

1984 No. 98S.S.

THE HIGH COURT

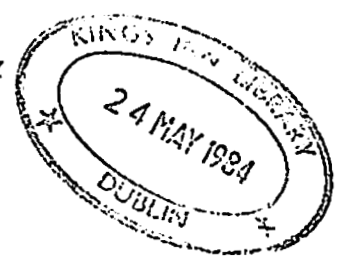
IN THE MATTER OF THE COURTS (SUPPLEMENTAL PROVISIONS)
ACT 1961

GARDA CHRISTOPHER MOLONEY

Complainant

and

JOHN STANLEY



Defendant

JUDGMENT delivered the 2nd day of April 1984 by Mr. Justice Lynch

Shortly before midnight on the 11th April 1982 Garda Christopher Moloney was directing traffic at the scene of a road traffic accident at the junction of Le Fanu Road and Kylemore Road. A motor vehicle approached the scene which was subsequently proved to have been driven by the defendant.

Garda Moloney signalled this vehicle to stop by raising his right hand and flashing his torch. He was dressed in full Garda uniform with an overcoat, scotch light belt and there was good public

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lighting at the scene.

The vehicle slowed down but did not stop and as it was passing him Garda Moloney struck the passenger window with his torch. He also shone his torch into the vehicle to enable him to observe the occupants thereof.

The vehicle went past and Garda Moloney and Garda Mulally, who was assisting him in directing the traffic at the scene of the accident, gave chase. Some distance further on the vehicle stopped and Garda Moloney observed a person, who was subsequently proved to be the defendant, getting out of the driver's door. Garda Moloney observed that the defendant was unsteady on his feet, his speech was slurred and his eyes were glazed. Garda Moloney formed the opinion that the defendant was unfit to drive a mechanically propelled vehicle due to the consumption of alcohol and he informed the defendant that he was arresting him under section 49 of the Road Traffic Act 1961. Garda Moloney conveyed the defendant to Ballyfermot Garda Station where he handed him over into the charge of Sergeant Patrick Sexton. Garda Moloney later charged the defendant with the offence set out on Ballyfermot Sheet 291 of 1982 and the defendant stated that

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he had nothing to say.

Sergeant Sexton informed the defendant that he proposed to call a doctor to the Garda Station and that he would require the defendant to permit the doctor to take from him a sample of blood or, at his, the defendant's, option a sample of urine and that he could if he so wished have a doctor of his own choice to attend also. Having so informed the defendant Sergeant Sexton then sent for Dr. Conor O'Hanlon who arrived at the Garda Station at about 12.20 a.m. on the 12th April 1982 and in the presence of the doctor the Sergeant requested the defendant to permit the doctor to take from him a sample of blood or, at his option, to provide a sample of urine and the defendant opted to provide a sample of urine.

There appears to be some slight confusion as to whether, at some stage, the Sergeant may not have said that the doctor would take a sample of urine and the defendant might provide, at his option, a sample of blood but it is clear from the Case Stated that the Sergeant conveyed to the defendant the requirement that he was to provide, at his own option, a sample of urine or alternatively to allow the doctor to



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take a sample of blood. This is made all the more clear from the fact that the defendant was provided in accordance with the Regulations with the necessary containers to enable him to provide a sample of urine and was allowed a period of some twenty minutes within which to do so but he failed to do so. It is quite clear that there was no doubt or confusion whatsoever as to what was required of the defendant and then at that stage, having failed to provide a sample of urine, he was asked to permit the doctor to take a sample of blood.

The defendant refused to allow the doctor to take a sample of blood and offered no valid excuse or reason for so refusing. Section 19(1) of the Road Traffic (Amendment) Act 1978 provides that it shall be a good defence for refusing or failing to permit a registered medical practitioner to take a specimen of blood for the defendant to satisfy the Court that there was a special and substantial reason for his refusal or failure. The onus is on the defendant to show such special and substantial reason and no evidence was given to show any such reason.

On behalf of the defendant it was submitted that as the evidence showed that the defendant had been requested to allow the

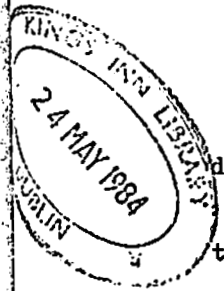
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medical practitioner to take a specimen of blood or provide at his option a specimen of urine this evidence did not support the charge as laid on Charge Sheet No. 291 of 1982 of Ballyfermot Garda Station. It was submitted in reply by the prosecution that the evidence established an offence contrary to section 13(3) of the 1978 Act. In reply to this it was submitted on behalf of the defendant on a more broad basis than initially that as the Act provided for interference with the bodily integrity of a person it should be strictly construed and applied.

I am satisfied that the evidence established a compliance with the requirements of section 13(1)(b) of the Act, and that the defendant was not misled in any way as to what was required of him in the Garda Station.

On the other hand it is quite clear that the Charge Sheet is defective in that it has got the requirements to permit the doctor to take a specimen and the option to the defendant to provide a specimen mixed up as between blood and urine. The Charge Sheet alleges an offence for failing to permit the designated registered medical practitioner to take a sample of urine or, at the



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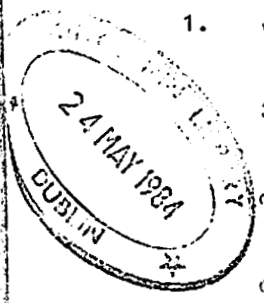
defendant's option, to provide a specimen of blood but then, of course, the Charge Sheet concludes by saying "contrary to section 13(3) of the Road Traffic (Amendment) Act 1978". A reference to section 13(3) shows that the doctor would take the specimen of blood or the defendant would provide the specimen of urine at the defendant's option.

I am of opinion, therefore, that the learned District Justice should amend the Charge Sheet by substituting for the word "urine" where it presently appears in the Charge Sheet the word "blood" and by substituting for the word "blood" where it presently appears in the Charge Sheet the word "urine".

The four questions put at the end of the Case Stated will each be answered in the affirmative namely:

1. Was the requirement made of the defendant by Sergeant Patrick Sexton made in accordance with the provisions of section 13(1) of the Road Traffic (Amendment) Act 1978 in all the circumstances deposed to sufficiently in accordance with the provisions of that section to require compliance by the defendant therewith?

Answer: Yes.



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2. If the said requirement was so sufficient does the failure or refusal of the defendant in the circumstances constitute an offence of which the defendant might be convicted in view of the charge as framed on Ballyfermot Charge Sheet 291/82, a copy of which is annexed to the case and in respect of which the charge as framed in accordance with the provisions of section 13 of the Road Traffic (Amendment) Act 1978?

Answer: Yes.

3. Should I convict the defendant of an offence contrary to section 13(3) of the said Act of 1978?

Answer: Yes.

4. If so, ought I to amend the Charge Sheet prior to so doing?

Answer: Yes, in the manner indicated above.



A handwritten signature in dark ink, appearing to read "Kevin P. O'Connell" or similar, written over a horizontal line.