AN CHÚIRT UACHTARACH

THE SUPREME COURT

[2026] IESC 33
Supreme Court AP:IE:2025:000139
High Court Record No. 2024/467 JR

O'Malley J.

Woulfe J.

Hogan J.

Collins J.

Donnelly J.

Between/

ANDREJS RATINSKIS

Respondent

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

Judgment of Ms. Justice Iseult O'Malley delivered on the 11th June 2026

Introduction

1. This is a direct appeal by the Director of Public Prosecutions against a decision of the High Court. That Court quashed the conviction of the respondent for the offence, contrary to s.4(2) of the Road Traffic Act 2010 as amended (referred to in this judgment as "the Act of 2010"), colloquially known as "drunk driving".

2. The Act of 2010 provides a power of arrest in certain circumstances. It further provides that a person who has been lawfully arrested and taken to a garda station can be required to provide breath, blood or urine specimens for the purpose of analysis, in order to determine the level of alcohol in the person's body. (This case concerns a blood specimen, so the judgment will not refer to the procedures for urine or breath specimens.) Section 15 of the Act sets out the procedures for the taking of specimens. Compliance with those procedures may be proved by way of production in court of a statutory form completed by the designated doctor or nurse who took the specimen. A duly completed form will be evidence of the facts stated in it. The purpose is to avoid the necessity to call the doctors or nurses to give oral evidence in court.

3. When that part of the process has been completed, the garda must forward the specimen to the Medical Bureau of Road Safety ("the Bureau") for analysis. It is presumed, unless the contrary is shown, that the various persons involved in taking and forwarding the specimen to the Bureau performed their statutory functions correctly.

4. Section 17 provides for proof of the concentration of alcohol in the blood by way of a duly completed certificate from the Bureau. Again, the purpose is to avoid the necessity

to call the analyst to give oral evidence. Where the certificate is duly completed, it is sufficient evidence of the facts stated in it unless the contrary is shown – in other words, a person can be convicted on foot of a certificate stating that the blood alcohol was over the statutory limit.

5. Both s.15 and s.17 provide for a presumption "*until the contrary is shown*" that the statutory obligations of the relevant persons have been complied with.

6. The accused person can raise a defence by arguing that the s.15 form and/or the s.17 certificate was not "*duly completed*", and so should not be given evidential status, or that there is for some reason a doubt about the correctness of what is stated in either of them.

7. In this case, the defence accepted that the s.15 form was duly completed. They challenged the s.17 certificate on the basis that the garda who sent the specimen to the Bureau had not proved the safekeeping of the package containing the specimen between the time it was taken and the time it was posted. It was argued that this had the effect of rendering the evidence inadmissible. The District Judge considered that the prosecution had no obligation to give such evidence and convicted the respondent.

8. The High Court (Sara Phelan J. – see [2025] IEHC 428) held that the District Court should have acquitted the respondent. In the judge's view there was a legal requirement to prove the chain of custody of the blood specimen, and there was in this case a gap in the evidence. She further held that the gap could not be covered by the statutory presumptions set out in the Act. The questions in the appeal therefore centre on the

provisions of the Act concerning the taking and analysis of specimens, and on the legal consequences (if any) of a break in a chain of evidence about the custody of the specimen.

Background

9. The facts of the case are set out fully in the judgment of Sara Phelan J. In brief, the respondent was arrested by a Garda Houlihan shortly after 11 o'clock on the night of the 20th August 2022, having failed to provide a breath specimen at a mandatory checkpoint. He was brought to a garda station, where a blood sample was taken by a designated doctor at 12.37 a.m.

10. The doctor and the garda correctly followed the procedure prescribed by s.15 of the Act. The doctor divided the specimen between two glass bottles which were placed into separate containers. Each container was sealed with a numbered seal. He handed both containers to the garda and then completed the form required by s.15 of the Act.

11. As provided for in the Road Traffic Act 2010 (Sections 15 and 17) (Prescribed Forms) (Amendment) Regulations 2020, a duly completed s.15 form contains the following information:

    1. Name, address, date of birth and gender of the person from whom the specimen to which the form related was taken, or who provided the specimen;

    2. Nature of specimen (i.e., blood or urine);

    3. Place at which specimen was taken or provided;

4. Date on which specimen was taken or provided;

5. Time at which specimen was taken;

6. [To be completed in the case of a specimen taken or provided in a hospital].

12. The person who took the specimen must then sign the declaration at the end of the form:

> "*I, the undersigned designated doctor or designated nurse*
>
> *took from the person named at 1 above the specimen of blood…to which this form relates. I divided the specimen into two parts. I placed each part in a container, which I forthwith sealed. I labelled each container with the name of the person and date. I gave both containers to a member of the Garda Síochána.*
>
> *Signature of designated doctor or designated nurse…*".

13. The s.15 form in the instant case bears the serial number 223787.

14. Garda Houlihan gave evidence that the two red seals put on the containers each carried the serial number NN 2487. He said that, as required by s.15(2) of the Act, he offered the respondent the option of taking one of the sealed containers. The respondent took one. Garda Houlihan then put the remaining sealed container, and the s.15 form, into a marked cardboard box and sealed that. As required by s.15(3) of the Act, he forwarded it to the Bureau by posting the box on the following day, the 22nd August.

15. The Bureau is a statutory body, originally established under the provisions of the Road Safety Act 1968. Under s.26 of the Act of 2010, it is responsible for, amongst other matters, the analysis of blood alcohol levels in specimens taken from persons under s.15. It is also responsible for the provision to garda stations of the necessary kits for use in the taking of specimens.

16. Specimen kits have been produced to the Court. For present purposes, it is relevant to note that each kit holds two small specimen bottles, two cylindrical containers, two numbered seals, four white labels and the form required by s.15 in duplicate. The cylindrical containers are in two pieces, one of which slots into the other. The blood or urine sample is to be divided between the two bottles. Each bottle is labelled and is placed into a container. The container is closed. A numbered seal is then wrapped around the join of the two parts of the container. When a seal is peeled off, it leaves behind a distinctive set of lettering imprinted over every part of the surface that it was in contact with. The container is also labelled. The serial numbers on the two seals match each other, as, obviously, do the serial numbers on the duplicate forms. The kit comes with a distinctive cardboard box upon which is printed the name and address of the Bureau, into which the container is placed for the purpose of forwarding it for analysis. The box is then sealed.

17. Under s.15(4) of the Act, there is in a prosecution for an offence under the Act a presumption, until the contrary is shown, that the steps recounted above were taken. Under s.20 as amended, a duly completed s.15 form:

> "*shall, until the contrary is shown, be sufficient evidence in any proceedings under the Road Traffic Act 1961 to 2023 of the facts stated in it, without proof of any signature on it or that the signatory was the proper person to sign it, and shall, until the contrary is shown, be sufficient evidence of compliance by the designated doctor…concerned with the requirements imposed on him or her by or under Chapter 4*".

18. The Bureau subsequently issued a certificate of analysis dated the 29th August. The concentration of blood alcohol was stated as being 126 milligrams of alcohol per 100 millilitres of blood (the maximum permissible under the Act being 50 milligrams per 100 millilitres).

19. The Bureau's certificate complied with the requirements of s.17 of the Act. Section 17(1) as amended provides that "*as soon as practicable after it has received a specimen forwarded to it under section 15*", the Bureau must analyse the specimen and may determine the concentration of alcohol in it. Subsection (3) provides that the Bureau is to forward a certificate in prescribed form to the Garda Síochána station from which the specimen analysed had been taken and is to forward a copy of that certificate to the person named on the s.15 form as the person from whom the specimen was taken.

20. Subsection (4) provides for a presumption, until the contrary is shown, that the foregoing requirements have been complied with.

21. Under s.20, a certificate expressed to have been issued under s.17 shall, until the contrary is shown, be sufficient evidence in any proceedings under the Road Traffic

Acts of the facts stated in it and of compliance by the Bureau with its statutory requirements.

22. A duly completed s.17 certificate is headed "*Certificate issued by the Medical Bureau of Road Safety under section 17 of the Road Traffic Act, 2010, certifying a concentration of alcohol*". Completion requires the insertion of the following information "*as shown on the form completed by the designated doctor or designated nurse*":

    1. The name, address, date of birth and gender of the person;
    2. The nature of the specimen;
    3. The place at which the specimen was taken or provided;
    4. The date on which the specimen was taken or provided;
    5. The time at which it was taken or provided;
    6. [To be completed if the specimen was taken or provided in a hospital].

23. There follows the statement:

    > "*The Medical Bureau of Road Safety certifies that on analysis by the Bureau the specimen to which the above particulars relate contained…*".

24. The form is signed by the analyst. There is then a statement that the certificate is issued under s.17 of the Act. The seal of the Bureau was affixed in the presence of its Deputy Director.

25. The s.17 certificate in this case bears the same serial number as the s.15 form.

26. The defence in this case did not object to the admission into evidence of either the s.15 form or the s.17 certificate. Garda Houlihan was cross-examined in relation to the circumstances of the arrest and the taking of the specimen, but not in relation to the safekeeping of the specimen.

27. The respondent's solicitor sought a direction at the close of the prosecution case. It was submitted that there had been an "*invalidation*" of the specimen because no evidence had been given as to its storage in the period before it was posted to the Bureau. There had been no evidence, in particular, as to whether it had been stored somewhere that other persons might have had access to. The solicitor relied, for the purposes of the argument, on the decision of this Court in *People (Director of Public Prosecutions) v. A. McD* [2016] IESC 71, [2016] 3 I.R. 123.

28. The District Judge rejected the submission. In summary, the reasons given were:

    a. the legislation contained various presumptions in relation to specimens and what happened to them and "*when eventually the certificate comes out, there are various presumptions that* [the specimens] *weren't interfered with*";

    b. there was no evidence (from the Bureau) that there was any interference with the specimen;

    c. the specimen was sealed; and

d. the defence did not cross-examine Garda Houlihan as to the chain of custody or as to where the specimen was kept before it was forwarded to the Bureau.

29. The respondent then gave evidence on the matters in respect of which the garda had been cross-examined – the circumstances of his arrest at the checkpoint and whether he had been offered the option of giving a urine sample in the station. His solicitor's closing submission focussed entirely on those matters. The respondent was convicted and was disqualified for two years and fined €350.

30. The respondent did not appeal the conviction to the Circuit Court, or seek an appeal by way of case stated to the High Court. Instead, judicial review proceedings were initiated in April 2024. Among other matters, it is pleaded in the statement of grounds that the District Judge had erred in convicting the respondent where the chain of custody evidence "*relating to essential (blood sample) evidence*" was not established in full or at all, and that "*the decision to admit such evidence was unlawful*". It was also pleaded that the District Judge had unlawfully shifted the burden of proof onto the defence. In his grounding affidavit, the respondent's solicitor averred that it "*remains a possibility*" that the specimen had been interfered with but gave no reason for thinking that it had been.

The High Court

31. Sara Phelan J. first considered the nature of the presumption in s.15(4). She saw the question as being whether or not the presumption covered the custody of the specimen

in the interregnum between the taking of the specimen and its subsequent transfer to the Bureau.

> "*If so, the prosecution were entitled to rely upon the presumption, and the applicant's case is bound to fail. If not, then the applicant must succeed, subject to whether or not the application was properly brought by way of judicial review.*"

32. The respondent submitted that ss. 15 and 17 of the Act covered, respectively, the start of the process and the end of the process but not what happened "*in between*". It was submitted that the burden always fell on the prosecution to prove that real evidence had been properly kept in a manner free from tampering or interference. That being so, it was for the prosecution to satisfy the court as to the integrity of the specimen by giving evidence as to its safe storage. The defence was under no obligation to cross-examine on the issue or to seek to rebut the s.15(4) presumption by adducing evidence to the contrary. Reliance was again placed on *A. McD* as support for this proposition.

33. The appellant argued that *A. McD* had no application where the prosecution had the benefit of a statutory presumption that had not been rebutted. The defence had an evidential burden in that regard, and that evidential burden could not be discharged by simply citing the absence of evidence as to storage prior to transmission to the Bureau. The question was: what had to be given in evidence to prove the case?

34. Sara Phelan J. found that s.15 did not provide for a presumption that the specimen had been stored securely or that its integrity had been preserved, and that s.20 did not assist

the prosecution in this regard. There was a presumption that the container had been sealed, but it went no further than that. For that reason, she found that there was a gap in the evidence of the chain of custody. She referred to *Director of Public Prosecutions v. Whelan* (unrep., High Court, O'Neill J. *ex tempore*, 2nd February 2009) and *Director of Public Prosecutions v. Walton* (unrep., High Court, Morris P., *ex tempore*, 13th July 1998) for the consequences of that finding. In *Walton*, one garda had obtained the sample and a different garda forwarded it to the Bureau. The second garda did not give evidence. Morris P. held that the forwarding was covered by the statutory presumption but commented that in a case without the benefit of the presumption the issue raised "*could be a perfectly valid point*".

35. Having found that there was no presumption that the specimen remained intact, Sara Phelan J. concluded that chain of custody evidence ought to have been adduced and that the defence did not bear any evidential burden in this regard. The integrity of the specimen was of paramount importance, and the prosecution had not excluded the possibility of interference. (Sara Phelan J. noted here that Staunton's *Drunken Driving* (2nd edn, Round Hall 2021) recorded that there had been reported instances of suspected interference with specimens. The newspaper report cited by the author in support of this appears to have related to the prosecution of a post office employee who was alleged to have abstracted from the post a package containing a specimen and to have microwaved it, rendering it useless for the purpose of analysis.) The certificates covered the admissibility of their own contents but no more.

36. The judge considered that the rule of strict construction of penal statutes meant that she could not read a further presumption into the statute. In this context she referred to the

decision of this Court in *DPP v. Avadenei* [2017] IESC 77, [2018] 3 I.R. 215, which she saw as holding that the strict construction of penal statutes was an "*unencroachable*" rule of statutory interpretation. She also referred to paragraph 86 of the judgment, where an attempt was made to categorise the types of issues that arise in cases such as this, and the consequences of certain flaws. One such category concerns cases where a statutory power was erroneously exercised, or procedures wrongly followed, in such a fashion that the evidence proffered did not in fact prove what it was intended to prove. Sara Phelan J. considered that this test applied in the instant case because the evidence proffered did not prove the integrity of the specimen.

37. Sara Phelan J. went on to hold that in the absence of the necessary chain of custody evidence the prosecution had to fail.

38. The judge then considered the appropriateness of judicial review in the light of those findings. The appellant submitted that judicial review was inappropriate and that the respondent should have taken either an appeal to the Circuit Court or an appeal by way of case stated on a point of law. The respondent's case in this regard was that an appeal to the Circuit Court, being a *de novo* hearing, would have permitted the prosecution to "*mend its hand*" and adduce the necessary evidence.

39. Sara Phelan J. held that the burden of proof was on the prosecution. As it had not discharged that burden in the District Court it should not be allowed "*a second bite of the cherry*" in a *de novo* appeal to the Circuit Court. Although a case stated would have been available as an adequate remedy, "*the totality of this case and the broad application of the outcome of the challenge*" meant that judicial review was "*not*

inappropriate". The purpose of judicial review was to ensure the legality of the process, and that was what was at issue. The District Court had relied on the statutory presumptions in circumstances where there was no presumption that the specimen had not been interfered with. There was no provision for any indication that the Bureau analyst had checked that the seal was intact. The District Judge had, in the circumstances, answered the wrong question. The error in construing the statute was an error in excess of jurisdiction.

The Grant of Leave to Appeal

40. The appellant sought leave to appeal directly to this Court. The application was not opposed by the respondent and was granted by way of determination dated the 12th December 2025 ([2025] IESCDET 157). The issues identified in the determination were:

> (1) Whether there exists a legal requirement to prove a chain of custody for forensic samples; or if it is a question of fact as to whether a sample, which has been forensically analysed, is the same as that obtained from the suspect.
>
> (2) Whether a ruling of law in the course of a criminal trial in the District Court can be subject to judicial review.

Submissions in the Appeal

The Appellant

41. The appellant's primary submission is that the High Court erred insofar as it held that there was a legal requirement to prove a chain of custody for forensic samples. It is contended that the key issue in any case is whether the trier of fact can be satisfied with the identity and integrity of the sample in question, and whether any analysis of the sample can be relied upon as proof of any relevant issue. It is argued that that the analysis in *A. McD* cannot be transposed, without modification, into a statutory regime which prescribes in detail how a specimen is to be taken, divided, sealed, labelled, and transmitted; creates express presumptions of compliance (s.15(4)); and confers evidential status on duly completed forms and certificates (s.20). In *A. McD* the Court was concerned with the handling of physical evidence which was not the subject of a comprehensive statutory certification regime. This case, by contrast, relates to legislation that was deliberately designed to avoid the necessity of calling evidence of every step in the chain.

42. In addition, it is contended that judicial review was not appropriate where the trial judge had concluded, on the evidence and having regard to the statutory presumptions, that she was satisfied as to the integrity of the sample and the analysis. Alternative remedies were available.

43. The appellant submits that the combination of the oral evidence of the garda, the s.15 certificate and the s.17 certificate proved, in the absence of evidence to the contrary,

that the blood specimen taken from the respondent was the specimen analysed by the Bureau. There was no evidence to suggest that it was not. In those circumstances the statutory presumptions had not been displaced. It was for the accused to show, whether by way of evidence or cross-examination, that any gap in the chain of custody had undermined the integrity of the forensic analysis. He could have had the other part of the specimen analysed. In any event, any such gap went to the weight of the evidence and not to its admissibility. Even if *A. McD* were to be considered applicable here, it would not automatically render the certificate inadmissible unless its reliability was fundamentally undermined by an identified gap in continuity. That would have been a question of fact for the trial judge.

44. It is submitted that the High Court judge misinterpreted the statutory provisions. The presumptions did not apply only to procedural matters but to all matters necessarily encompassed by the prescribed steps. The act of sealing the container was not a mere formality – it was the method by which the integrity of the specimen was safeguarded. The label was another safeguard. The s.17 certificate proved the concentration of blood in "*the specimen*" – that is, the specimen taken from the accused.

45. The judgments in *Power v. Hunt* [2013] IEHC 174, [2013] 3 I.R. 709 and *DPP (Sergeant Moyles) v. Cullen* [2014] IESC 7, [2014] 3 I.R. 30 are referred to for the analysis of the nature and effect of certificate evidence in cases such as this. The statutory regime has the effect that it is unnecessary to call oral evidence of the matters covered. The entire purpose of that regime would be defeated if it were to be necessary to adduce oral evidence of the chain of custody. The admissibility of the s.17 certificate was unaffected by the absence of evidence about storage.

46. The appellant cites *Walton* (above), *DPP v. Corrigan* [1980] I.L.R.M. 145 and *DPP v. Collins* [1981] I.L.R.M. 447 as cases where the defendant was found not to have discharged the burden of displacing the presumption. In *Collins*, there was evidence of an unidentified white substance in the specimen bottles, and the defence suggested that it could have affected the result. Giving the judgment of this Court, Henchy J. said:

> "*While the legal or persuasive burden of proof in a criminal case rests on the prosecution (save where a statute provides otherwise), the prosecution will have discharged their evidential burden if they have adduced sufficient evidence to raise a prima facie case against the accused. The prosecution did so in this case. The certificate issued by the Bureau under s. 22 of the 1978 Act is declared by s. 23(2) to be sufficient evidence of the facts certified to in it, until the contrary is shown. One of the facts certified to in the certificate produced in this case is that the specimen of blood (not the specimen of blood together with the accompanying substance) had the certified concentration of alcohol in it. The evidential onus of showing that the analysis was at least capable of being rendered false by the unspecified white substance therefore passed to the defendant.*
>
> *The mere suggestion of counsel for the defendant that the unspecified white substance could possibly have produced a false analysis to the extent of showing the offence charged to have been committed, when in fact it had not been committed, is not sufficient to discharge the evidential burden of proof which lay on the defendant as to this issue. To suggest that something may have happened, or may have produced a particular result, is one thing; to adduce*

evidence pointing in the direction of that possibility is another matter. The law acts on the latter, but not on the former. Where, as in this case, the prosecution have adduced evidence showing the existence of all the elements necessary for the commission of the offence, and the defence wish to controvert or cast the necessary doubt on the prosecution case by suggesting the existence of a factor which would justify an acquittal, the evidential burden as to that factor passes to the defence….

[…]

In the instant case, before counsel's suggestion could be given serious consideration as a defence (or, be deemed fit to be submitted to the jury as a defence, if the charge was being tried with a jury), the defence should have adduced admissible evidence that a white substance of the kind and in the quantity found in the container could have falsified the certified analysis in the way suggested. And even if such evidence had been adduced, the prosecution would have been entitled to give rebutting evidence. But since no evidence on the matter was brought forward by the defence, I would rule that the analysis, and therefore the conviction, were not invalidated by the presence of the unspecified white substance."

47. It is submitted that the bare suggestion by the respondent in this appeal that the specimen and/or the s.17 certificate had been "*invalidated*" was insufficient.

48. The issue in this case having arisen by way of an application for a direction in the District Court, the appellant makes the case that the question whether the specimen taken by the doctor was the specimen analysed by the Bureau was one of fact.

Deficiencies in a chain of evidence, and the effect of such deficiencies if there are any, are matters for the consideration of the trier of fact. The prosecution does not bear a burden of proof to exclude every possible hypothesis consistent with innocence. In this case, the District Judge was entitled to conclude on the evidence that the sealed container containing the specimen provided by the respondent was transmitted and that the s.17 certificate was reliable.

49. On the issue as to the appropriateness of judicial review, the appellant submits that the question whether there is sufficient evidence to sustain a conviction is not amenable to judicial review. Reference is made to the judgment of Clarke J. in *Sweeney v. District Judge Fahy* [2014] IESC 50, where there is a discussion of the distinction between errors that render the decision of a court unlawful, and thus capable of being quashed, and those which can only be corrected by way of appeal. *Lennon v. District Judge Clifford* [1992] 1 I.R. 382 is cited for the proposition that where the proceedings are regular on their face, and the inferior tribunal had jurisdiction, *certiorari* will not be granted because the tribunal misconceived a point of law, including misconstruing a statutory provision.

The Respondent

50. The respondent maintains the position that there is a legal requirement to establish the chain of custody of forensic samples. The argument is that the statutory presumptions did not absolve the prosecution of an obligation, under the rules of evidence, to account for the custody of the specimen "*from the moment of its recording until its production in court*". It is said, by reference to *A. McD,* that this obligation arises under the normal

rules of evidence. If the chain of evidence cannot be proved in respect of any item, then it is inadmissible.

51. The respondent has also described the obligation to prove the chain of custody as "*a statutory requirement*" and says that, if it is not complied with, the certificate is rendered inadmissible. It is not suggested, however, that there is an explicit statutory obligation in this respect. The proposition is that there is no statutory presumption absolving the prosecution of its obligation to prove the chain of custody in its entirety and that therefore the legislation can be read as preserving the obligation to prove a chain of custody.

52. In answer to queries from the Court, the respondent has accepted that the specimen was not "*real*" evidence, and was not in fact evidence at all. He argues, however, that the s.17 certificate (which is the actual evidence produced to the court of trial) is inextricably linked to the specimen and cannot be decoupled from it. If the specimen is unreliable, because the chain of custody has not been proved, then so is the certificate. It is submitted that the situation is analogous to a case where the original arrest is shown to have been unlawful – the fact that the certificates comply with the statutory requirements would not make them admissible, because the unlawful arrest would contaminate the entire process.

53. It is submitted that the absence of such evidence in this case meant that there was insufficient evidence to establish the authenticity of the specimen beyond reasonable doubt. The respondent argues that the interpretation of the Act by the High Court was

correct in this regard, having regard to the rule of strict construction of penal statutes. He cites the decision of this Court in *Avadenei* as approving that principle.

54. It is again emphasised that neither the Act nor the s.15 form provide expressly for any presumption or evidence concerning the custody, storage or security of the specimen after the container is sealed. The s.15 presumption goes no further than the act of sealing.

55. The respondent quotes paragraph 6-124 of Staunton's *Drunken Driving*, which suggests that the process of gathering evidence and subjecting it to forensic analysis in cases such as this is arguably no different to other areas of the criminal law, and is subject to the same general requirement to comply with the rules of evidence. Specimens of blood and urine are described in this passage as pieces of "*real evidence*" which ultimately form the basis for the certificate evidence. The author states:

> "*Therefore, whether the presumption in s.15(4) absolves the prosecution of any obligation to account for such evidence in the normal way is not clear.*"

56. The respondent also refers to *Power v. Hunt* and *DPP (Sergeant Moyles) v. Cullen*, with emphasis on the limitations of certificate evidence and the requirement to comply with the statutory regime. It is again submitted that proof of the chain of custody is a "*statutory*" requirement. Such proof is said to be necessary in circumstances where the nature of the sample is such that one blood specimen cannot be distinguished from another save by reference to the label.

57. The authorities on the obligation to seek out and preserve material evidence of guilt or innocence are relied upon, with the "*material evidence*" here being the specimen.

58. The respondent does not accept the contention that a gap in the chain of evidence goes to the weight rather than admissibility of the evidence. It is said that in each of the cases cited by the appellant there was some at least some evidence by which authenticity could be assessed but that in this case no such assessment can be done because of the length of the time unaccounted for. In the circumstances, the certificate evidence should not have been admitted and the direction should have been granted.

59. In relation to the issue of judicial review, the respondent submits that the error of the District Judge in this regard was an error in excess of jurisdiction, and therefore amenable to judicial review. Even if it was an error within jurisdiction, judicial review was appropriate because otherwise the prosecution could have mended its hand in an appeal to the Circuit Court.

60. It is contended that the respondent is entitled to argue in the judicial review proceedings that the s.17 certificate evidence was wrongly admitted in the District Court, notwithstanding the fact that objection was not taken to its admission when it was produced in the trial. The respondent says that if the objection had been raised at that stage, the prosecution could have "*mended its hand*" before closing its case.

Discussion

61. It is apparent that the analysis in the High Court judgment was based on acceptance of the following propositions:

(i) The blood specimen was an item of real evidence.

(ii) The decision of this Court in *A. McD* requires proof of a chain of custody in respect of real evidence in all cases.

(iii) The decision in *A. McD* means that real evidence is inadmissible if there is any gap in the evidence relating to the chain of custody.

(iv) The statutory presumptions and certificate evidence did not dispense with the need to prove custody during the period between the sealing of the specimen and its arrival at the Bureau.

(v) The statutory procedures required for the handling of specimens did not establish the integrity of the specimen.

(vi) The effect of the analysis in *Avadenei* is that, because the court is considering a penal statute, *any* failure in strict compliance with the statute means that the prosecution must fail.

62. Unfortunately, each one of those propositions is incorrect.

63. Firstly, specimens taken under the Act of 2010 are not evidence in any sense. "*Evidence*" is adduced in court to prove, or support the proof of, some factual proposition. The specimens are not produced in court – they are analysed. It is the result of the analysis that constitutes the evidence that the driver was over the limit. That evidence is given by way of certificate.

64. Although the respondent now accepts that the specimen was not "*evidence*", he appears to see the distinction between the specimen and the certificate as a distinction without a difference. Because they are inextricably linked, he contends that if the physical specimen would be inadmissible by reason of a failure to prove a chain of custody, then it must follow that the certificate is likewise inadmissible.

65. This is not correct. The content of a document such as the certificate is admissible because the Act makes it admissible. Without that statutory foundation it would simply be inadmissible hearsay, as if the analyst had simply written a letter describing the analysis and findings. The Act also sets out the criteria for the certificate's admissibility – it must be on a prescribed form and must be "*duly completed*". If these criteria are satisfied, the certificate is admissible and its contents become evidence.

66. Formulated more properly, I think that the respondent's argument could be that if admissible evidence – in this case the certificate – relates to the analysis of a physical object or substance, the status of the evidence will be affected by a failure to prove the chain of custody of the object or substance. It is, however, important to be clear that such an argument would have to focus on the question whether it could be shown that the certificate should not be accepted as "*sufficient*" evidence of what is stated in it.

This is not a question of the *admissibility* of the certificate but of the *weight* to be attached to its content. The Act provides that the content is sufficient evidence unless the contrary is shown. The crucial point to be made is that under the Act it is for the defence to raise the issue of sufficiency and to either adduce evidence or rely on evidence adduced by the prosecution in order to show that there is reason to doubt the correctness of the certificate.

67. There is no general rule of law requiring evidence of a chain of custody for real evidence. Here, it is necessary to point out that the term "*real evidence*" is used in various ways to describe various forms of evidence that are not sworn testimony given by a witness in court. In its broadest sense it is a term that has been used in a wide variety of circumstances to refer to any evidence, relevant to the proof of some proposition of fact in issue in the trial, that the triers of fact in the court conducting the trial can observe for themselves. In that sense, it includes material objects but can also be used in respect of the demeanour of a witness when giving their evidence in relation to the physical appearance of a person where, for example, there is an issue as to whether the accused does or does not look like the description given by witnesses to the crime, or the demeanour of a witness when giving evidence (see *McGrath on Evidence*, 2nd edn, Round Hall Press 2014, at 12-55).

68. In a narrower sense, real evidence is a physical object, such as a weapon or a package of drugs, that is produced in court. The term also covers audio and video recordings played or shown in court. It may refer to a document where what may be in issue is not the content but the factual existence or appearance of such document, or a signature or

fingerprint on it (see, for example, *Phipson on Evidence*, 16th edn, Sweet & Maxwell 2005, at 1-14).

69. Clearly, there can be no special rule of law applicable to all these different kinds of evidence. As with all evidence, they are admissible if relevant to an issue in the case and of probative value, unless excluded under one of the exclusionary rules.

70. In this context, it must be made clear that *A. McD* did not purport to lay down a general rule of law requiring proof of a chain of custody of physical objects as a condition of admissibility of evidence about them.

71. The evidence in question in *A. McD* was footage taken from a CCTV camera. The defence argued that the content of the footage was hearsay and therefore inadmissible. The evidence was excluded by the trial judge after a *voir dire*, on the basis that the prosecution had failed to tender evidence regarding the function and operation of the recording system. In the judge's view, such evidence was required as a matter of law so that the court could determine whether the footage was real evidence rather than hearsay.

72. This Court disagreed. At paragraph 43 of his judgment, McKechnie J. described the issue, in light of the hearsay objection, as being whether or not there had been human intervention that impacted directly on the content relied upon by the prosecution. He held that in principle, the footage was real evidence and not hearsay.

73. At paragraph 56, McKechnie J. made it clear that the classification of the evidence as real evidence did not mean that its admissibility could not be challenged on some other sustainable ground.

74. At paragraph 58, McKechnie J. said:

> "*Like all pieces of evidence, CCTV footage must be proved in an appropriate way and to the required standard. I do not accept that some notion of judicial notice, or any similar type of approach, plays any part in satisfying this requirement, nor do I believe that there exists any type of presumption to the effect that security systems operate as designed or function as intended (see para. 27, supra). In the established phraseology, the evidence should prove the provenance and authenticity of the footage; the recording must be intelligible and of sufficient quality, and must also be relevant and have probative value. In addition, the party seeking to adduce such evidence must be able to account for its history from the moment of its recording until its production in court, this to exclude the possibility that it may have been interfered with (R v. Robson & Harris). Obviously, it is open to the accused person to test this evidence in the normal way and to raise any admissibility objection that might be open to him on both the law and the facts: the exclusionary rules, fair procedures, illegality and unconstitutionality come to mind. However, once the above requirements are satisfied, then the material in question will normally be available for consideration in the same way as any other piece of real evidence so tendered.*"

75. It was noted that it had not been argued in the trial that the footage had been edited, tampered with or fabricated.

76. McKechnie J. set out his general conclusions on the law in a series of numbered points in paragraph 63. At points (vii) – (x) he said of CCTV footage:

> "*(vii) in general, its provenance and authenticity must be established, as must any other material requirement normally associated with real evidence, such as relevance, probative value, etc.;*
>
> *(viii) objection to its admissibility may be taken on any sustainable ground, including those covered by the exclusionary rules, or such other as may arise on either the facts or the law of the case;*
>
> *(ix) as with any piece of admissible evidence, its weight, value and credibility are matters for the jury;*
>
> *(x) because of its potency, care must be exercised to ensure the overall integrity of such evidence*."

77. None of these principles are either controversial or new. The focus in this part of the judgment is on the reliability and weight of the footage. The question of admissibility is referred to separately, as a matter to be dealt with according to the normal exclusionary rules. The applicability of those rules is to be determined on a fact-specific basis.

78. In referring to the chain of custody, the judgment simply stated that the party adducing the evidence "*must be able*" to account for its custody, to exclude the possibility of tampering. This, however, is a matter for the finder of facts and not a condition of admissibility. There was absolutely no suggestion that a failure to prove the chain of custody as part of the prosecution's case would necessarily have the effect of rendering the evidence inadmissible.

79. The point here is the distinction between the admissibility of evidence and the weight to be given to it where there are gaps in the evidence of its custody. This becomes clearer when one considers the case referred to in the passage quoted. The judgment in *Robson* concerned a challenge to the admissibility of a number of tape recordings. The challenge was based on two arguments. The first was that such recordings were akin to documents and so, on the application of the "*best evidence*" rule, the prosecution had to prove that they were originals or else explain the absence of the originals. The second was that the recordings were so defective as to be unfairly prejudicial without being probative.

80. It is important to note here that there was no suggestion in that case that the defence would be entitled to simply wait for the close of the prosecution case and seek a direction of the basis of a failure to prove originality – it was clearly accepted that it was for them to raise the issue.

81. On the issue of originality, the judge held that the burden on the prosecution was only to show a *prima facie* case by putting up evidence of the provenance and history of the recordings up to their production in court. If that evidence survived intact after cross-

examination, the trial judge did not need to go further and the evidence was admissible. The second issue went to the authenticity and weight of the evidence, and was a matter for the jury. The tapes were sufficiently clear for the jury to give them proper consideration and it was not unfair to admit them.

82. The correct interpretation of the decision of O'Neill J. in *Whelan*, concerning the necessity to prove a chain of custody of evidence that has been admitted, and the effect of a gap in the evidence, was dealt with in detail in the judgment of Charleton J. in *People (DPP) v. Hawkins* [2014] IECCA 36:

> "*33. No doubt, in very many cases, the prosecution wish to exercise a counsel of prudence, whereby everything that is capable of mathematical proof will be testified to in that way. This approach, however, does not mean that there is any higher standard in criminal cases than that the jury should be satisfied of the provenance of relevant exhibits beyond reasonable doubt and that such facts as are proven beyond reasonable doubt must ultimately be analysed as to whether these prove the guilt of the accused person beyond reasonable doubt on any one or more counts. There can be some instances where the writing of an appropriate name and number on a bag may suffice to establish its provenance to that standard. The failure to call a chain of evidence in between to explain to the jury how that physical evidence came to be in one place when it was found to be in another may not otherwise be necessary. In circumstances where gaps are left by the prosecution, however, these may be such that a reasonable doubt as to the provenance of physical evidence, or their relationship to the proof of the offence, may be absent. In Francis Whelan v. DPP (Unreported, ex tempore,*

High Court, Ó Néill J, 2nd February, 2009), the accused was apprehended for a controlled drug search and two items were taken away on a search of his person. These items were then sent to the forensic science laboratory. In the course of the prosecution of the accused a certificate was tendered simply stating his name but containing no other identifying features to link him to the items in question. Furthermore, the garda who conveyed the evidence bag to the forensic science laboratory did not give evidence. Ó Néill J saw that there was a very significant gap in the evidence and held on a case stated from the District Court that in such circumstances the accused had no case to answer. ***This case is not authority for the proposition that wherever there is a gap in the proof by the prosecution of the physical custody of an exhibit that evidence resulting from this should be excluded****. The actual words in the approved but ex tempore judgment of Ó Néill J refer:*

> '*It seems to me that the gap in the chain of evidence is extremely significant. The only circumstantial evidence is the name 'Francis Whelan' written on the certificate. That in itself could not cure the problem. Perhaps if the civil standard of proof, the balance of probabilities were being applied, the court might comfortably conclude that the sample taken was that of the accused. But when the court must be satisfied beyond reasonable doubt, in my view in the absence of Garda Carroll or other evidence to tighten up evidence relating to the identification of the materials tested, I do not think that a court could be satisfied beyond a reasonable doubt that the subject of the certificate related to the accused. It is to be observed that when a particular evidential status is accorded to certificates it is crucially important that*

the steps taken are established. Great care must be taken to ensure this is so. The reason is clear: if a person may be convicted essentially on the basis of a piece of paper, it is of crucial importance that the steps that are taken to produce that result are taken properly and, to use a famous and popular phrase, with openness and transparency. Otherwise the only means accused persons would have of defending themselves would be to attempt to call evidence to prove or demonstrate that steps were not taken properly. That is why, when it is possible to convict substantially by means of certificate evidence, the necessary preliminary steps must be proven. In other words it is not tolerable to have substantial gaps in the evidence leading to the tendering of the certificate.

34. ***That was a case in which there was no proof, beyond the appearance of a common name, that the items in the bag produced during the course of the prosecution case had come from the accused man. Such an approach is not acceptable. Neither is it necessary, however, to call every person who at any stage had handled, or who had custody of, items of physical evidence. The standard to be applied is the standard that failed in the Francis Whelan case, namely proof of facts relevant to the charge beyond reasonable doubt.*** *This was made clear in an ex tempore judgment of this Court in the People (DPP) v. Michael McDermott (Unreported, ex tempore, Court of Criminal Appeal, Hardiman J, 17th June, 2002). There, Hardiman J indicated, in response to a point made by the defence, that the chain of evidence is dependent upon the standard of proof in criminal cases, as opposed to the requirement urged on*

behalf of the appellant in this case, which is that of mathematical certainty. At pages 2 and 3 of the unreported, ex tempore, judgment Hardiman J stated:

> *There can be no doubt, as was conceded at all times by the prosecution, that there is an inconsistency between the evidence of Detective Garda Farrell and Ms. Hughes the forensic scientist. However the question is: is this an inconsistency significant to this case such as makes it impossible for the jury rightfully to be satisfied that the material analysed by Ms. Hughes was the material seized by the Gardaí who came up to the accused in the car park as described. We do not believe that inconsistency does render it impossible, or impossible rationally, to be so satisfied. It is perfectly plain that one or other of these witnesses is mistaken. Mr. White [counsel for the defence] has put it on the basis that if the Book of Evidence be right, that material could have been removed by Garda Farrell, and that that establishes, he says, that it was not, having regard to the evidence of Ms. Hughes, the material seized. We do not think that it is so. We do not think that the prosecution case is fatally damaged by the fact that there is an inconsistency in what we think Mr. Sweetman [counsel for the prosecution] correctly described as a peripheral matter.* ***The jury had to be satisfied that it was the same material and they were instructed properly in relation to that, and clearly came to the conclusion that it was.*** *We do not believe that the inconsistency is at all fatal, we consider that there was ample evidence with which the jury could have been satisfied on the matter they required to be satisfied of in this regard.*" (Emphasis added.)

83. The respondent has now accepted in the course of this appeal that the specimen was not evidence in itself. He contends, however, that its inextricable link to the certificate means that if the integrity of the specimen is not reliable then the certificate should not be admitted. Apart from the fact that this submission conflates the separate concepts of admissibility and reliability, it fails to take account of the effect of the statutory provisions.

84. Firstly, s.20 of the Act of 2010 provides that documents issued in compliance with ss. 15 and 17 shall "*until the contrary is shown*" be sufficient evidence of the facts stated in them. Certainly, to show that there is a doubt over the identity of the specimen that was analysed would be to show that the certificate should not be relied upon as "*sufficient evidence*". But that is not an admissibility issue.

85. Next, it is necessary to consider the actual contents of the s.15 form and the s.17 certificate. The form, combined with the evidence of the garda, was evidence that the specimen had been taken by a designated doctor from the respondent, who was under lawful arrest, at a particular garda station on a particular date. It stated his name and date of birth. The form was also evidence that the specimen had been duly divided between two bottles and that each bottle had been labelled with the respondent's personal details. Finally, it was evidence that the bottles had been sealed into the containers with identically numbered seals.

86. The s.17 certificate sets out the same particulars relating to the specimen received for analysis as the particulars on the s.15 form, thus identifying the specimen received as the specimen taken from the respondent. It then certifies that on analysis "*the specimen*

to which the above particulars relate" contained the stated concentration of alcohol. Finally, it states that the certificate was issued under s.17 of the Act. A certificate issued under s.17 relates to a specimen forwarded to the Bureau under s.15. The certificate is, therefore, evidence that the analysis undertaken related to the specimen taken from the named person in accordance with the requirements of s.15. That means a specimen that had been bottled, labelled and sealed.

87. The s.17 certificate, therefore, identifies the specimen that the Bureau analysed as being "*the*" specimen taken from the respondent.

88. The High Court judge was concerned about the fact that the Bureau was not asked in the form to indicate whether or not the seal on the container had been tampered with. It is perhaps unfortunate that the judge was not shown the Bureau kit. It is clear that if a seal were to be removed and then put back onto the container, the resulting jumble of lettering imprinted onto the container would be immediately apparent to the next person to peel it off. It would be obvious that the seal had previously been opened. If, alternatively, a fresh container with a fresh seal was used, the serial numbers would not match. In either of these scenarios, the possibility of tampering or contamination would mean that the Bureau would not be able to certify that the specimen was "*the*" specimen to which the particulars related. That is why the sealing of the container is an essential safeguard for the integrity of the specimen.

89. Further, under s.17(4) it is to be presumed, unless the contrary is shown, that the Bureau has complied with its statutory function – that is, that it has analysed a specimen forwarded to it under s.15.

90. Looking at the statutory scheme as a whole, the provisions of the Act make practical arrangements for the safeguarding of the integrity of the specimen, allow for evidence to be given by certificate and provide for presumptions of statutory compliance. In those circumstances it is for the defence to raise any question of admissibility by reference to the established exclusionary rules. They may also raise any issue as to reliability based on the evidence of the prosecution or evidence that they adduce themselves. This could, of course, include an analysis of the contents of the second bottle. If the latter was materially different to the result of the Bureau analysis, it could of course raise a serious issue as to whether the specimen analysed by the Bureau was "*the*" specimen taken from the person.

91. This case demonstrates, to my mind, the importance of adhering to the normal rules and principles of evidence and trial procedure. The overall burden on the prosecution is to prove the guilt of the accused beyond reasonable doubt by means of admissible evidence. It is entirely well-established law that the burden does not include an obligation to exclude every hypothetical possibility of innocence, that "*beyond reasonable doubt*" does not mean mathematical certainty, and that relevant evidence is admissible unless excluded by an exclusionary rule or in an exercise of the judge's discretion to exclude evidence on the basis that its prejudicial effect outweighs its probative value. The judgment of Henchy J. in *Collins* makes it clear beyond any doubt that the defence must go beyond a mere suggestion that something *might* have gone wrong with the statutory process.

92. Next, there is the question of the view taken in the High Court of the meaning and effect of the judgment in *Avadenei*. The judge appears to see it only as affirming the principle

of strict construction of penal statutes. Paragraph 77 of the judgment in *Avadenei*, however, simply notes that there was no dispute about that principle and that the real issue in the case was the effect of the particular defect that had been identified. The Court went on to hold that in the circumstances of that case the defect was of no consequence.

93. Finally, there is the question whether the defence was entitled to pursue judicial review proceedings rather than appealing the conviction of seeking a case stated. In the view of my conclusions up to this point it is not necessary to consider this issue in any detail (for a full consideration, see the recent judgments of Donnelly J. in *AB v. The Chief IPO* [2026] IESC 23 and *LA v. The Chief Appeals Officer and Others* [2026] IESC 22). It is my firm view, however, that this was not a case for judicial review. The application made by the defence in the trial court was technically for a direction – in principle, this is a matter that raises the sufficiency of the prosecution case as made out on the evidence. There may, in another case, be scope for debate about whether or not insufficiency of evidence can be the subject of judicial review, but the subject has not been canvassed in this appeal. The focus here has been on the alleged error in the interpretation of the statute. Such an error does not necessarily mean that the judge has thereby exceeded their jurisdiction. It is a matter far more suited to a case stated on a point of law than to judicial review.

94. I would allow the appeal.