**THE COURT OF APPEAL**

**Ryan P.**
**Kelly J.**
**Peart J.**

**2014/22 COA**

**2014/23 COA**

**Between**

**Colm Ahearn**

**Appellant**

**And**

**District Judge Patrick Brady and the Director of Public Prosecutions and the Superior Courts Rules Committee**

**Respondents**

**And**

**John Joyce**

**Appellant**

**And**

**District Judge Patricia MacNamara and Director of Public Prosecutions**

**Respondents**

**Judgment of the Court delivered on the 10th day of November 2015**

**Introduction**
1. These are appeals from a judgment and order of Birmingham J. of the 13th October, 2014. They are as lacking in merit as were the applications which were, quite rightly, dismissed by him.

**History**
2. We gratefully adopt the background to the cases as comprehensively set out in the judgment under appeal. Birmingham J. said as follows:-

> *"The background to each of these cases is as follows. In relation to the Ahearn case, on the 29th September, 2010, an incident involving a B.M.W. motor car, the property of Mr. Edward Gibney occurred at Aspen Park, Kinsealy, Dublin. In its aftermath, two men, one of them the applicant, Colm Ahearn were arrested and charged. Mr. Ahearn was charged with three offences. An offence under s. 15 of the Criminal Justice (Theft and Fraud Offences ) Act 2001, an offence under s. 2 of the Criminal Damage Act 1991 and an offence contrary to s. 113 of the Road Traffic Act 1961, as amended. It is with this last charge that the present proceedings are concerned. On the 21st February, 2011, the applicant and the other person charged in relation to the incident in Kinsealy appeared at Swords District Court. In both cases the charges contrary to s. 15 of the Criminal Justice (Theft and Fraud Offences) Act 2001 were struck out and both accused pleaded guilty to the other two charges under s. 113 of the Road Traffic Act and s. 2 of the Criminal Damage Act 1991.*
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> *On the 19th April, 2011, both* (sic) *applicants appeared in court. On that occasion the applicant did not have any compensation to offer and it appears there was some indication that compensation would not be forthcoming from him. So far as the other person who had been charged is concerned, the case involving him was, at his request put back to allow a further opportunity for payment of compensation. Judge Brady imposed on Mr. Ahearn a six month sentence, a fine of €500 and ordered payment of compensation of €792.34 and witness expenses of €200.*
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> *On the 27th April, 2011, the applicant lodged an appeal in relation to the criminal damage matter, but did not lodge an appeal in relation to the s. 113 charge. The criminal damage appeal resulted in a suspended sentence in the Circuit Court after compensation was paid.*
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> *On the 29th December, 2011, a committal warrant issued in relation to the s. 113 conviction the fine of €750 not having been paid.*
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> *In May/June 2012, the applicant, Mr. Ahearn was contacted by gardaí in relation to the warrant which had issued in respect of the s. 113 matter and the unpaid fine. At that stage Mr Ahearn consulted his solicitor, Mr. John Quinn, and it was at that point that it emerged for the first time that there was an issue in relation to the wording of the conviction order and the wording of the warrant.*
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> *The operative part of the conviction order which was subsequently transposed into the warrant was as follows:-*
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> > *'At the sitting of the Court at Swords Courthouse, North Street, Swords, Co. Dublin, in the Dublin Metropolitan District on the 21st February, 2011, a complaint was heard and determined that the above named accused of 13 Mount Drinan Crescent, Kinsealy Downs, Kinsealy, Dublin, on the 29th September, 2010, at Aspen Park Kinsealy Court, Kinsealy, Dublin, in the Dublin Metropolitan District did get into a mechanically propelled vehicle register No. 95 D 52490, the property of Edward Gibney while such vehicle was stationary. Contrary to s. 113 of the Road Traffic Act 1961 (as amended by s. 6 of the Road Traffic Act 1968 and s. 18 of the Road Traffic Act 2006) and the said defendant having pleaded guilty it was adjudged that the said defendant be convicted of said offence and pay*

*a fine of €750 making a total sum of €750 within six months and in default of payment of the said sum within the said period that the said defendant be imprisoned in Wheatfield Prison for the period of 90 days unless the said sum be paid sooner.'*

*The language of the conviction order and indeed the language of the subsequent warrant themselves reflect the language of the charge to which Mr. Ahearn pleaded guilty.*

*So far as the case in which Mr. John Joyce is the applicant is concerned, the background is that an incident occurred on the 16th October, 2011, at the premises of Celluplast Limited at Baldoyle Industrial Estate. In the aftermath of the incident, the applicant Mr. Joyce was charged with three offences, a charge contrary to s. 2 of the Criminal Damage Act 1991, and two charges contrary to s. 113 of the Road Traffic Act, these being charge sheet no. 12405193, relating to a mechanically propelled vehicle 06 D 76223 and charge sheet no. 12405225, relating to a mechanically propelled vehicle 04 KE 4407.*

*On the 15th June, 2012, the applicant pleaded guilty to the two s. 113 charges and the criminal damage charge was struck out. A prison sentence of two months was imposed on charge sheet 12405225 and charge sheet 12405193 was taken into account. It was ordered that the sentence would run from the expiration of another sentence that the applicant, Mr. Joyce was serving.*

*The sentence has now been served in full and it appears that the sentence in question was served concurrently with another sentence or sentences.*

*The applicant's present solicitor John J. Quinn and Company has obtained a copy of the committal warrant. The operative part was in these terms:-*

*'John Joyce of 7 Moyne Park, Moyne Road, Baldoyle, Dublin 13, was this day before the court at court No. 17 (CCJ) Criminal Courts of Justice, Parkgate Street, Dublin 8, in the Dublin Metropolitan District charged that on the 16th October, 2011, at Celluplast Unit 52B, Baldoyle Industrial Estate, Baldoyle, in said District Court area of the Dublin Metropolitan District did get into a mechanically propelled vehicle, register No. 04 KE 4407, the property of Ross Darcy, while such vehicle was stationary contrary to s. 113 of the Road Traffic Act 1961, (as amended by s. 6 of the Road Traffic Act 1968 and s. 18 of the Road Traffic Act 2006) and whereas the accused has been convicted of the said offence and ordered to be imprisoned for the period of two months to be served on the legal expiration of a sentence of five months imposed in Dublin Circuit Court on the 10th May, 2012.*

*This is to command you to whom this warrant is addressed to lodge the accused John Joyce of 7 Moyne Park, Moyne Road, Baldoyle in Wheatfield Prison, there to be imprisoned by the Governor thereof for the period of the aforesaid sentence.'*

*The language of the warrant reflects the language of the order drawn up and presented to the judge of the District Court for signature, though not, it seems signed by her, and both documents, that is to say the warrant and the order in turn reflect the language of the charge to which Mr. Joyce pleaded guilty."*

3. To this account we add one further detail. The pleas of guilty referred to were in all cases entered with the benefit of legal advice and the accused were legally represented at all relevant times. No issue was raised by the accused's legal advisers concerning the matters in respect of which complaint is now made.

4. Both appellants sought *certiorari* to quash both the orders of conviction and the warrants issued on foot of them. They failed in that effort, hence these appeals.

**Error on the face of the record**

5. At the forefront of the arguments made both in the High Court and on appeal was a contention that the convictions and warrants contained errors on their face in that they failed to recite that the vehicles were entered without lawful authority or reasonable cause. It is said that that failure of recital is fatal to the efficacy of the respective orders and warrants. A determination of whether this contention is correct or not is pivotal to these appeals.

**Section 113(1)**

6. Section 113 of the Road Traffic Act 1961, as amended, provides as follows:-

*"A person shall not, without lawful authority or reasonable cause, interfere or attempt to interfere with the mechanism of a mechanically propelled vehicle while it is stationary in a public place, or get on or into or attempt to get on or into the vehicle while it is so stationary."*

7. As is clear from the trial judge's recital of fact, the same language was used in the charge sheet, the conviction order and the committal warrant in each case.

**Appellants' case**

8. The appellants' case is that the charge sheet should have alleged that the accused got in the vehicle while stationary and without lawful authority or reasonable cause since they are the ingredients of the offence created by s. 113(1). Instead the allegation was merely that they "did get into" a mechanically propelled vehicle contrary to s. 113 of the Road Traffic Act 1961, as amended. This failure to recite "without lawful authority or reasonable cause" is, it is said, fatal and amounts to an error on the face of the record in respect of which *certiorari* should be granted *ex debito justitiae.*

9. In support of this contention a substantial body of case law, most of it quite elderly, was relied upon. One of the principal cases cited was *Smyth v. Moody* [1903] KB 56. There Wills J. said:

*"I think that s. 39 of the Summary Jurisdiction Act, 1879, which provides that it is sufficient to describe the offence in the words of the statute creating the offence, cannot be supposed to have been intended to break down the very important rule which has prevailed now for a least 200 years in the administration of justice with respect of the sufficiency of particulars in a conviction. I do not think for a moment that it was intended to relieve persons who had to*

*draw convictions from inserting anything that was necessary as an ingredient of the offence of which the particular defendant has been found guilty. When one comes to the description of the offence itself, then it is quite sufficient if it is described in the terms of the statute, however general they may be. At the same time the old rule must prevail, that whatever is necessary to show that the person convicted has done something which brought him within the words of the statute must still be specified."*

10. Other cases from the early part of the 20th century to like effect were also cited. They included *R. (Meehan) v. Louth Justices* [1905] 39 ILTR 23, and *R. (Bunting) v. Antrim Justices* [1905] 39 ILTR 82.

11. Reference was also made to an extract from the 1914 edition of O'Connor's *Irish Justice of the Peace,* where the requirements for a valid conviction are discussed. At p. 207 one finds the following:-

*"The general requisites of a good conviction are:*

*(i) That it be full and correct;*

*(ii) That the directions of the particular statute relative to the offence should appear on the face of the conviction to have been substantially complied with, both as regards the subject matter of the offence being clearly brought within the statute, and the adjudication;*

*(iii) That it be certain;*

*(iv) That all the facts necessary to support a conviction must be expressly alleged and not left to be gathered by inference or intendment (Paley 8th Ed, pp. 195 et seq). Proceeding to deal with the particular contents of a conviction every conviction must contain:*

1. *a statement showing that the offence is within the jurisdiction,*
2. *names of complainants and defendant,*
3. *time of offence,*
4. *place of offence,*
5. *description of offence with certainty and accuracy,*
6. *an adjudication permitted by statute."*

12. Reliance was also placed on a decision of the former Supreme Court in *State (Cunningham) v. O'Floinn* [1960] I.R. 198. The issue in that case was the failure to recite in an order of summary conviction that the offence alleged was "*contrary to the form of the statute in such case made and provided*" or to indicate the particular statutory provision contravened. It is accepted that although the actual issue determined in that case was different to what arises here, it is argued that what O'Daly J. said is of relevance. In the course of his judgment he refers to s. 72 of the Dublin Police Act 1842 which stated: "*it shall be sufficient if the offence shall be stated in the words of the statute declaring the offence*". O'Daly J. also cites in particular the passage from the judgment of Wills J. in *Smyth v. Moody*.

13. All of these are cases of some antiquity, a matter commented upon by Keane C.J. in the case of *Murphy v. Director of Public Prosecutions* (26th January, 2004) where he noted that: "*a somewhat different jurisprudence prevailed in those days in matters of this nature*". In this case he was commenting upon these elderly cases and contrasting them with what he described as "*the modern law on the subject*". It is this modern law which governs the instant cases.

**The modern law**

14. The modern law on the subject is to be found in the decision of Finlay P. in the *State (Sugg) v. District Justice O'Sullivan* and the *State (Good) v District Justice McArdle* (23rd June, 1980) as expressly approved of by the Supreme Court in Murphy's case.

15. In *Sugg's* case, Finlay P said the following:

*"The fundamental requirements of a good order on conviction are that it will set out in clear and unambiguous terms the precise offence by reference to statute in the case of a statutory offence and by reference to an acceptable common law definition in the case of a common law offence of which the accused was found guilty and that furthermore it will contain such material facts as will identify the manner in which the offence was committed, the date upon which it was committed and the place where it was committed so as to prevent, in effect, the person so convicted from ever being charged with the same offence again and so as to leave him with a record of the matter in respect of which he was convicted on which he could safely ground a plea of autre fois convict were he ever to be charged with the same offence again."*

16. The contention which was made in both *Sugg* and *Good's* case was that a failure to recite in a summons and order of conviction for driving without due care and attention contrary to s. 52 of the Road Traffic Act 1961, that the place of the offence identified was not a public place rendered the conviction bad. Finlay P. said:-

*"Under the provisions of both s. 53 and s. 52 of the Road Traffic Act 1961 as amended, an offence only occurs if the person charged drives a vehicle which is of course a mechanically propelled vehicle in a public place, in the case of s. 53, in a manner which was dangerous to the public and in the case of s. 51, without due care and attention.*

*The submissions made on behalf each of the prosecutors who are separately represented were to the effect that this being an essential ingredient of the offence in each case that any order purporting to convict the prosecutor of that offence which does not contain a specific recital that the driving concerned occurred in a public place was an order bad on its face.*

*I am satisfied that these contentions must fail.*

*Public place is defined in s. 3 of the Road Traffic Act 1961, as meaning 'any street, road or other place to which the public have access with vehicles whether as a right or by permission or whether subject to, or free of charge'. In the case of John Sugg, the complaint made against him and the summons by which he was brought before the court informed him and recited that the charge or allegation against him was that he had driven the vehicle concerned at 'junction of Glasnevin Avenue and Glasnevin Drive'. In the case of the prosecutor Alex Good, the driving is stated in the same document which forms part of course of the conviction in each case as having occurred at 'Navan Road Bridge, Navan Road, Blanchardstown'.*

*It has been stated before that the purpose of a summons bringing a person before the District Court on a criminal charge is to inform that person in clear and unambiguous language not only of the offence being alleged against him, but also of the main or constituent facts surrounding that offence so as to enable him to prepare for his defence. It seems to me that the form of the summons not referring merely to a public place, but identifying a specific part of a road in one case and of two streets in another amply fulfils this purpose and that there could be no contention made that a summons in the form of the summons recited in each of these two convictions was otherwise then a perfectly good summons."*

17. The President then went on to set out the fundamental requirements of a good order and conviction which we have already quoted.

**Analysis**
18. Section 113 of the Road Traffic Act 1961 creates a number of offences. The absence of lawful authority or reasonable cause is common to them all. Thus, to interfere or attempt to interfere with the mechanism of a mechanically propelled vehicle while it is stationary in a public place are two offences so created. Likewise to get on or into or to attempt to get on or into the vehicle while it is so stationary are also offences.

19. The complaints made against the accused in these cases and the convictions registered on foot of their pleas of guilty were that they "*got into"* the relevant mechanically propelled vehicles. Having thus identified the specific offence created under s. 113 of the Road Traffic Act 1961 and having specifically referred to that section of the Act, can it be said that the absence of the words "without lawful authority or reasonable cause" has the fatal consequences which are contented for? To put it another way does the wording in question here fall foul of the modern law on the subject as set forth by Finlay P in *Sugg's* case?

20. In our view it does not. The accused in each case was informed in clear and unambiguous terms of the offence alleged ie. getting into a mechanically propelled vehicle contrary to s. 113 of the Road Traffic Act 1961. Such a description required the accused and their legal advisers to consider the terms of that section which makes it clear that by virtue of it, the entry into the vehicle was alleged to be without lawful authority or reasonable cause. All of the necessary information was furnished to the accused and their legal advisers. No issue was raised by their legal advisers and on foot of the advice furnished by them the accused pleaded guilty.

21. Reliance on cases in the nineteenth century and the early part of the twentieth century is to rely on "*a somewhat different jurisprudence*" (per Keane J.) to that which obtains nowadays. Such cases arose in circumstances where legal advice and legal representation in the magistrates courts were the exception rather than the rule, contrary to the position which now exists.

22. Curiously enough it had to be accepted by counsel acting on behalf of the appellants that if the charges here were laid in the following form, no complaint could be made. Thus if the charge was that the accused "*without lawful authority or reasonable cause got into*" the vehicle "*contrary to the form of the statute in such cases made and provided"* no complaint could be made. The formulation of the charge in that fashion gives a great deal less information than in the present case. It would require the legal advisers to ferret out whatever the relevant statutory provision was from the myriad of offences created by the Road Traffic Acts. Yet, when furnished with the specific statutory provision in respect of which the charges were brought, but where the words complained of were missing, the charges fall to be considered as bad on their face, it is claimed.

23. We are unable to accept this proposition.

24. In our view the charges and the orders which flowed from them comply fully with the prescription of Finlay P. in Sugg's case. The precise offences were set out in clear and unambiguous terms by reference to the statute. They contained such material facts as identified the manner in which the offences were committed, the date upon which they were committed and the place where they were committed. The accused could never again be charged with the same offences. They are left with a record of the matter in respect of which they were convicted so as to enable them to ground a plea of *autrefois convict* were they ever to be charged with the same offences again.

**The High Court judgment**
25. In coming to this conclusion we differ from the view formed by the trial judge. He took the view that the charges should have alleged that the accused got into the vehicle while stationary without lawful authority or reasonable cause and so also should the conviction orders and warrants. Notwithstanding that failure however, he took the view that judicial review should be refused. He quite rightly concluded that no one had been prejudiced or mislead by the omitted recitals. He said:-

*"In a situation where the reference to the statutory provisions in conjunction with the facts recited can leave no room for any doubt as to what was alleged and what was admitted, I do not believe that the admitted drafting errors in fact give rise to an error on the face of the record and accordingly I would decline to quash the challenged instruments."*

26. We entirely agree with those observations of the trial judge and his dismissal of the proceedings. We differ from him only insofar as in our opinion the charges as laid and the orders which resulted from them are not defective and comply with the modern law on the topic as set forth by Finlay P in *Sugg's* case.

**Decision**
27. These appeals are dismissed.