twelve months. The prosecution was heard at Fermoy District Court. The applicant appealed the matter to the Circuit Court.
2. At the hearing of the prosecution the applicant represented himself, though he had engaged the services of a Solicitor earlier in the proceedings. The applicant also represented himself in these judicial review proceedings.

**Application for judicial review**

3. The applicant made an application for leave to apply for judicial review, initially seeking the following reliefs: -
  - (i) An order of *certiorari* quashing the decision of the District Judge in the proceedings at Fermoy District Court on 22 February 2019 to refuse to order disclosure of evidence and to convict;
  - (ii) A declaration that the refusal to inform the applicant in detail of the reason for his arrest rendered his detention unlawful; and
  - (iii) A request for a preliminary ruling from the European Court of Justice on whether the prosecution's refusal to furnish evidence in their possession complies with European Union Directive 2012/13/EU.

The Court (Noonan J.) granted the applicant leave to apply on notice and directed that the applicant remove the name of the District Judge involved from the title.

Subsequently, the applicant sought to reinstate the name of the District Judge and to amend his Statement of Grounds to seek the following additional reliefs: -

- (i) Damages;
- (ii) A miscarriage of justice certificate;
- (iii) An order that the prosecution disclose all evidence relating to the alleged offence;
- (iv) An order that the applicant be furnished with the DAR recordings of all proceedings before the District Court in relation to the alleged offence;

- (v) An order that the applicant be furnished with server access logs showing which IP addresses and user accounts were logged in remotely during the proceedings in question on 22 February 2019;
- (vi) An order staying the related appeal proceedings in the Circuit Court pending the finalisation of the judicial review; and
- (vii) An order that any subsequent appeal proceedings be heard by a judge other than the Judge before whom the appeal was then listed.

Noonan J. directed that it would be for the trial judge to decide whether or not to allow these amendments.

#### **Applicable legal principles**

4. Though the application before the Court is seeking leave for judicial review on notice, I am satisfied that the principles which I should apply are those set out in the judgment of Finlay C.J. in *G. v. DPP* [1994] 1 I.R. 374: -

"It is, I am satisfied, desirable before considering the specific issues in this case to set out in short form what appears to be the necessary ingredients which an applicant must satisfy in order to obtain liberty of the court to issue judicial review proceedings. An applicant must satisfy the court in a *prima facie* manner by the facts set out in his affidavit and submissions made in support of his application of the following matters:—

- (a) That he has a sufficient interest in the matter to which the application relates to comply with rule 20 (4).
- (b) That the facts averred in the affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review.
- (c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks.
- (d) That the application has been made promptly and in any event within the three months or six months time limits provided for in O. 84, r. 21 (1), or that the Court is satisfied that there is a good reason for extending the time limit. ...
- (e) That the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure."

#### **The application**

5. In his grounding affidavit and submissions to the Court, the applicant sought to identify a number of instances in which he maintained the District Judge erred in legal principle and departed from fair procedures: -

- (i) The applicant maintained that he was denied disclosure of certain evidence which he considered to be relevant to the prosecution. He referred to the CCTV footage from the garda station to which he was taken following his arrest. He maintained that this was in breach of the respondent's "*Guidelines for Prosecutors*";
- (ii) The applicant sought GPS data and TETRA radio system data on the garda patrol car to establish that the movements of the said patrol car were other than those which the gardaí had stated they were in evidence; and
- (iii) In the course of his grounding affidavit, the applicant deposed to the following: -

"22. The fact that [the District Judge] repeatedly read from a computer screen leads me to believe that there was a third party prompting her in real time.

23. The fact that [the District Judge] stated that the only proofs which she would permit were those required to 'bring home' a conviction demonstrates bias and is contrary to the requirements of a presumption of innocence, a fair trial and equality of arms."

- 6. The applicant also made a number of complaints which were not referred to in his grounding affidavit. In the course of the hearing, the applicant referred to a photograph being taken of him on the night, presumably by the gardaí involved. He also made an application to the Court to have the intoxilyser machine physically examined by a technical expert.

#### **Hearing of 22 February 2019**

- 7. The Court had available to it a transcript of the proceedings that took place on 22 February 2019 at the District Court in Fermoy, County Cork. The following is an account of the proceedings: -

- (i) The applicant sought the CCTV footage from the garda station to which he was taken following his arrest. He also sought a written statement that the garda car was not equipped with an onboard camera. The District Judge informed the applicant that he would be afforded an opportunity to view the CCTV footage at the garda station, which was nearby. As for the TETRA (a radio system) and the GPS coordinates for the garda car in question, the applicant was informed by the District Judge that this was not relevant to the charge the applicant was facing. Further, the garda car in question did not have an onboard camera;
- (ii) Following an adjournment to enable the applicant to review the CCTV recording in the garda station, the case was resumed later that day. The applicant sought to have the intoxilyser machine physically examined by a technical expert. On enquiry from the District Judge as to "*what technical expert?*", the applicant sought a direction from the Court as to what an acceptable "*technical expertise would be*". The District Judge explained that she was present to hear the case but could not give the advice sought;

- (iii) The prosecution case commenced with Garda David Delea giving evidence of the events of 4 February 2018 when he observed a motor vehicle, which the applicant was driving, being driven erratically on what was the old main road from Dublin to Cork. Garda Delea gave evidence of there being a smell of intoxicating liquor from the applicant's breath and that his speech was slurred. Having formed the opinion that the applicant had consumed intoxicating liquor, and having informed the applicant of this opinion, the Garda asked the applicant to provide a specimen of his breath under s. 9 (1) of the Road Traffic Act 2010. Subsequently, the applicant was arrested and cautioned. The applicant was informed that he was under arrest on suspicion of drink driving and Garda Farrell, who was also present, explained the reason for his arrest, the fact that he could consult a solicitor and that he could have any person reasonably named by him informed of his arrest. He was also handed a copy of the C72S form;
- (iv) At the garda station the period of observation began at 9.15pm and at 9.35pm the applicant was brought to the doctor's room where he underwent a breath test. As the result fell within the fixed charge notice category for drink driving, a fixed charge notice was issued;
- (v) Garda Delea was then cross examined by the applicant. Before doing so the applicant requested that other garda witnesses be excluded from the court whilst he was cross examining Garda Delea. The District Judge acceded to this request.

The applicant questioned the location of the garda car before they encountered the applicant's car. As for the reason for his arrest, the transcript establishes that, though a physical copy of the legislation was not given to the applicant, he was informed of the reason for his arrest;

- (vi) The applicant did not question Garda Delea on the contents of the CCTV footage which he had viewed earlier;
- (vii) Garda Patricia Hanley, who was on duty with Garda Delea at the time, then gave evidence and was cross examined by the applicant;
- (viii) At the conclusion of the case for the prosecution the applicant made an application for a direction that he had no case to answer. The applicant submitted that there was no lawful arrest. He further submitted: -

"If the GPS on the TETRA radios will prove, that Garda Delea and Garda Hanley were stationary in the time proceeding (sic) this, and that's perjured evidence that they've given, then the GPS will prove that."

The District Judge pointed out to the applicant that he did not put this proposition to either Garda Delea or Garda Hanley whilst cross examining them;

- (ix) Having heard from the prosecution, the District Judge in a comprehensive and careful ruling refused the application. In the course of the ruling the District Judge

set out the material evidence, and referred to the relevant statutory provisions and legal authorities;

- (x) The applicant decided not to go into evidence; and
  - (xi) The District Judge convicted the applicant of the offence, imposed a fine of €500 and a disqualification for twelve months.
8. Having considered the transcript, I am satisfied that the District Judge conducted the trial in an entirely appropriate way in accordance with law.

### **Consideration of grounds**

9. On the matter of disclosure, the applicant was furnished with an opportunity to view the CCTV taken in the garda station to which he was taken after his arrest. It is notable that the contents of this recording were not referred to, in any material way or at all, in the course of the applicant's cross examination of the gardaí involved.
10. Details of the GPS coordinates and the information that might be gleaned from the TETRA radio are not relevant to the charges which faced the applicant other than as a general issue of credibility. The applicant did cross examine the gardaí concerning the position of the garda car prior to him being stopped. The District Judge accepted, as she was entitled to, the evidence of the gardaí concerning the manner in which the applicant's car was being driven before being stopped. Further, there was no real challenge by the applicant as to the evidence given on compliance with the various statutory provisions to prove a charge of drunken driving.
11. On the general issue of disclosure, I refer to the following passage from the judgment of Kearns J. in *DPP v. McCarthy* [2008] 3 I.R. 1: -

"... [T]he obligations of disclosure are not limitless nor are they to be assessed in a vacuum or upon a purely theoretical or notional basis. Nor is a conviction to be regarded as unsafe per se simply because there has been a partial failure by the prosecution to meet the obligations of disclosure. It is a question of degree in every case, having regard to the nature and importance of the material in question."

In this case, I am satisfied that there was no failure to meet the obligation of disclosure. The obligation of disclosure is not absolute and, in this case, the applicant has not established that not having the GPS coordinates or information from the TETRA radio prejudiced his defence in any material way.

12. The issue concerning an examination of the intoxilyser machine featured only briefly at the hearing of the charge and was not referred to in the applicant's grounding affidavit. There is reference to this in the applicant's written submissions, where he relied upon *Oates v. Browne* [2016] 1 I.R. 481. In that case the applicant had sought an opportunity to inspect and examine the machine by an expert on his behalf. Though Hardiman J. did accept such a right of inspection, the case was decided on the basis of the District Judge's failure to give reasons for his decision. In the instant case, the applicant's application was

made late in the proceedings and was not pursued by him and, more particularly, the manner in which the application was made afforded the District Judge no opportunity to give reasons. I have referred to this at para. 7 (ii) above. Further, this application was made in circumstances where the maintenance and service records had already been provided to the applicant prior to the hearing, and the applicant raised no issue concerning these.

13. The applicant maintains that there was a refusal to inform him in detail the reason for his arrest which rendered such arrest unlawful. It is clear from the evidence given in the District Court by the gardaí involved that, though the applicant was not provided with a copy of the Statute until at the garda station. The evidence of Garda Delea, under cross examination from the applicant, was: -

"Q. Sorry, Garda, that's not true. I asked you for the legislation and you told me you didn't have it in your pocket?

A. Yes, I explained to you that I didn't have a physical copy of it, but I explained to you in normal terms what the offence was and I said I didn't have a physical copy of the legislation, that's correct."

and: -

"Q. The actual wording of the legislation, not the heading the actual wording of the legislation?

A. The physical copy you were told you weren't in a position to actually hand him a physical copy at that particular point in time, but it was explained to him in oral and layman's – legal and layman's terms the reason for his arrest, et cetera, and he did understand that, Judge."

I refer to the following passage from the judgment of Blayney J. in *DPP v. Mooney* [1992] 1 I.R. 548, where he stated: -

"... [A] garda in making an arrest does not have to use technical or precise language. Provided the arrested person knows in substance why he is being arrested the arrest is valid. So telling the respondent that he was being arrested for an offence of drunk driving was a sufficient communication of the reason for his arrest since in my opinion that could mean any of the three offences under the section. It told the respondent in substance why he was being arrested. ... it must be doubtful if [the garda] was required to give any reason at all. As the respondent had been required to blow into the breathalyser, and the results had been positive, the respondent must have been well aware of why he was being arrested."

It is clear from the foregoing and, indeed, from other authorities that the applicant was not entitled to a physical copy of the relevant legislation and was at all stages fully aware of the reasons for his arrest.

14. In the course of his application, the applicant complained of the manner in which the District Judge conducted the hearing. The applicant alleged that the District Judge stated that “*nothing other than the proofs necessary to bring a prosecution home would be allowed*”. However, it is clear from the transcript that the conduct of the hearing by the District Judge was entirely appropriate. This is clear from the following passage in the transcript: -

“Judge: Well you see, you haven’t outlined to me what it is you’re seeking. As I’ve explained to you, there is any amount of case law in relation to the issue with regards to discovery. Discovery is not a fishing mission. You must be specific about what it is you require, and not only must you be specific, it must be relevant to the prosecution. I’ve already told you that a radio that you are seeking data from, that is not relevant, GPS is not relevant, because this is the prosecution under section 4 of the Road Traffic Act 2010, which sets out very clearly what the proofs are to reach the threshold in relation to a prosecution under that section. Nothing other than the proofs necessary will be allowed before the Court. It’s as simple as that.”

15. In his grounding affidavit, the applicant claimed that as the District Judge “*repeatedly read from a computer screen leads me to believe that there was a third party prompting her in real time*”. Courts do have available to them computer screens; however, to suggest, as the applicant does, that this was a means of “*prompting*” the District Judge by a “*third party*” (completely unidentified) borders on the bizarre.

16. Earlier in this judgment, I set out the legal principles that are applicable to an application such as this. I referenced the oft cited passage from the judgment of Finlay C.J. in *G. v. DPP* [1994] 1 I.R. 374. For the reasons stated, I am satisfied that the applicant has failed to meet the threshold of establishing an arguable case. In any event, the applicant’s complaints in relation to the issue of disclosure for his arrest were made by the District Judge acting within her jurisdiction. As Birmingham P. stated in *DPP v. Fahy* [2018] IECA 223: -

“2. A number of legal areas were touched on in the course of the papers. The appellant contends that he may not have received full disclosure as described in the Prosecution Guidelines of the DPP. In the Court's view, the question of disclosure is a matter to be dealt with by the trial judge and is not a proper matter for judicial review.”

#### **The request for a preliminary ruling from the European Court of Justice**

17. I am satisfied that the issues raised in this application do not require a ruling from the European Court of Justice (see Article 267 of the TFEU).

#### **Conclusion**

18. By reason of the foregoing, I dismiss the applicant’s application herein. As this judgment is being delivered electronically, the parties have fourteen days within which to furnish to the Court with written submissions in the matter of costs.