

**THE HIGH COURT****2009 488 JR****BETWEEN****William O'Neill****Applicant****And****District Judge Michael Patwell, The Director of Public Prosecutions, The Courts Service, Ireland and The Attorney General****Respondents****JUDGMENT of Mr. Justice Charleton delivered the 26th day of March, 2010**

1. The applicant was arrested at Ballynoe, in the County of Cork, on the 3rd March, 2008, for driving a vehicle while under the influence of intoxicating liquor. On testing, the concentration of alcohol in the applicant's urine exceeded 107 milligrams per 100 millilitres. He was therefore summonsed to answer an offence contrary to ss. 49 (3) and (6) (a) of the Road Traffic Act 1961, as inserted by s. 10 of the Road Traffic Act 1994, and as amended by s. 18 of the Road Traffic Act 2006. This was first made returnable on the 4th July, 2008, before Tullow District Court, Co. Waterford, for the 12th September, 2008. The applicant appeared and the case was adjourned to the 9th January, 2009. In the meanwhile, on the 4th November, 2008, the District Court Districts and Areas (Amendment) Order 2008 (S.I. No. 462 of 2008) came into force. This meant that, having apparently committed an offence in District Court Area 21 at Ballynoe, the applicant was moved into District Court Area 20, more properly a part of Co. Cork. The trial was fixed for the 27th February, 2009, and the applicant's solicitor was informed that instead of going to Tullow, he should now go to Fermoy, County Cork for hearing. There he came before Judge Michael Patwell and was convicted. There is no complaint as to the manner of trial. Rather, the applicant claims that the judge assigned to District Court Area 20 could not adjudicate a case from District Court Area 21. This argument was made to Judge Patwell who rejected it, hence this application for judicial review.

**Legislative basis**

2. Article 34.1 of the Constitution provides for the administration of justice by independent judges and in public. Article 34.2 divides the courts into courts of first instance and a court of final appeal. Any number of courts of first instance seem to be capable of being created by the Oireachtas under Article 34.3 of the Constitution, provided that a High Court also exists with full original jurisdiction over all questions of law and fact in civil and criminal matters. Under Article 34.4 a provision is made whereby there must also be courts of local and limited jurisdiction with a right of appeal, as determined by the Oireachtas. The District Court is such a court of local and limited jurisdiction and it was provided for, first, as the successor Petty Sessions Court, in the Courts of Justice Act 1924.

This legislation is subject to Article 36 of the Constitution relating to the courts which provides that the following matters shall be regulated in accordance with law, that is to say:-

1. The number of judges of the Supreme Court, and of the High Court, their remuneration, age of retirement and pensions of such judges;
2. The number of the judges of all other courts, and their terms of appointment; and
3. The Constitution and organisation of the said courts, the distribution of jurisdiction and business among the said courts and judges, and all matters of procedure.

3. Under ss. 77 and 78 of the Courts of Justice Act 1924 the jurisdiction previously exercised by justices of the peace sitting at petty sessions, and divisional justices of the police district of Dublin, was transferred to the District Court. Under s. 79 of the Courts of Justice Act 1924 as amended by s. 53 of the Courts of Justice Act 1936, the existing jurisdiction was regulated. Section 79 of the Act of 1924 provides:-

"Provided that the jurisdictions by this Act vested in and transferred to the District Court shall be exercised by the judges severally as follows:-

In civil cases, by a judge for the time being assigned to the District wherein the defendant or one (or other) of the defendants ordinarily resides or carries on any profession, business or occupation;

In criminal cases, by a judge for the time being assigned to the District wherein the crime has been committed or the accused has been arrested or resides;

In licensing cases, by a judge for the time being assigned to the district where the licensed premises are situate."

4. Section 68 of the Act of 1924 provided for the appointment of judges by the Minister for Justice to particular districts. They were then regulated by s. 47 of the Court Officers Act 1926, which divided sections of the country into District Court areas as provided for by the Minister for Justice. Supplemental provisions in the Courts of Justice Act 1953 put in place new districts, and areas within districts, where the District Court might exercise its jurisdiction. Section 32 of the

Courts (Supplemental Provisions) Act 1961 provided for the continuation of the districts created by the earlier Act and for the assignment of judges to particular districts. Under s. 33 of the Courts (Supplemental Provisions) Act 1961, the jurisdiction already vested in the District Court was reaffirmed. Other, more recently created, jurisdictions were also conferred on that court. Section 26 of the Courts of Justice Act 1953, as amended by s. 43 of the Courts (Supplemental Provisions) Act 1961, s. 16 of the Courts Act 1971, and s. 29 of the Courts Service Act 1998 provides as follows:-

"26.-(1) It shall be lawful for the Minister from time to time, as he shall consider expedient, by order to do all or any of the following things:

- (a) vary or abolish any district court district,
- (b) create any new district court district,
- (c) vary or abolish any district court area,
- (d) create any new district court area,
- (e) vary the class or classes of business for which any district court area is delimited,
- (f) alter the places or vary the days or hours for the time being appointed for holding the district court in or for any District Court area,
- (g) after consultation with the President of the District Court, appoint one or more convenient places within every district court area created or varied under this section or within one mile boundary of such area in which, and such and so many convenient days and hours at which, the district court shall be held for the purpose of transacting for such area the business for which the area is delimited,
- (h) assign and name to or change the name of any district court district or district court area,
- (i) revoke or amend an order under this section.

2(a) Whenever the Minister makes an order under subsection (1) of this section, he may make provision for securing the continuation and completion of any business transacted in the District Court which is initiated before the commencement of such order and is not completed before that date.

(b) For the purposes of this subsection, business transacted in the District Court shall be regarded as being initiated on the day on which the summons, warrant, process or other originating document relating to it is issued.

(3) The abolition of a district court district under subsection 1 of this section shall operate to terminate any assignment then in force of a district judge to that district and such district judge may be permanently assigned at any time to another district court by the Government.

(4) References in section 64 of the Act of 1936 to section 47 of the Act of 1926 shall be construed as including references to subsection (1) of this section and the District Court Districts (Dublin) Order 1945 (S.R. and O. No. 279 of 1945), shall have effect accordingly."

5. In addition, the District Court Rules make like provision on the basis of the statutory enactments set out above. On the passing of the Courts Service Act 1998, s. 29 empowered the Courts Service, after consultation with the President of the District Court, to make orders that were previously the province of the Minister for Justice. The relevant order made, and in issue in this judicial review, is the District Courts Districts and Areas (Amendment) Order 2008 (S.I. No. 462 of 2008). This was signed by President Maloney on the 4th November, 2008. It re-jigs various District Courts in accordance with changes to electoral areas. This more properly, brings Ballynoe from District Court Area 21 to District Court Area 20. Article 4 provides:-

"Business transacted in the District Court that is initiated and not completed before commencement of this order shall be continued and completed as if this order had been in force at the time at which such business had been initiated."

6. Since the District Court Districts and Areas (Amendments) Order 2008 (S.I. No. 462 of 2008) mirrors s. 26 of the Courts of Justice Act 1953, as amended, there is no ground upon which it can be argued that the Courts Service exceeded its jurisdiction. Since the passing of the Courts of Justice Act 1924, the jurisdiction of any District Court is exercisable on a local and limited basis depending upon its civil or criminal jurisdiction. Criminal jurisdiction derives from the crime apparently having been committed within the district, or the person to be accused residing there, or that he or she was arrested there. Both the framers of the Constitution, and the Oireachtas, had it in mind that District Court areas would change. Populations increase or diminish and business in civil and criminal jurisdictions can reflect not only the number of people living in a district but a multitude of other factors as well such as ease of access and convenience to town facilities. Consequently, District Court areas might be enlarged, amalgamated or reduced. This is entirely what was contemplated by s. 26 (1) (c) of the Courts of Justice Act 1953. Jurisdictions being dependent upon the commission of a crime, the arrest of the accused, or the residence of the accused, within a district, once any variation in an area occurred, it was apparent that accused persons might be left behind as isolated islands of jurisdiction to be exercised by a previous District Court district. More conveniently, they could be transferred to another one. This is a pure administrative matter. It has nothing to do with the prohibition in the Constitution of retroactive penal sanction. Furthermore, since it is administratively convenient, where District Court areas change, for an accused to also move, this is expressly provided for in s. 26 (2) of the Courts of Justice Act 1953. With the passing of the District Court Districts and Areas (Amendments) Order 2008 (S.I. No. 462 of 2008) the jurisdiction to try the accused was moved lawfully from District Court Area 21 to District Court Area 20. The statutory scheme therefore provides a complete answer to the plea of lack of jurisdiction underpinning the conviction of the accused on a drunken driving charge.

**Discretion**

7. The applicant was properly arrested and summonsed. He was tried before a judge exercising the jurisdiction to try that crime in the District Court. His trial was fair. The complaint made here is that the hearing of the trial took place in a different district, at a remove of some few miles from the place where it would first have been tried. Even were it the case that the legislation did not cover this eventuality precisely, which it does, I would have refused this application for judicial review. The grounds for an order of *certiorari* are discretionary. Apart from legal merit, an order quashing a conviction is not necessarily to be exercised in favour of those who are able to display a non-compliance with legal form. The substance of this case exhibits a scrupulous following of the relevant law outlawing drunk driving. This offence is a menace to those who wish to use the roads lawfully. The applicant received a fair trial in the court having jurisdiction to dispose of that offence by summary trial. The requirements of true social order provided for in the preamble to the Constitution must require the court to look, in appropriate circumstances, at the merits of an application as well as reviewing it by reference to its form. Even if the points so ably made by the applicant were correct, a substantial compliance took place with the requirements of the just disposal of criminal business in the forum to which it was lawful under the Constitution to allocate trials of that kind. I can see no basis upon which it could be fairly adjudged that the applicant should be relieved of the criminal responsibility which directly flowed from his own actions.