

THE HIGH COURT

[2006 1343 SS]

**IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT 1857 AS EXTENDED BY SECTION 51 OF THE COURTS
(SUPPLEMENTAL PROVISIONS) ACT 1961**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF GARDA RICHARD T. O'CONNOR)

PROSECUTOR

**AND
BRENDAN CRONIN**

ACCUSED

APPEAL BY WAY OF CASE STATED

Judgment of Mr. Justice de Valera delivered the 13th day of November, 2006.

1. On the 5th April, 2006, Brendan Cronin appeared before Judge James O'Connor at the Tralee District Court charged with two offences.

2. The offence, the subject matter of this appeal by way of case stated read:

"On the 28th May, 2005, at Durtane, Ballyheigue, Kerry in the said District Court area of Tralee drove a mechanically propelled vehicle registered number 94 D 16922 in a public place while there was present in your body a quantity of alcohol such that, within three hours after so driving, the concentration of alcohol in your urine exceeded a concentration of 107 milligrams of alcohol per 100 millilitres of urine. Contrary to s. 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. 23 of the Road Traffic Act, 2002."

3. In the appeal by way of case stated, the District Court judge has sought the opinion of the High Court on the following question:

"In the circumstances of this case, was I correct in dismissing the charge where the arresting Garda had said that he had formed the opinion the accused was incapable of 'exercising' proper control of a mechanically propelled vehicle rather than stating he had formed the opinion that the accused was incapable of 'having' proper control of the vehicle which is the exact wording used in s. 49(1)(a) of the Road Traffic Act 1961."

4. I am satisfied that the District judge was not correct in dismissing the charge.

5. The difference in meaning between the use of the words "exercising" and "having" in the context of this section, and also in the context of the circumstances of the offence and the subsequent arrest, is nonexistent.

6. It is impossible to put any construction on the use of these words other than that the driver was incapable by reason of the intoxicant of having proper control of the vehicle.

7. In matters such as this, where the use of the slightly different wording from that of the section involved does not materially alter the section's meaning, the accused is not prejudiced by this alteration and it is not a sufficient ground to dismiss the charge.