

THE HIGH COURT

2006 1318 JR

Between:

Niall Harnett

Applicant

And

Conor O'Reilly

Respondent

And

Commissioner of An Garda Síochána, The Attorney

General, and Ireland

JUDGMENT of Mr. Justice Michael Peart delivered on the 12th day of February, 2009

This application arises out of certain events which took place on the 31st October 2006 at the Shell Corrib Oil Refinery site at Bellanaboy, Co. Mayo ("the Shell Site"). The applicant had been one of a number of people who had up to this date been engaged in protests against certain building works at this site. Those protests had been ongoing for some time prior to this particular date, and, according to an affidavit sworn by Inspector Patrick Robinson, a decision had been taken by An Garda Síochána to remove protesters and their vehicles from the entrance to the site and the immediate surrounding area in order to facilitate workers on the site and their vehicles gaining entrance to the site unhindered by the actions of protesters. He goes on to characterise the applicant as being "*one of the main agitators in the protests that have occurred since 3rd October 2006 and that he has been involved in, inter alia, the continuous blocking of vehicles on a daily basis going to and from the site*".

There is clearly a difference of opinion between the applicant and Inspector Robinson and other members of the Gardai who have sworn affidavits on this application as to exactly what occurred. I will come to those issues in due course, but for the moment it suffices to say that on this date the applicant was forcibly removed from his car in the vicinity of the entrance to the site, and his car was seized by the Gardai and removed to Belmullet Garda Station where it remains to this day. The applicant states that during this incident the driver's window of his car was damaged during removal of the applicant therefrom.

The applicant asks this Court to declare that the seizure of this vehicle was unlawful, that it is being unlawfully held by the Gardai, and he seeks an order for its return, as well as damages and costs. According to the applicant his car was seized by the respondent because he considered that the car was unroadworthy, and wished to have it inspected by a Garda PSV inspector. The applicant denied at the time, and denies now that his car is not in a roadworthy condition. The PSV inspection was carried out on 1st November 2006, and the applicant was informed that there were a number of faults and that he would have to have the car towed from the Garda Station to a garage to have it fixed. The applicant attended at Belmullet Garda Station to collect some belongings from his car and at that stage informed the respondent that he wanted the window fixed by the Gardai before he would have it towed away. Again, according to the applicant's grounding affidavit, he was informed that if the car was not towed away "within the next few days" the car would be "sectioned" and would be sold with the proceeds being given to the State. Some further discussion did not resolve the situation. Over the following days some further attempts were made by the applicant to discuss this matter with members of Belmullet Garda Station, but to no avail, according to his grounding affidavit. The applicant removed all his personal belongings from the van but has left the van at the station, where it remains to this day.

In his Statement of Opposition the respondent pleads that the car was lawfully seized on this occasion, and that the applicant has been told on numerous occasions that he is free to have the car towed away from the Garda Station at Belmullet. In that regard it is pleaded at paragraph 6 thereof:

"The respondents contend that the applicant's motor vehicle was lawfully removed from [the Shell Site] in circumstances where the applicant had, pursuant to the provisions of Section 91 of the Road Traffic Act, 1961, been lawfully been requested to move the aforesaid motor vehicle which was blocking the entrance to the said Shell Site at Bellanaboy, Belmullet, in the County of Mayo. The applicant refused to move his vehicle notwithstanding this request, and subsequent to an examination thereof the applicant's vehicle was lawfully detained for the purposes of carrying out a P.S.V. examination thereof pursuant to the provisions of Section 20 of the Road Traffic Act, 1961, and the European Communities (Vehicle Testing) Regulations, 1991 (S.I. No. 356/1991). The P.S.V. examination was carried out in respect of the applicant's vehicle on 1 November 2006. The vehicle was found to be defective in certain respects."

That plea is supported by an affidavit sworn by the respondent, who was on this date temporarily assigned to assist other Gardai at the Shell Site. He states that he was informed at 10.45 am on that date that the applicant had driven his van through the Garda barriers at the entrance to the site and that it was blocking the entrance. He viewed this as a potentially serious situation which warranted immediate intervention, since he was aware that the applicant was "one of the main agitators in the overall protest". He left Belmullet Garda Station with two other members of An Garda Síochána, and arrived at the site at about 11.05 am. He describes finding on arrival there that the applicant's vehicle was parked

parallel to the right hand side of the entrance gate, and that the applicant was seated in the driver's seat, and another man was seated in the passenger seat. At this time there were a number of Gardai around this and another vehicle, parked at the entrance and there were about twenty protesters outside the barrier cheering on the occupants of the vehicles. He says also that there were about six construction vehicles attempting to gain entrance to the site.

The respondent goes on to state that at 11.25am he approached the applicant's vehicle and noticed that the driver's window was open, and he went to it and asked the applicant to leave his vehicle, but that he refused to do so. Having made a number of unsuccessful requests that he leave the vehicle, the respondent then directed the applicant to leave the vehicle and again the applicant failed to comply with this request. According to the respondent, other protesters arrived at the barrier and they became vocal and agitated, and accordingly he directed a Garda colleague to remove the applicant from his vehicle, and he states *"I also decided to remove the vehicle to allow free access to the site for construction traffic"*.

He then states that the vehicle was removed to the right hand side of the construction gate *"where it was then examined with a view to gaining the necessary particulars"*, and that upon examination he became aware that the vehicle was in a poor physical condition with a number of rust holes in the rear panelling and around the rear windows, and that some of these holes were substantial, and in addition the front of the vehicle appeared to be sitting very low to the ground particularly on the left side. He noticed also that there was no certificate of roadworthiness on the windscreen, and that given the age of the vehicle *"this would be a requirement for a commercial vehicle"* and states also that while the vehicle is in fact a two-seater commercial van he noticed that the applicant had it taxed as a private vehicle. Even as a private vehicle, he states that it should have been displaying a current national car test certificate.

He goes on to state that because of these concerns regarding the overall condition and the lack of roadworthiness certificates it was unsafe for use on the public highway and he decided to have it removed to Belmullet Garda Station for the purpose of a PSV mechanical inspection there. He says that he approached the applicant and told him that he was having his vehicle removed pursuant to the provisions of s. 20 of the Road Traffic Act, 1961, as amended for the purpose of having that examination carried out, and that he directed another member to so remove the van. The remainder of his affidavit deals with what discussions occurred subsequently with the applicant and his eventual refusal to remove the van from the Garda Station unless the window of the van was fixed by the Gardai, despite being informed that the vehicle could be removed by him after 11.30am on the following morning.

I should perhaps refer to the fact that the respondent in this affidavit states that a full inspection of the van was carried out at 11 am on the following day, and that a number of faults were discovered, including a defect in the steering mechanism, and that the PSV Inspector had informed him that the van was not roadworthy until such time as the steering mechanism was rectified, and that it would have to be towed away. That inspector's report has been exhibited. It states that the following defects were identified: *"Free play or wear in left steering track rod end; Groule (sic) in left rear wheel bearing; Both front shock absorbers soft and weak; rust holes in rear doors around rear windows; The driver's window was [s]tuck in the open position, obviously a winder or runner problem. Apart from the above I found this vehicle to be otherwise in serviceable condition"*.

In relation to the alleged broken window, the respondent states that in fact the window itself is not broken but that the window closing mechanism only is defective. That view seems to be borne out by what the inspector has reported in relation to window. He stated that this was not the responsibility of the Gardai.

The applicant's version of events is somewhat different to that given by the respondent and other Gardai who have sworn affidavits in support of that position. I should refer to that and set out what he states happened at the site on that day and thereafter.

The applicant has set out events which occurred eleven days previously on the 20th October 2006, but those events are not really relevant to the events the subject of the present application, and there is no need to set them out, except to say perhaps that he states that he had the permission of the owners of landowner to enter upon the land. But in relation to the 31st October 2006, the applicant states that he drove back to the gates of the site. No Shell security personnel approached him on this occasion, but five Gardai arrived, and he informed them that he had permission from the registered landowner to enter the site and that he wished to so enter. He states that the Gardai did not enter into any discussion with him and instead tried to pull open the doors of the car which were locked, and knocked on the windows gesturing aggressively for him to move. He says that he could hear one of the Gardai telling him to get out of the car. This apparently went on for some moments before they desisted and started making phone calls.

He states that about thirty minutes later the respondent, who was unaccompanied at the time, approached the car and asked the applicant for his driving licence, to which the applicant responded by saying that he was on private property. The respondent then walked to the rear of the car and spoke to other Gardai who were about fifteen metres away. The applicant states that at this stage he opened his window by about six inches to speak to somebody on the road, and that at this point a Garda *"sprang forward"* and seized hold of the window of the car in an effort to take the keys from the ignition. He says that about four Gardai assisted in trying to force the window down and *"breaking it in half"*. He says that the window fell down into the door housing of the car leaving the window completely open. It would appear that in fact the applicant's passenger removed the key from the ignition before the Gardai could do so. It is slightly unclear from the affidavit but it would appear that the passenger may have given the key to the Gardai as the applicant then states in paragraph 10 that the Gardai *"unlocked the driver side door and opened it"*.

In paragraph 11 the applicant states that at this point the respondent came over again, and that he complained to the respondent that the Gardai had broken his window, and that he wanted his keys back *"so that I could drive away"*, to which the respondent, according to the applicant, stated that it was too late for that, and that he instructed the Gardai to remove him from the car. The applicant states that although he did not resist and said that he would do so voluntarily he was nevertheless grabbed forcibly and dragged from the car and removed out onto the roadway. He states that all this action was filmed by a Garda member who he names.

Paragraph 12 states that after his removal from the car the respondent asked him if he had an NCT or MOT certificate for the vehicle, and that he stated in reply that it was a commercial vehicle which is taxed as a private vehicle, and that the testing centres will not test the vehicle in such circumstances, and that it was not therefore possible for him to have such a certificate. However, he states that he assured the respondent that the vehicle was regularly serviced and offered to show a recent service history for the vehicle, which offer was declined.

Paragraph 13 states that at this point, the respondent stated *"Judging from the way you have been driving that vehicle, I have doubts about its roadworthiness. Therefore I am seizing it and bringing it to Belmullet Garda Station where I will arrange for a Garda PSV inspector to come to the station to inspect it"*. The applicant says that he was then informed that if the vehicle failed that test he would have to get the car towed away from the station to a garage to get it fixed before he could drive it again. The car was then driven away by a Garda to Belmullet Garda Station, and the applicant followed as a passenger in another car, despite his request that he be driven by the Garda in his own car.

This affidavit then recites subsequent events to which I have already referred, and those subsequent events are not really relevant since it is the lawfulness of the seizure of the car on that date which is the issue to be decided on this application, rather than anything which occurred subsequently.

I should refer to an affidavit sworn on the respondent's behalf by Sgt. David Hughes who was on duty at Belmullet Garda Station on the 31st October 2006 when he received a report that the main entrance gate (No.1) at the site had been blocked by two vehicles belonging to protesters. He went to the site and found that two cars had gone beyond the barriers erected by Gardai to the front of the site and were then blocking the gates of the site, one of which he recognised as the applicant's vehicle, and he was not familiar with the other car. He states that it was obvious that the applicant's car had been parked in such a way as to prevent all traffic from going in and coming out of the site and that several trucks were lined up on either side of the gateways which were unable to proceed further. He saw that the applicant and the driver of the second vehicle had been removed from these vehicles. He says that he spoke to the respondent who told him that he suspected that the vehicle was in such poor mechanical condition that he was going to have it examined by a PSV inspector in order to ensure that it was fit for use in a public place without danger to members of the public. The respondent requested him to bring the vehicle to Belmullet Garda Station so that this examination could be carried out. Thereupon Sgt. Haughney entered the applicant's vehicle and carried out what he describes as "a standard Garda driving cockpit drill which includes the running of a brake test". He states that as a result of this "basic examination" he formed the view that the vehicle required a full examination by a PSV inspector and that he drove the vehicle to the Garda station for that purpose, and that as a result of what he calls "the overall poor condition of the vehicle and the soft brakes" he drove it at less than 40 kms per hour for the duration of that journey.

The applicant in his submissions has pointed to the fact that the PSV inspector report makes no complaint as to a defect in the brakes, and that this fact was being wrongly relied upon as a reason to impound the car. The applicant submits also that the car was not in a public place at the time of the seizure, but on private land onto which he had the landowner's permission to enter. I will return to these matters in due course.

The respondent claims that he was entitled to seize the applicant's vehicle and remove it from this site pursuant to the provisions of s. 91 of the Road Traffic Act, 1961, and that in addition he was entitled to remove and detain the vehicle for the purpose of a PSV examination pursuant to the provisions of s. 20 of that same Act.

Those provisions are as follows:

Section 91 - Road Traffic Act, 1961:

" (1) For the purpose of preserving order in relation to traffic when there is an event attracting a large assembly of persons or when there is traffic congestion or a fire, flood or similar occurrence, a member of the Garda Síochána in uniform may do all or any of the following: divert, regulate and control traffic and regulate and control the parking of vehicles.

(2) The powers conferred by subsection (1) of this section shall, in particular, include power to do all or any of the following things by oral or manual direction:

(a) prohibit the passage of traffic;

(b) indicate the direction in which traffic is to proceed;

(c) prohibit the parking of vehicles;

(d) indicate places for the parking of vehicles or as stands for public service vehicles and regulate their use;

(e) make any other prohibitions or indications which he considers necessary for preventing obstruction or disorder in traffic."

Section 20 – Road Traffic Act, 1961:

(1) Where a member of the Garda Síochána observes a mechanically propelled vehicle or combination of vehicles in a public place and he suspects that there is a defect affecting the vehicle or combination which is such that it is, when in use, a danger to the public or, in the case of a public service vehicle, there is a defect affecting it which is such that either it is a danger to the public or it is rendered unfit for the carriage of passengers, he may suspect and examine the vehicle or combination and, for the purpose of carrying out the inspection and examination, may do all such things and make all such requirements in relation to it as are reasonably necessary.

(2) For the purposes of subsection (1) of this section and without prejudice to the generality of the powers conferred thereby, a member of the Garda Síochána may—

(a) require the person in charge of a mechanically propelled vehicle or combination of vehicles to bring it to a convenient place indicated by the member suitable for the carrying out of an inspection and examination under this section and not more than five miles distant by the shortest available route from the place at which the requisition is made, and to carry the member in the vehicle or combination,

(b) drive a mechanically propelled vehicle or combination of vehicles for a reasonable time and place,

(c) require the person in charge of a mechanically propelled vehicle or combination of vehicles to drive it or cause it to be driven for a reasonable time and distance in such direction and manner and at such speed as the member directs, and to carry the member in it while it is being so driven,

(d) carry out or cause to be carried out such tests as the member considers reasonable.

(3) Where a member of the Garda Síochána has, consequent upon having inspected and examined under this section a mechanically propelled vehicle, reasonable grounds for believing that there is a defect affecting it which is such as to be, when in use, a danger to the public, he may –

(a) instruct the person in charge that it is not to be driven in a public place until the defect has been rectified,

(b) require the person in charge or the owner to submit it for a further examination and test at a specified time and place.

(4) to (18) ”

Section 3 (1) Road Traffic Act, 1961, as relevant:

“3. -- (1) In this Act, save where the context otherwise requires –

“public place” means any street, road, or other place to which the public have access with vehicles whether as of right or by permission and whether subject to or free of charge”.

The applicant makes a couple of preliminary points in relation to the powers alleged by the respondent to have entitled him to seize his vehicle. Firstly he submits that s. 91 of the Road Traffic Act, 1961 has no application to the circumstances at the site on this date, since it was not an “event” as contemplated by the section. He submits that the word “event” refers to something like a sports fixture or a music concert which might require traffic management of the kind authorised by this section. He submits also that the respondent never made any reference to any power under that section when requiring him to get out of his car or to remove it, and when he had the applicant removed as described, and thereafter seized it and had it removed to Belmullet Garda Station, and that insofar as the respondent is relying on the powers contained in s. 91, the applicant submits that this is an attempt by the respondent to retrospectively justify his seizure of the vehicle, and that this was not the power which the respondent believed he was invoking at the time, and certainly did not say so to the applicant.

In relation to s. 20 of the same Act, the applicant submits that at the time at which the vehicle was seized and removed by the Gardai, the vehicle was not in a public place, but was rather on private lands onto which he had the owner's permission to enter. It is submitted that in such circumstances the power under s. 20 of the Act cannot be exercised.

Firstly, I am satisfied that the location at which the applicant stopped his vehicle at the entrance to the site, even though it was private land to which the applicant had permission to enter, is nevertheless “a public place” within the meaning to be given to that phrase by s. 3 of the 1961 Act. It is a “*place to which the public have access with vehicles whether as of right or by permission and whether subject to or free of charge*” (my emphasis). In my view therefore the power exercised by the respondent on this occasion at that place was a power which he was entitled to exercise. In those circumstances, the respondent was entitled to form the opinion from his initial observation and basic examination of the applicant's vehicle that it was not in a roadworthy condition, and to take the action which he did once that opinion had been formed by having the vehicle brought to Belmullet Garda Station for the purpose of a full PSV inspection.

The powers under s. 20 are extensive, and permit in the present case the respondent to require that the vehicle be towed away from the Garda Station rather than driven away, given the opinion formed that the vehicle is unroadworthy.

I am satisfied that the applicant is not entitled to a declaration that the seizure of this vehicle was unlawful, and/or that it is being unlawfully held by the Gardai. It follows that for the same reason the court cannot grant any mandatory injunction for its return to the applicant. In any event the applicant is free to have the vehicle towed away whenever he wishes to do so. This has been made clear to him.

In relation to damages, I am not in any event satisfied that there is any evidence that the car window was broken by the Gardai as alleged by the applicant. It appears to be the case that the intact window is within the door housing and that the window winding mechanism may need some repair. But this cannot be the subject of a claim for damages by the applicant in the circumstances which have been outlined.

Strictly speaking, it is unnecessary for me to reach a conclusion in relation to whether or not the gathering of persons and vehicles at this site on this day is or is not “an event” for the purpose of the powers given to the Gardai to regulate and otherwise deal with traffic at such an event under that section. While expressing no final view on the matter, it does seem to me to be a section designed to give powers to control and regulate traffic at an event such as a sporting fixture or a music concert where an unusual amount of traffic present may require special consideration and powers to control and regulate it. The circumstances which presented themselves at this site on this date seem to me to be far removed from such “an event”, but I reserve a final conclusion on that issue for determination in another case where it is necessary to be decided.

The applicant in this case, who represented himself on this application, did so with care, clarity and courtesy to the court and to his opponent. I want to acknowledge that. But for these reasons stated I must dismiss his application.

