

**THE HIGH COURT**  
**JUDICIAL REVIEW**

[2013 No. 459 JR]

**BETWEEN****ROBERT CANTY****APPLICANT****AND****HIS HONOUR JUDGE CARROLL MORAN****AND****THE DIRECTOR OF PUBLIC PROSECUTIONS****RESPONDENTS****JUDGMENT of Kearns P. delivered on the 7th day of March, 2014**

In this case the applicant seeks an order of *certiorari* to quash the decision of the first named respondent delivered on the 19th March, 2013, whereby he dismissed an appeal from the District Court convicting the applicant of an offence contrary to s. 49 of the Road Traffic Act 1961 (as amended). The particulars of the offence were that on the 30th September, 2011, Garda Ferriter observed the applicant driving a motor van erratically in a public place near Tarbert in Co. Kerry. When he stopped the vehicle he observed that the applicant's eyes were red and detected a very strong smell of what he believed to be cannabis. Having duly cautioned the applicant, the applicant admitted that he had smoked a joint of cannabis. Garda Ferriter states that when the applicant stepped out of his van that his balance was poor. He thus formed the opinion under s. 14 of the Road Traffic Act 1994 (as amended by s. 23 of the Road Traffic Act 2002) that the applicant was under the influence of a drug to such an extent as to render him incapable of having proper control of a mechanically propelled vehicle in a public place.

He informed the applicant of that suspicion and required him to accompany him to Listowel Garda Station. The applicant agreed to do so on a voluntary basis and, on arrival at the garda station, was introduced to the member in charge as "a person who had agreed to accompany Garda Ferriter to the garda station".

While voluntarily in the garda station the applicant agreed to provide a specimen of his urine for Dr. O'Connor, the designated medical practitioner, which said specimen was duly forwarded to the Medical Bureau of Road Safety where analysis of the urine revealed a concentration of drugs of the cannabinoid class.

As the evidence later tendered in court revealed, the applicant, upon arrival in the garda station, had been treated for record purposes as a person in custody. His details were inserted in the custody record by the member in charge, one Garda Daniel Maguire. He gave evidence in the District Court that the applicant had been provided with information in accordance with Regulation 81 of the Treatment of Persons in Custody Regulations 1987 and 2006. Garda Maguire gave evidence that he had informed the applicant of the reason for his "arrest" and had explained to the applicant (whom he described as "the prisoner") that he would be searched and further gave evidence that he gave the applicant all the information specified in Regulation 81 of the Criminal Justice Act pointing out that he could exercise those rights at any time during his stay in the garda station. He also handed the applicant a copy of the said notice of rights.

Following a hearing in the District Court the applicant was convicted of an offence contrary to s. 49(1) and 6(a) of the Road Traffic Act 1961, as amended, and was fined and disqualified from driving for a period of four years. Thereafter the applicant appealed against the said conviction and sentence and the same came on for hearing before the first named respondent on the 19th March, 2013.

At that hearing counsel on behalf of the applicant submitted that, notwithstanding that the applicant had voluntarily agreed to accompany the garda to Listowel Garda Station, he had thereafter been treated as a person in custody. It was submitted that his detention was thus unlawful and in breach of his constitutional rights and that any evidence obtained or secured in such circumstances was inadmissible under the exclusionary rule.

The first named respondent gave careful consideration to these submissions and ruled that the applicant, having gone to the garda station on a voluntary basis, was then obliged to provide a sample in any event and it was thus immaterial as to how he had been described whilst on the premises of the garda station. He thereafter convicted the applicant and confirmed the €400 fine and the four year consequential disqualification from driving.

**THE SUBMISSIONS**

As already indicated, the applicant submits that the events outlined above gave rise to a *de facto* custody thereby rendering inadmissible the evidence which later constituted the basis for the prosecution case.

In response, while counsel on behalf of the respondents conceded that the applicant may have been misdescribed as a "prisoner", the fact however was that he was never a prisoner, was never in custody and was never in unlawful detention. While he was afforded all the rights and entitlements of a prisoner, the specimen of urine provided by him was not unconstitutionally or unlawfully obtained. In all the circumstances there was no impediment to the receipt in evidence by the first named respondent of the certificate of analysis and the trial judge did not err in law in admitting that evidence.

**DECISION**

It is perhaps important at the outset to record that the applicant himself did not give evidence in either the District Court or the Circuit Court to challenge the description of the events relied upon by the respondents in meeting this case. In other words, he does not challenge the assertion that he went voluntarily to the garda station and voluntarily agreed to provide the urine sample when requested so to do.

Section 14 of the Road Traffic Act 1994 provides:-

*"(1) Whenever a member of the Garda Síochána is of opinion that a person in charge of a mechanically propelled vehicle in a public place is under the influence of a drug or drugs to such an extent as to be incapable of having proper control of the vehicle, he may require the person to accompany him to a Garda Síochána station.*

*(2) A person who refuses or fails to comply with a requirement under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both.*

*(3) A member of the Garda Síochána may arrest without warrant a person who in the member's opinion is committing or has committed an offence under subsection (2).*

*(4) Where a person is at a Garda Síochána station either pursuant to subsection (1) or having been arrested under subsection (3), a member of the Garda Síochána may there require the person either—*

*(a) to permit a designated doctor to take from the person a specimen of his blood, or*

*(b) at the option of the person, to provide for the designated doctor a specimen of his urine,*

*and if the doctor states in writing that he is unwilling, on medical grounds, to take from the person or be provided by him with the specimen to which the requirement in either of the foregoing paragraphs related, the member may make a requirement of the person under this subsection in relation to the specimen other than that to which the first requirement related."*

It is clear from the foregoing that the section contemplates two circumstances wherein a person may be brought to a garda station under s. 14 of the Act. Both scenarios are premised upon the formation of an opinion by the relevant member of An Garda Síochána that a person in charge of a mechanically propelled vehicle in a public place is under the influence of a drug to such extent as to be incapable of having proper control of the vehicle. Having formed such an opinion, the garda in question may then "require" the person to accompany him to a garda station.

Section 14(2) then makes clear that a person refusing to comply with such a requirement made under ss.(1) should be guilty of an offence and, by ss.(3) provides that the member of An Garda Síochána may arrest such person without warrant.

However, s. 14(4) speaks to a situation where, following the making of a request or requirement under ss. (1) a person is at a garda station in circumstances other than being under arrest. Such a person may there be required to permit a designated doctor to take a specimen of his urine.

In these circumstances it is quite clear that a proper statutory basis for the steps taken in this case existed, albeit that the paperwork seems to have been written up by Garda Maguire on the mistaken assumption that the applicant had been brought to the garda station under circumstances of arrest.

It would be absurd to hold that the applicant had been prejudiced in any way by the actual events which occurred in this case. On the contrary, he was the beneficiary of additional rights provided under statute for persons who have been arrested.

In my view a mere misdescription cannot be deemed to alter the applicant's voluntary presence in the garda station from being voluntary to being involuntary. The decision of the Circuit Court Judge was made entirely within jurisdiction. There has been no assertion of any want of fair procedures or of the infringement of any other right of the applicant and in these circumstances I decline to grant the relief sought.