THE COURT OF APPEAL

Birmingham J.
Mahon J.
Edwards J.

Record No. 2012/194

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

GARY HOWARD

Appellant

Judgment of the Court delivered by Mr. Justice Edwards on 20th day of July 2016

1. The appellant was convicted of two counts of murder in the Central Criminal Court on 25th May, 2012, following a twenty six day trial.

2. A number of grounds of appeal are made by the appellant in relation to his conviction. For convenience, these grounds of appeal will be addressed in four separate sections in the course of this judgment. These sections will address the following:-

(i) The grounds of appeal relating to the appellant's arrest.

(ii) The grounds of appeal relating to the admissibility of interviews of the appellant whilst in garda custody (including the alleged breach of the appellant's constitutional rights in relation to his request to see a solicitor).

(iii) The ground of appeal relating to the authorisation of the extension of the appellant's detention in Kevin Street garda station.

(iv) The ground of appeal relating to the learned trial judge's charge to the jury.

Background facts

3. Mr. Paddy Mooney and Mr. Brendan Molyneaux were both killed by gun shot wounds on 10th January, 2010, at 4G Pearse House, Dublin 2. The gardaí were alerted, and a double murder investigation commenced.

4. The appellant was arrested at 9:25 p.m. on 10th January, 2010, following a forcible entry into the premises at his home in Finglas, where he was present with his partner and their young child. Immediately after the arrest, a search warrant which the gardaí had earlier obtained was shown to the appellant's partner, and the house was then searched on foot of that warrant. The validity of the search warrant was not challenged by the appellant. The appellant was brought to Kevin Street garda station, where his detention was authorised by Sergeant Brian Burke pursuant to s. 50 of the Criminal Justice Act 2007 ("the Act of 2007") at 10:29 p.m. Sergeant Burke said he was satisfied that the appellant's detention was necessary for the full and proper investigation of the offences with which he was arrested, namely, the murders of Mr. Mooney and Mr. Molyneaux.

5. Whilst in custody, the appellant was interviewed on a number of occasions by the investigating gardaí, in the course of which admissions were made in respect of the double murder.

6. After an initial period of detention of six hours in Kevin Street garda station, the appellant's detention was extended by authorisation of Detective Superintendent Gabriel O'Gara. It is contended by the appellant that this authorisation of the extension of detention by Detective Superintendent O'Gara is not valid because he was not independent of the investigation into the double murder.

(i) The grounds of appeal relating to the appellant's arrest

7. Submissions were made to the learned trial judge in the course of a *voir dire* on Day 4 of the trial (20th April, 2012) in relation to the issue of the appellant's arrest. Evidence was given by Sergeant Paul Tallon, Superintendent Gabriel O'Gara and Chief Superintendent John Twomey in respect thereof.

8. Sergeant Tallon gave evidence that he attended at the scene of the double murder at approximately 8 p.m. on 10th January, 2010. He received confidential information which suggested that the appellant was the perpetrator of the double murder. A search warrant was obtained from Detective Superintendent O'Gara (s. 29 of the Offences against the State Act 1939 as amended) in relation to an address in Finglas, where it was known that the appellant was residing with his girlfriend and young child. A search team was assembled, including Sergeant Tallon as well as members of both the Emergency Response Unit (ERU) and the Organised Crime Unit of An Garda Síochána. On arrival, gardaí forced the front door and entered the premises. Sergeant Tallon stated in evidence that his purpose in entering the premises was two fold: one was to arrest the appellant, and the other was to search the premises.

9. Sergeant Tallon's evidence was that immediately upon entering the premises by force, the team confronted the appellant and arrested him at 9:25 p.m. The appellant's hands were placed in plastic bags for evidence related reasons. The appellant's partner was then informed about the search warrant; it was shown to her, and the premises were subsequently searched.

10. When asked about the power of arrest under which he had operated when arresting the appellant, Sergeant Tallon stated "*for an*

arrestable offence under the Criminal Law Act 1997". Sergeant Tallon was extensively cross examined in relation to the basis upon which he arrested the appellant.

11. Mr. Gillane S.C., counsel for the appellant, made a detailed submission to the learned trial judge in relation to the arrest issue. He concluded his submission in the following terms:-

> *"But the Supreme Court .. indicated that it could not, and would not, separate what would have otherwise been a lawful from an initial unlawful arrest where the unlawful factor was the dominating factor through which and by which the arrest was achieved. And in this case, I respectfully submit that the arrest of Mr. Howard, the dominating factor in the arrest of Mr. Howard was the warrant, which everyone at the time was relying on, and which was used to secure entry into the premises and is the only authority invoked by anybody to explain their presence there and was, in fact, the authority through which and by which an arrest was secured. And in my respectful submission, that ultimately leads to the conclusion, as in Laide, that the arrest must be unlawful."*

12. The learned trial judge ruled that the arrest of the appellant was lawful. He stated:-

> *"In this case the lawfulness of the arrest of the accused has been challenged. That been so, the onus lies on the prosecution to prove the lawfulness of the arrest and to prove it to the standard of beyond reasonable doubt. The material evidence which was adduced on this application is as follows. Sgt. Tallon is a member of the Divisional Crime Task Force and he attended the scenes of these killings at 8 p.m.. He spoke to Detective Superintendent O'Gara who gave him confidential information to the effect that the accused, Gary Howard, was implicated. He conveyed that he had sensitive information in his possession that Mr. Howard had made arrangements for Mr. Molyneaux (one of the deceased), to be in the flat at the material time and that he had bicycled over. He was satisfied that Mr. Howard was the person responsible for the killings. At Pearse St. garda station Superintendent O'Gara told him of confidential information that Mr. Howard had returned home. He applied to the Superintendent for a search warrant. He was satisfied that he was residing there. And Superintendent O'Gara issued a warrant under s. 29 of the Offences against the State Act. He was searching for a firearm and for a mobile phone which he believed would be found there. He went to Finglas and met the Emergency Response Unit and briefed them. He was satisfied that Mr. Howard would be present on the premises and he feared an armed confrontation would take place. He had two purposes in mind. One was to effect Mr. Howard's arrest, and secondly, to carry out a search. The plan was that entry would be effected by force, and the door was closed; this was 9.25 p.m.. He stood behind members of the ERU because they were armed. The front door was put and he described specialist tools being available for that purpose. He was met by Mr. Howard in the hallway and he put him to the floor. This was at 9.25 p.m. He arrested him for double murder and he cautioned him. Plastic bags were put over his hands to preserve any forensic samples that might be there. Mr. Howard was handcuffed. He was removed from the scene in a patrol car.. Inside was Jennifer Brown and I showed her the warrant and told her we would search. She was arrested when her mother arrived to care for the child, and taken to Kilmainham garda station. Now, Mr. Howard was arrested for the arrestable offence of murder .. But we are dealing here with a situation where two people have been executed out of the blue in the one room, and the persons whom the guards are satisfied has perpetrated this is behind a closed door, armed to the best of their knowledge, information and belief. What is the State to do? Is it to throw its hat at the situation or is it to try and look to see if it has any alternative powers?*
>
> *In my opinion, the clear duty of the State was to look to see if they had any alternative powers to deal with the situation, and they looked at s. 6 of the Criminal Law Act 1997 and decided that it was applicable and saved the day for them on this particular issue. Maybe it did, maybe it did'nt, that will ultimately for another court to decide. But so far as I am concerned they found powers which were applicable to the situation, and which, on this issue, have saved the day for them ...*
>
> *The conditions between the two cases are wholly different [this was a reference to a comparison of the facts in this case and the facts in DPP v. Laide and Ryan [2005] 1 I.R. 209]. Now, it cannot in the first instance be expected that the guards are going to exercise powers and say at the time "in the case these powers turn out to be found wanting in some respect by the Supreme Court we are going to invoke any fall back powers we might be able to find" and secondly, nice polite expressions cannot be expected where the guards are in front of a door, behind which they suspect is somebody who is armed and has killed within the last two hours. In my view the arrest in this case was lawful and the prosecution has discharged the onus that rested upon them."*

13. As already stated, Sergeant Tallon's evidence, in response to a question asked of him about the power of arrest that he had used in relation to the appellant, was to state "*for an arrestable offence under the Criminal Law Act 1997*" (Day 4 p. 7). When asked what the purpose was in seeking to enter the appellant's premises, Sergeant Tallon stated *"I had two purposes on arrival. One was to arrest Gary Howard, and two was to search the premises."* (Day 4 p. 5). Sergeant Tallon also stated the basis for his belief that the appellant resided at the Finglas premises where the forcible entry and arrest took place. He stated the following (Day 4, p. 3):-

> *"… Superintendent O'Gara informed me of again confidential information of a secretive and sensitive nature which stated that Gary Howard had returned to his residence of 2 Dunsoghly Grove in Finglas."*

14. He was then asked "*Did you know who he was living there with?,"* to which he replied "*His girlfriend, Jennifer Brown … and his child*".

15. Sergeant Tallon was later asked "*Were you satisfied he was residing there*?", to which he replied "*Yes, and I was satisfied that he had returned there as well …"*

16. Section 4(3) of the Criminal Law Act 1997 provides as follows:-

> *"Where a member of the Garda Síochaná, with reasonable cause, suspects that an arrestable offence has been committed, he or she may arrest without warrant anyone whom the member, with reasonable cause, suspects to be guilty of the offence."*

17. Section 6(2) of the Criminal Law Act 1997 provides:-

> *" For the purpose of arresting a person without a warrant for an arrestable offence a member of the Garda Síochaná may enter (if need be, by use of reasonable force) and search any premises (including a dwelling) where that person is or where the member, with reasonable cause, suspects that person to be, and where the premises is a dwelling the*

member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the member to be in charge of the dwelling, enter that dwelling unless-

…

(d) the person ordinarily resides at that dwelling."

18. Section 6(2) of the Criminal Law Act 1997 therefore provides for the forcible entry into a dwelling *"[f]or the purposes of arresting a person without a warrant for an arrestable offence"* **and** *"search any premises … where that person is …",* if *"the person ordinarily resides at that dwelling*".

19. The fact that the gardaí had in their possession a valid search warrant for the premises in question did not of itself invalidate the arrest, because it took place before the production or operation of the search warrant. The existence of the search warrant was to facilitate a search of the premises. The procedure sanctioned by a search warrant is separate and distinct to the process of effecting an arrest, although there will often be a close association between the two.

20. In the circumstances of this case, and having regard to the evidence of Sergeant Tallon, s. 4(3) and s. 6(2) of the Criminal Law Act 1997, independently of each other, permitted the gardaí to arrest the appellant immediately upon entering the premises and prior to the production of the search warrant relating to the premises. The gardaí had good reason to be concerned about their own safety, the safety of the public and indeed the appellant's safety, having regard to the fact that a short time prior to their arrival at the premises it was their belief that the appellant had murdered two men in what appeared to be quite brutal circumstances. An unannounced and forcible entry into the premises followed by the immediate arrest of the appellant was of the utmost importance. There was no requirement in the circumstances for the gardaí to delay the arrest of the appellant until after the production of the search warrant.

21. This Court is therefore satisfied that the arrest of the appellant was lawful.

(ii) The grounds of appeal relating to the admissibility of interviews and the request for a solicitor

22. The grounds of appeal relating to these issues are as follows:

> 1. The learned trial judge erred in fact and in law in determining that the interviews with the appellant whilst in garda custody were admissible in evidence in the trial.
>
> 2. In relation to same, the learned trial judge erred in law and in fact in holding that the said interviews were not the result of inducements and/or threats or oppression and/or were not a breach of the appellant's constitutional rights and/or were not otherwise inadmissible in law as being unsafe and unreliable and contrary to fundamental fairness of procedures.

23. In the course of the appellant's detention, between his arrest on 19th January, 2010, and the evening of 15th January, 2010, the appellant made certain important admissions in the course of a number of interviews in Kevin Street garda station. At the trial, the prosecution sought to admit these, and other, inculpatory statements. Their admissibility was challenged by the appellant on a number of grounds. These were the subject of submissions and legal argument in a *voir dire* over a number of days to the effect, (*inter alia*), that recorded admissions made by the appellant in the course of an interview on the afternoon of 13th January, 2010, should be excluded from the jury because a request by the appellant to see his solicitor had not been followed up by the gardaí. At its conclusion, the trial judge ruled as follows:-

> *"I am satisfied to the standard beyond reasonable doubt of the following matters. One, the guards were investigating a most nasty and brutal assassination of two completely innocent people. Two, they had confidential and secret information which they absolutely believed that the accused was the hit man. Three, he was lawfully arrested and was in lawful custody. Four, his rights of access were generously vindicated and, where there was any delay, he was not prejudiced thereby. Four, he knew the score and spoke the language, and when he spoke about being sectioned before he was not speaking about the mental health acts. Five, his rights of access to medical attention was fully vindicated. Six, any interference with his right of access to his family was for necessary and justifiable operational reasons. Seven, thorough and vigorous interrogation was required to get him to engage with the interview process, and any techniques employed were justified by the exigencies of the situation. Eight, it is fanciful to say that he could have been coerced into confessing during an off camera moment. His demeanour and trembling while actually confessing could not have been feigned as a result of any coercion in an off camera moment or otherwise. Nine, I am satisfied to the standard beyond reasonable doubt that the admissions were voluntary ones made without coercion, deception, threats or promises at a point in time when the accused was taking a realistic view of his situation and confronting it. His demeanour and trembling to me rule out any other rational hypothesis. Ten, in reaching my conclusion I have relied primarily on the custody record and on the video record of the interviews. The material contended for, I find it to be admissible. Jury back please."*

24. Prior to giving his ruling, the learned trial judge viewed the relevant video recordings of the interviews.

25. The appellant contends that his request to speak to his solicitor made in the course of an interview between 4:03 p.m. and 4:25 p.m. on 13th January, 2010, which was conducted by Detective Sergeant Whitelaw and Detective Garda Cronin, was not processed and that that failure to contact his solicitor amounted to a denial of his constitutional rights, with the consequence that his inculpatory statement, made less than one hour later, should therefore have been ruled inadmissible by the learned trial judge. As indicated above, the learned trial judge ruled that the appellant's *"rights of access to a solicitor were generously vindicated, and where there was any delay, he was not prejudiced thereby."*

26. In the course of the interview between 4:03 p.m. and 4:25 p.m. on 13th January, 2010, the appellant asked to speak to his mother, and to his solicitor. In the course of this approximately twenty minute interview, the appellant made this request on three occasions. This was accepted as correct by Detective Garda Cronin. The decision was made not to facilitate the requested meeting with the appellant's mother, and no steps were taken to contact the appellant's solicitor. Normal procedure in these circumstances would have been for one of the interviewing gardaí to advise the Member in Charge of the request (to speak to his solicitor), and the Member in Charge would make the necessary contact. The request was not communicated to the Member in Charge, and contact with the appellant's solicitor was therefore not made. It is not suggested that the failure to advise the Member in Charge, and more particularly the failure to contact the appellant's solicitor, was in any way deliberate. In the period between the conclusion of the interview at 4:25 p.m. and the commencement of the interview at 4:50 p.m. (during which interview the inculpatory statement was

made), the appellant was brought to the exercise yard for a cigarette and then returned to his cell for a short period of time where he consumed a bottle of coca cola, all at his request. During this time, the request to see his solicitor was not repeated by the appellant. Towards the end of the interview that had commenced at 4.50 p.m., the request to see his solicitor was repeated by the appellant, when he said *"I might have more to tell yous, I just want to see me ma, see me solicitor and get a bit of exercise".*

27. The appellant's first interview with Detective Sergeant Whitelaw and Detective Garda Cronin took place at 8:40 a.m. on 11th January, 2010, the day following his arrest. In the course of 11th and 12th January, 2010, and up to the interview commencing at 4:03 p.m. on 13th January, 2010, thirteen such interviews took place. In the course of his entire period of detention, the appellant had contact with his solicitor on approximately sixteen occasions; on seven of these occasions, the appellant spoke to his solicitor by telephone, and on nine occasions the appellant had face to face meetings with his solicitor in the garda station. On another occasion the appellant's solicitor came to the garda station to see the appellant, but did not wait to do so. On two or three occasions the appellant declined to speak to his solicitor, who had contacted the garda station by phone. The appellant's first contact with his solicitor was on the day of his arrest, 10th January, 2010. This contact was by telephone and within twenty minutes of his arrival at Kevin Street garda station. Shortly afterwards, the appellant's solicitor visited the garda station and spoke to the appellant. On that occasion the appellant's solicitor was in the garda station for approximately one hour. The following day, 11th January, 2010, the appellant spoke to his solicitor in the garda station on two occasions, and on 12th January, 2010, he spoke to his solicitor on two occasions and met him on one occasion. On 13th January, 2010, the appellant spoke to his solicitor by telephone less than three hours before the commencement of the 4:03 p.m. interview. Approximately one hour or so following the conclusion of the 4:50 p.m. interview, the appellant had a face to face meeting with his solicitor. Later that evening, the appellant had another face to face meeting with his solicitor.

28. Throughout the period of his detention, the appellant frequently invoked his right to silence in the course of a number of interviews. Early on the morning of 13th January, 2010, in the course of an interview, the appellant specifically referred to advice given to him by his solicitor to make no comment. In the course of that interview and a second interview at 10:50 a.m. on that morning, he invoked his right to silence. He again referred to advice given to him by his solicitor to remain silent in the course of an interview at 1:49 p.m. on 13th January, 2010. On 14th and 15th January, 2010, there were a number of occasions when, in the course of interviews, the appellant invoked his right to silence. During an interview which commenced at 7:40 p.m. on 14th January, 2010, and immediately following a consultation with his solicitor, the appellant made admissions and expressed his apologies to the families of the two murdered men in the course thereof.

29. In the course of his submissions, counsel for the appellant referred the court to the judgment of Clarke J. in the case of *The People (Director of Public Prosecutions) v. Gormley and White* [2014] 2 I.R. 591. The facts of that case (insofar as they related to Mr. Gormley) were that Mr. Gormley had been arrested and subsequently interviewed by the gardaí after his solicitor had been contacted, but before the solicitor had arrived at the station and been afforded the opportunity to give legal advice to Mr. Gormley. At p. 634 Clarke J. stated:-

> *"Therefore, whatever may be the situation in other cases, it seems to me that Mr. Gormley's case is clear. He requested a solicitor. He never withdrew that request nor could it be said that he waived his entitlement to timely legal advice in any way. He made statements, which were relied on to significant effect at his trial, before he had an opportunity to obtain the requested advice. For the reasons analysed in detail by the ECtHR in Saludz v. Turkley (App. No. 36391/02) (2009) 49 E.H.R.R. 19 and by the United States Supreme Court in Miranda v. Arizona (1966) 384 U.S. 436, I am satisfied that the entitlement not to self-incriminate incorporates an entitlement to legal advice in advance of mandatory questioning of a suspect in custody. In Mr. Gormley's case that right was clearly denied. He had requested such advice, had not withdrawn any request or otherwise waived his entitlement and yet had been questioned before he had received the necessary advice. No question could arise on the facts of his case as to whether there might be an exception where it proved impractical, through no fault of any of the prosecuting authorities, to provide the advice in question."*

30. Clarke J. went on to state:-

> *"The right to a trial in due course of law encompasses a right to early access to a lawyer after arrest and the right not to be interrogated without having had an opportunity to obtain such advice."*

31. The decision in the Gormley case is a clear authority for the proposition that the right to legal advice before interrogation is an important constitutional entitlement of high legal value and, as stated by Clarke J. in the course of his judgment, that:-

> *"[i]f any exceptions to that right are to be recognised then it would be necessary that there would be wholly exceptional circumstances involving a pressing and compelling need to protect other major constitutional rights such as the right to life."*

32. There are important distinguishing features between the facts in the Gormley case and the facts in the case under appeal. In Gormley, following his arrest Mr. Gormley was informed of his rights, and he gave the gardaí the names of two solicitors. Efforts were made by the gardaí to locate either one of the two solicitors, including visiting the home of the parents of one of the solicitors and leaving a message with his wife. At 3:06 p.m. the solicitor contacted the garda station and confirmed that he would attend at the station shortly after 4 p.m. Notwithstanding that fact, and prior to the solicitor calling to the garda station, Mr. Gormley was interviewed at 3:10 p.m. by the investigating gardaí, in the course of which he made a number of inculpatory admissions. The solicitor later arrived at 4:08 p.m., after the conclusion of the relevant interview. In the case under appeal, the appellant was arrested on 10th January, 2010, at 10:10 p.m. Within half an hour or so, both at the appellant's request and prior to him being interviewed, the nominated solicitor was contacted and spoke to the appellant for five or six minutes. Within an half an hour or so thereafter, the solicitor arrived at the garda station and had a consultation with his client. There was contact between the appellant and his solicitor both by phone and on a face to face basis over the following two to three days, during which the appellant was interviewed on a number of occasions, and in the course of which interviews he invoked his right to silence on some of those occasions. By the time the appellant was interviewed on the afternoon of 13th January, 2010, he had been visited by his solicitor and had spoken to him on a number of occasions for varying periods of time. It is certainly the case that in the course of 10th, 11th, 12th and in the early part of 13th January, 2010, the appellant had had regular contact with his solicitor. No requests to see his solicitor were denied during this period of time. To this very important extent, there is a significant difference in the circumstances that were present and evident in the case under appeal, as compared to the *Gormley* case.

33. It is evident that by the afternoon of 13th January, 2010, the appellant had received comprehensive legal advice from his solicitor and had understood that advice. On many occasions during this period, the appellant invoked his right to silence and occasionally referred to the fact that he had received advice from his solicitor to so do. He was not in the position of an individual who was

unaware of his legal rights, particularly his right to remain silent and to make no comment in response to questioning by gardaí. As commented by the learned trial judge, the appellant "*knew the score and spoke the language*".

34. Undoubtedly, having regard to the circumstances in this case, the appellant's request to see his solicitor, made by him in the course of the 4:03 p.m. interview on 13th January, 2010, should have been conveyed by the interviewing gardaí to the Member in Charge, and arrangements should have been made to contact the solicitor. Regrettably, this was not done. Similar requests had been complied with on a number of occasions previously, and indeed subsequently. There is nothing to suggest, and it certainly does not appear to be the case, that the failure to follow up on the appellant's request to see his solicitor was in any way deliberate on the part of the gardaí.

35. This Court is satisfied that by the afternoon of 13th January, 2010, the appellant had had numerous opportunities to engage with his solicitor and that he had done so quite extensively; he had received legal advice, including his legal entitlement to remain silent at interview, and he had acted upon such advice. It could not therefore be said that the failure to contact his solicitor on this single occasion amounted to a breach of his constitutional rights such as would imperil the admissibility of the statement made by him in the course of the afternoon of 13th January, 2010.

The complaint of oppression

36. The appellant also alleges that the trial judge's ruling upon his general complaint of oppression, which complaint was based upon the circumstances and manner in which he was interrogated, was incorrect both as to the facts and in law, and that evidence of the admissions made by him on the 13th of January, 2010, and subsequently, ought properly to have been excluded from the jury on the grounds that they were not voluntary.

37. In particular, it was submitted that the appellant had been placed in an extreme position of pressure throughout his detention. It was contended that the conditions of the appellant's detention were such that any admissions produced during it were in circumstances falling "*below the required standards of fairness*", which were identified in *The People (Director of Public Prosecutions) v. Shaw* [1982] I.R. 1 at p. 61 as being the litmus test in such matters.

38. The questioning of the appellant took place during 26 interviews in total, conducted over five days from the 11th of January, 2010, until the 15th of January, 2010. Based on the transcript of the trial, and a chronology helpfully appended to the respondent's written submissions, the course of the interviewing process may be synopsised as follows:-

> Interview No. 1: 11/01/2010 8:40 a.m. – 10:59 a.m.
>
> The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. During this interview, the appellant relies on his right to silence in stages and denies any involvement in the murders of Mr. Molyneaux and Mr. Mooney. He tells the interviewers to fuck off.
>
> Interview No. 2: 11/01/2010 11:15 a.m. – 12:35 p.m.
>
> The appellant is interviewed by Detective Garda Williams and Detective Garda Donnelly. During this interview the appellant relies on his right to silence.
>
> Interview No. 3: 11/01/2010 2:20 p.m. – 3:50 p.m.
>
> The appellant is interviewed by Detective Garda Des Rogers and Detective Sergeant Tallon. In this interview the appellant accepted that he had been in 4G Pearse House before. He denied involvement in the murders and said that on that day he had walked from York House (where his father resided) through Temple Bar to Amiens Street. The appellant also answered questions about shooting his horse with a Dillinger the previous Friday.
>
> Interview No. 4: 11/01/2010 4:20 p.m. – 6:35 p.m.
>
> The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. During this interview the appellant says that his partner, Jennifer Browne, drove him into town on the 10th January, 2010. He relies on his right to silence in answer to certain questions, but he also says that, although he would have been breaking an exclusion order to which he was subject, he was in Sheriff Street at the time of the murders with Christopher McCarthy, Leroy Howard, Adrian Barrett, Stephen Byrne and Joanne Farrell.
>
> Interview No. 5: 11/01/2010 10:30 p.m. – 11:50 p.m.
>
> The appellant is interviewed by Detective Garda Des Rogers and Detective Sergeant Tallon. During this interview the appellant relies on his right to silence mostly but does say that he would be surprised if someone said he was at 4G Pearse House at the time of the murders.
>
> Interview No. 6: 12/01/2010 8:35 a.m. – 10:17 a.m.
>
> The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. During this interview the appellant relies on his right to silence.
>
> Interview No. 7: 12/01/2010 10:50 a.m. – 12:32 p.m.
>
> The appellant is interviewed by Detective Garda Williams and Detective Garda Donnelly. During this interview the appellant relies on his right to silence.
>
> Interview No. 8: 12/01/2010 2:28 p.m. – 4:13 p.m.
>
> The appellant is interviewed by Detective Garda Des Rogers and Detective Sergeant Tallon. During this interview the appellant is shown CCTV from 4G Pearse House, and he says that at the time of the murder he was at Sheriff Street. He also says that he hid his phone in the back garden because he thought that his house was going to be raided from seeing Garda cars outside his house as it had happened on previous occasions. The appellant is asked why he does not wish to co-operate with the investigation, and the appellant replies that he is 'acting on the advice of my solicitor, he told me not to answer any questions'.

Interview No. 9: 12/01/2010 4:38 p.m. – 6:32 p.m.

The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. During this interview the appellant relies on his right to silence.

Interview No. 10: 12/01/2010 7:56 p.m. – 8:35 p.m.

The appellant is interviewed by Detective Garda Williams and Detective Garda Donnelly. During this interview the appellant is questioned about the alibi he provided during earlier interviews putting him in the Amiens Street/Sheriff Street area in the company of other people at the time of the murders.

Interview No. 11: 12/01/2010 10:57 p.m. – 11:43 p.m.

The appellant is interviewed by Detective Garda Des Rogers and Detective Garda Philip Byrne. During this interview the appellant is shown CCTV from Spar and York House. For the most part, he relies on his right to silence.

Interview No. 12: 13/01/2010 08:33 a.m. – 10:24 a.m.

The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. During this interview the appellant is questioned about the comments he made to his mother at a court hearing the previous evening. He replies the 'corporation has me excluded from the area, and the boys would think they were doing me a favour by not telling the truth'. He says that if he breaks this exclusion order then his 'ma gets fucked out of the house'. The appellant says at one point that he 'is sticking to my solicitor's advice and have no comment to make'.

Interview No. 13: 13/01/2010 10:50 a.m. – 12:37 p.m.

The appellant is interviewed by Garda O'Donovan and Garda Daly. During this interview the appellant is questioned about the comments he made to his father the previous evening prior to a court hearing. The appellant relies on his right to silence.

Interview No. 14: 13/01/2010 1:49 p.m. – 3:55 p.m.

The appellant is interviewed by Detective Garda Williams and Detective Garda Donnelly. During this interview the appellant confirmed that he had been advised to remain silent by his solicitor. He also tells the interviewers that he had previously been 'on sections in Ballymun and Blanchardstown and they have been able to tell me what's on my phone without having my phone'. At the conclusion of the interview, the appellant is asked if the notes are correct, and the appellant replies that he wants 'to change a few things, on all the questions that I answered I now want to say no comment on the advice of my solicitor'.

Interview No. 15: 13/01/2010 4:03 p.m. – 4:25 p.m.

The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. During this interview a statement from Thomas Nalty is read to the appellant. The appellant immediately replies that it is 'lies' and that Mr. Nalty believes the appellant stole €1,000 from him. He requests to stop the interview. He requests some fresh air and exercise as he feels sick. He also asks to speak to his mother and to speak to his solicitor. Thomas Nalty is deceased at the time of the appellant's trial, but his statement which was read to the appellant purports to set out that Mr. Nalty was present at 4G Pearse House when the appellant shot Mr. Mooney and Mr. Molyneaux. The request for a solicitor is not communicated to the Member in Charge, Sergeant Sourke.

Interview No. 16: 13/01/2010 4:50 p.m. – 5:23 p.m.

The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. The appellant made clear and concise admissions in relation to the double murder. Toward the end of this interview, the appellant asks to see his mother and says 'I might have more to tell yous, I just want to see me ma, see me solicitor and get a bit of exercise'.

Interview No. 17: 13/01/2010 9:00 p.m. – 10:06 p.m.

The appellant is interviewed by Detective Garda Des Rogers and Detective Sergeant Tallon. During this interview the appellant seeks to retract his earlier admissions due to comments made off camera, and says he has no further comment to make on the advice of his solicitor. He says the only reason he made the admissions was to see his mother, ensure his partner would be released and that he thought he might be able to see his child as well. He alleges that gardaí had put him under "too much pressure". He also says at the end of the interview that he had meant to say "duress instead of pressure".

Interview No. 18: 13/01/2010 11:43 p.m. – 11:56 p.m.

The appellant is interviewed by Detective Garda Des Rogers and Detective Sergeant Tallon. During this interview the appellant relies on his right to silence.

Interview No. 19: 14/01/2010 8:49 a.m. – 10:01 a.m.

The appellant is interviewed by Detective Garda Donnelly and Detective Garda Williams. During this interview the appellant relies on his right to silence. In addition, he says he was acting under duress when he made the earlier inculpatory statement. In response to being asked how his mother feels about 'all of this', he threatens to 'slap the head' of the interviewers before apologising.

Interview No. 20: 14/01/2010 10:23 a.m. – 10:50 a.m.

The appellant is interviewed by Detective Garda Donnelly and Detective Garda Williams. The appellant relies on his right to silence.

Interview No. 21: 14/01/2010 10.53 a.m. – 12.22 p.m.

The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Cronin. At 12:05 p.m. Detective Sergeant Whitelaw informs Sergeant Millea that the appellant had requested a doctor, and Dr. Maloney is contacted. The appellant relies on his right to silence and confirms again that was 'on the advice of my solicitor'.

Interview No. 22: 14/01/2010 2:40 p.m. – 4:15 p.m.

The appellant is interviewed by Detective Garda Des Rogers and Detective Sergeant Tallon. During this interview the appellant makes further full admissions in relation to his involvement in the double murder and draws a map of his route leaving Pearse House. At 3:53 p.m. the appellant leaves the interview room as he says that he is feeling unwell and is provided with a cup of water. He returns when he says he feels better and wants to return to the interview. The appellant also requests a doctor, and he later sees Dr. Maloney at 5:45 p.m., who pronounces him fit to be further interviewed.

Interview No. 23: 14/01/2010 6:21 p.m. – 7:21 p.m.

The appellant is interviewed by Detective Garda Donnelly and Detective Garda Williams. During this interview the appellant again makes full admissions in relation to the double murder. This interview is interrupted at 7:21 p.m. when Sergeant Sourke informs the appellant that Mr. Ruane has arrived at the station, and he is brought to the doctor's room for a consultation. The appellant then consults with Mr. Ruane in the Doctor's room.

The interview continues after the appellant speaks with his solicitor, and the appellant continues to make admissions. He accepts exhibits that are put to him. The appellant also apologises to the families of Mr. Mooney and Mr. Molyneaux.

Interview No. 24: 14/01/2010 8:45 p.m. – 9:37 p.m.

The appellant is interviewed by Detcetive Sergeant Whitelaw and Detective Garda Cronin. The appellant continues to make admissions in relation to the murder and confirms CCTV that is shown to him and identifies himself on same. He states that he is stressed and wants to go to bed.

Interview No. 25: 15/01/2010 10:09 a.m. – 10:38 p.m.

The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Byrne. During this interview the appellant retracts the later admissions. He says he was told what to say by the gardaí. He tells the interviewers the gardaí asked him to enter witness protection.

Interview No. 26: 15/01/2010 10:09 a.m. – 10:38 p.m.

The appellant is interviewed by Detective Sergeant Whitelaw and Detective Garda Byrne. The appellant continues to dispute his admissions and alleges the gardaí told the Star newspaper that the appellant was entering the Witness Protection Programme. He says his solicitor was informed about an article in the Star about the witness protection programme but would not say anymore.

39. The basis for the allegation of oppression, which the appellant contends was intended to break or sap his will, is elaborated upon in the written submissions filed on his behalf. In addition to re-iterating the complaint that the controversial admissions followed upon a request made for access to, and advice from, his solicitor which was denied (an issue we have already addressed at an earlier stage of this judgement), the appellant makes the following further specific complaints.

40. It is alleged that his interrogators placed him under undue pressure by drawing to his attention that his partner, Jennifer Browne, was also in custody; by suggesting that he had dragged her into it; and by suggesting that if he would "*take the rap*", he could "d*rag her out of it".* It was further complained that inappropriate and excessive pressure was exerted upon him when, in response to being asked whether Jennifer Browne had had any involvement, to which he had asked rhetorically *"[d]o you think I would involve me girlfriend, especially a pregnant girlfriend?*" (and had then gone on to expressly assert that he had not done so), it had been put to him: "*We know you did, the fact we know you did*", and he was then urged to "*Start thinking about that, Gary, that she's pregnant, you're not that bad , Gary, for God's sake man, take the rap."*

41. He further alleges that yet another aspect of generally oppressive behaviour by his interrogators was their refusal to respect his lawful assertion of his right to silence, relying in that regard on the advice of his solicitor. It was asserted in cross-examination, and not denied by the garda to whom it was put, that when the appellant had attempted to invoke his right to silence (and in doing so had offered the explanation that he was acting on the advice of his solicitor), this had elicited the response from one of his interviewers that *"I don't give a fuck whose advice you're acting on, if you're acting on the advice of my hairy fucking goat".*

42. The appellant further points to multiple other instances of robust remarks by gardaí to the appellant in the course of the controversial interviews urging him to confess.

43. Further, the appellant also relies upon references by gardaí, from an early stage, to what "*Eamon*" would think of the appellant's position. This, it was submitted, was ostensibly a reference to an "*Eamon Dunne",* who was a reputed gangland figure, and it was submitted that this was designed to put pressure on the appellant.

44. It was further submitted that yet another aspect of the generally oppressive circumstances in which the appellant was interviewed was that he was being held incommunicado for long periods of his detention on foot of a decision by Superintendent O'Gara and not the Member in Charge of the garda station.

45. It was also submitted that yet further inappropriate pressure was applied to the appellant in the course of the said interviews by suggestions that he had potentially landed his family in trouble (the implication was not with the police, but with unnamed third parties), that he should "*be a man and stand up and take it like one*", that his mother could lose her home, and that family members might be arrested or subjected to garda inquiries in the context of the ongoing investigation.

46. Responding to these complaints, counsel for the respondent has pointed out, *inter alia*, that the submissions made do not in any way properly address why the trial judge was incorrect in not ruling out the three interviews on the 14th January, 2010, (interviews

22, 23, and 24) where the appellant made full, clear and concise admissions in relation to the double murder. The difficulty for the appellant in this regard is that he complains that the fifth interview on the 13th January (interview 16) should not have been admitted as evidence given that he had asked at the end of the previous interview (interview 15) to have access to a solicitor in order to seek advice on a specific issue; yet, following on from this, he had had three consultations with his solicitor in Kevin Street garda station. The first was between 6:24 p.m. and 6:50 p.m. on the 13th of January, the second was between 8:20 p.m. and 8:44 p.m. on the same date, and the third was from 7:21 p.m. to 7:40 p.m. on the 14th of January. During this period he explained in interview 17 why he had made the earlier admissions and stated that they were not true. He was interviewed on several further occasions after he had sought to retract his earlier admissions, and he relied on his right to silence. He was also not afraid to make threats to the interviewers, as occurred in interview 19. He then makes the critical further admissions in interviews 22, 23 and 24. It was submitted that it was of significance that during one of the interviews where he makes admissions on the 14th January, 2010, (interview 23), the appellant's solicitor arrived at the station and consulted with his client who then returned to the interview and continued making inculpatory statements. Moreover, shortly before this interview, the appellant was also seen by Dr. Maloney who advised that he was fit for interview, and he was described in the custody record as *'relaxed'* with *'no problems'*. It was submitted that it is difficult to see in any manner how the appellant's will was broken as is simply asserted in general terms. There was simply no evidence before the trial judge to suggest any such *'breaking'* or *'sapping of will'*.

47. With respect to the complaints concerning the manner in which the interviewing of the complainant was conducted, it was submitted that the trial judge was right to rule as he did. The judge had viewed the video recordings of all of the interviews and, having observed the appellant's conduct and demeanour, had been satisfied beyond reasonable doubt that the admissions "*were voluntary ones made without coercion, deception, threats or promises at a point in time when the accused was taking a realistic view of his situation and confronting it*." It was submitted that there was objective evidence supporting the view taken and that, in those circumstances, both the trial judge's assessment and ruling were unassailable.

48. In the context of the general ground of oppression being put forward by the appellant, reliance had been placed by his counsel on *The People (Director of Public Prosecutions) v. McNally* (1981) 2 Frewen 43, which adopts the description of oppressive questioning that was set out in *R v. Pager* [1972] 1 All E.R. 1114 (at p. 1119):-

> *" ...questioning which by its nature, duration or other attendant circumstances (including the fact of custody) excites hopes (such as the hope of release) or fears, or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have stayed silent."*

49. However, the trial judge had found as a fact on the evidence before him that *'he knew the score and spoke the language and he spoke of about being sectioned before, he was not speaking about the Mental Health Acts*'. Again, it was submitted, this Court should not interfere in circumstances where there was objective evidence capable of supporting the trial judge's said finding.

50. Counsel for the respondent further referred to the following remarks of O'Flaherty J, when giving judgment in the former Court of Criminal Appeal in the case of *The People (Director of Public Prosecutions) v. McCann* [1998] 4 I.R. 397, where he stated (at p. 410):-

> *" …the very word 'interrogation' means more than some form of gentle questioning and provided there are no threats or inducements or oppressive circumstances then the Gardaí are always entitled to persist with their questioning of a suspect."*

51. Counsel for the respondent points out that it was never contended at trial that the appellant was mistreated during the course of his interviews. It was submitted that the reality of the evidence that was presented to the trial judge was that the conduct of the investigating Gardaí towards the appellant did not amount to oppression as it is to be understood from the case law on the issue. The appellant in the instant case adopted a stance during interviews, and having regard to this the manner of interrogation adopted by the gardaí was perfectly reasonable and legitimate.

52. It was submitted that one has only to look at the attitude adopted by Mr. Howard towards the end of the third interview on the 13th January, 2010, to see that this was a person who, when making admissions, was doing so in a voluntary manner and as a result of 'taking a realistic view of his situation and confronting it':-

> *"Question: What do you mean by that?*
>
> *Answer: I shot him in the back of the head, then went over to Paddy, fired a shot at him. I think he said, 'Get a doctor.' I tried to shoot again. The gun was jammed so I fixed it and put one into the side of his head. Shot him in the side of his head and then left.*
>
> *Question: Did you take the gun with you?*
>
> *Answer: Yeah, I didn't want to do that crime, yous don't know how much pressure I was put under to do it. I didn't want to do it because I knew the two of them very well.*
>
> *Question: Who do I mean by the two of them?*
>
> *Answer: Paddy and Brendan, I didn't want to do it but it was either me plus me child or else them.*
>
> *Question: Is that what you were threatened with?*
>
> *Answer: Yeah, there was a gun put in my mouth then pointed out me child and I was told if I wanted to see his next birthday and live to see it meself I had to go down and shoot Brendan in Paddy's and shoot Paddy cause he would have been a witness.*
>
> *Question: Why was Brendan a target?*
>
> *Answer: Because he was on CCTV outside somebody's house on a date in October and that person believed that Brendan and the other person that was with him were there to shoot him, but didn't because there were kids at the hall door and they went straight past and were seen a number of other times after that walking around on the cameras of this person's house and he believed that they were there to do one thing and that was to kill him.*

Question: Remember the video you were shown of the gun man going into the flat, was that you?

Answer: Yeah.

Question: What were you wearing when you went in?

Answer: Black trousers with green stripes, black Nike runners, blue and black jacket.

Question: Had you changed your clothes from earlier in the day?

Answer: Yeah.

Question: And did you change back again?

Answer: Yeah.

Question: Where are those clothes now?

Answer: I don't know.

Question: Did you go over on a push bike?

Answer: Yeah.

Question: What route did you take on that date?

Answer: Down Gill Street, I think that's what it's called, then across the new bridge on the quays, turned right on to the quays, went down to Windmill Lane, and took the left and then the left, took the right at the back of the EUROSPAR, don't know the name of that road, left me bike on Crane Street, went into the flats and done the job. Can I see me ma now?

Question: We'll see what we can arrange?

Answer: ***I might have more to tell yous, I just want to see me ma, see me solicitor and get a bit of exercise.***

Question: I've read these notes over to you, do you wish to make any additions or alterations to them, Gary?

Answer: No.

Question: Are they correct?

Answer: Yeah.

Question: Will you sign them?

Answer: Yeah."

(Underlining by this Court)

53. It was submitted that this excerpt from the appellant's interview illustrates in a very vivid manner that he was very much in control of himself and not under any influence as suggested in his submissions. It was submitted that of crucial significance was the appellant's indication that he *'might have more to say'* but wanted to see his mother and solicitor first.

54. Furthermore, counsel submitted, it is clear that none of the matters complained of by the appellant led to the confessions made. Mr. Howard's attitude in general in response to the questions posed to him is not one of *'crumbling'* , but in fact far from it. The evidence presented established that when Mr. Howard was interrogated and the matters complained of were put to him (or raised as stated in the submissions), he offered denials, refutations or relied on his right to silence, and sometimes threatened and abused the interviewing gardaí. Counsel for the respondent submits that it is beyond reasonable doubt that the conduct complained of did not have any coercive effect on the appellant.

55. It was further submitted that if, which the respondent did not accept, any aspects of the conduct of the interviewing Gardaí had in fact been oppressive, any such oppression would have dissipated by the time the appellant made his admissions.

56. Insofar as there were references to the detention of Jennifer Browne, to him dragging other persons into it, and to his family potentially being in trouble, these occurred during interview no. 9 on the 12th of January, 2010. The respondent relies on the finding of the trial judge in his ruling at end of the *voir dire*. The trial judge had observed the appellant's recalcitrant attitude and demeanour during the interview in question on video, and his said attitude is in any case apparent from the transcript. The appellant had offered both denials and refutations in respect of matters put to him, and at various points had smirked at questions put to him, or had been abusive: *inter alia*, telling the interviewers to "*Fuck off*." Moreover, the first substantive admissions made by the appellant were not made until seven interviews later.

57. With regard to the reference to "*Eamon*" during the questioning of the appellant, counsel for the respondent submitted that it is of fundamental importance to note how this line of questioning came about. It was the appellant himself who raised the issue of there being an 'Eamon' in the very first interview with the gardaí. The trial judge heard evidence of the following exchange in interview:-

"Question: Gary, why shoot dead someone you know and got on with, how do you feel?

Answer: I don't know, I didn't shoot anybody.

Question: Are you feeling any remorse?

Answer: Why should I, I didn't do anything, there are two men dead, two men I knew well.

Question: Why did you kill them so?

Answer: I didn't kill anybody.

Question: So, why not help us?

Answer: Look, Brendan was an IRA head and if he got whacked I could get shot, whacked if Eamon can get statements.

Question: Who is Eamon?

Answer: I don't know who you're talking about.

Question: Was it Eamon who told you to do the killings?

Answer: Who's Eamon? No one told me to do the killings, I didn't do anything.

Question: Gary, we know you did the shooting, we know how you set it up, what we want to know is why, were you under threat yourself to do the shooting?

Answer: Nothing to say, I was under threat, but not to do the shooting.

Question: Who were you threatened by?

Answer: No reply."

58. Later, it was put to the appellant:-

"Question: Was it Eamon Dunne that would get ye whacked as you mentioned him earlier?

Answer: He's not the only Eamon Dunne I know. "

59. The appellant, having raised the issue of there being an 'Eamon', was then asked on a number of further occasions questions relating to this issue and whether he was threatened by this *'Eamon'* or *'Eamon Dunne'*. It was submitted that it was fanciful to suggest that the appellant was put under some kind of pressure as a result of the references to *'Eamon'* , when it was the appellant himself who had raised 'Eamon' as an issue at a very early stage.

60. Counsel for the respondent sought to similarly contextualise the references, of which the appellant now complains, to his mother possibly losing her home. Again, the point is made that this suggestion in fact came from the appellant in the first instance. In the interview in which it occurred, the appellant was being asked about comments he had shouted to his mother, during a visit to court:-

"Question: When you shouted at your ma in court, outside the court to tell her to tell the boys to say you were with them, why did you say this?

Answer: The Corporation has me excluded from the area, and the boys would think they were doing me a favour by not telling the truth...

Question: This exclusion order Gary, what happens if you break it?

Answer: Me ma gets fucked out the house.

Question: Are you happy that your ma is fucked out of her house?

Answer: No comment.

Question: Are you happy that your ma is fucked out of her house?

Answer: No comment.

Question: How long is she living there?

Answer: No comment.

Question: Why the exclusion order?

Answer: They found 13 Es in the house.

Question: And they were yours?

Answer: Yeah."

61. It was clear that the subject of his mother possibly being put out of her home by Dublin City Council was introduced by the appellant himself, that he had then been asked legitimate questions about that, and that there was no attempt to threaten him, pressurise him or coerce him in any way.

62. Finally, counsel for the respondent also sought to deal with the complaint that the curtailment of personal visits had been used to oppress the appellant. This complaint is refuted by the respondent, who contends that the decision to curtail personal visits was entirely justifiable for operational reasons in connection with the investigation. It was submitted to be of significance that in the interviews leading up to the appellant being brought to the Criminal Courts of Justice in connection with an application to have his detention further extended by a judge, he had offered an alibi stating that he was with certain persons on Amiens Street and Sheriff

Street in Dublin around the time of the shooting. After the court hearing, the appellant was overheard saying to his mother "*Tell Adam Barrett, Stephen Byrne, Joanne Farrell and Christopher McCarthy that I was with them on Sunday night*". These were in fact the comments that had provoked the questioning quoted in para. 60 above. The alibi provided was completely false, and it was clear that the appellant was making efforts by communicating with his mother to encourage others to support that false alibi. This demonstrated that there was a serious risk that the investigation would be compromised by further contact between the appellant and his mother during his detention, and justified the decision to curtail visits to the appellant while he was in detention. Evidence given at the trial concerning the making of these comments was not challenged on behalf of the appellant.

63. In addition, counsel for the respondent points out that a visit by the appellant's mother was in fact facilitated under supervision on the 14th January, 2010, (which was before the later admissions). During this visit the appellant and his mother openly discussed what he might say, and her response was *'All I want to say is, I'd rather have a son that's murdered than a rat'*.

64. This Court has carefully considered the submissions made by both sides. It is clear that some of the questioning of the appellant was robust. However, we are satisfied that the manner of questioning was not oppressive or unfair. The appellant was a suspect in a double murder investigation, and the gardaí were entitled to question him robustly, tenaciously and comprehensively. We attach much significance to the fact that each of the twenty six interviews with the appellant were recorded on video and that the trial judge viewed the relevant video tapes. While it was open to this Court to repeat that exercise, we have not found it necessary to do so in circumstances where it is clear from the transcript what the attendant circumstances were, and what the context of each of the lines of questioning in respect of which the appellant makes complaints was. The trial judge's ruling on the issue of oppression was clear and concise, and we are satisfied that it was justified on the evidence he had before him. We therefore also reject the ground of appeal based upon alleged oppressive and unfair questioning.

(iii) The ground of appeal relating to the authorisation of the extension of the appellant's detention

65. Ground no. 6 of his Notice of Appeal asserts that the trial judge erred in law in determining that there was no requirement that a garda superintendent who was independent of the investigation in respect of which the appellant was arrested ought to receive any application for, and subsequently authorise, an extension of the detention of the appellant whilst he was in custody in Kevin Street garda station.

66. At the trial, counsel for the appellant had argued in the course of a *voir dire* that the extension at 5:35 a.m. on the 11th of January, 2010, of the appellant's detention under s. 50 of the Act of 2007 for a further eighteen hours from 6 a.m. by Detective/Superintendent O'Gara, who was not independent of the investigation, was unlawful and not valid on that account.

67. The appellant complains that the trial judge did not address this issue at all in his ruling, or that, if he did, he failed to give any reasons for his decision in circumstances where the appellant was entitled to reasons.

68. It bears remarking upon that this issue was one of multiple issues raised in the course of a lengthy *voir dire* that commenced on Day 5 of the trial and lasted until Day 17, when the trial judge gave his ruling. The ruling has already been quoted in full at para. 23 of this judgment. As can be seen, the trial judge rejects all of the issues raised on the *voir dire* in a rolled up ruling in which he sets out ten discrete reasons for doing so. It is true that the trial judge does not isolate for specific attention the claim that Superintendent O'Gara's extension was unlawful and invalid in circumstances where he was not independent of the investigation. However, he did express himself satisfied that the appellant "*was lawfully arrested, and was in lawful custody.*"

69. While the ruling was certainly terse and brief, neither counsel for the defence nor, for that matter, counsel for the prosecution saw fit to complain that any matter had been overlooked, as it would have been their duty to do if they had believed that to be the case. As to the sufficiency of the reasons offered, counsel for the defence neither made any complaint in that regard nor requested any elaboration.

70. We consider that a number of further comments require to be made. Before doing so, however, it may be instructive to set out the terms of s. 50 of the Act of 2007 (to the extent relevant) as well as relevant provisions of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. 119 of 1987) (hereinafter "the Regulations of 1987").

71. Section 50 of the Act of 2007 (to the extent relevant) provides:-

" *(1) This section applies to—*

> *(a) murder involving the use of a firearm or an explosive,*
>
> *(b) murder to which section 3 of the Criminal Justice Act 1990 applies,*
>
> *(c) an offence under section 15 of the Act of 1925*
>
> *(d) an offence under section 15 of the Non-Fatal Offences against the Person Act 1997 involving the use of a firearm, or*
>
> *(e) an offence under Part 7 of the Criminal Justice Act 2006*

(2) Where a member of the Garda Síochána arrests without warrant, whether in a Garda Síochána station or elsewhere, a person (in this section referred to as "the arrested person") whom he or she, with reasonable cause, suspects of having committed an offence to which this section applies, the arrested person—

> *(a) if not already in a Garda Síochána station, may be taken to and detained in a Garda Síochána station, or*
>
> *(b) if he or she is arrested in a Garda Síochána station, may be detained in the station,*

for such a period or periods authorised by subsection (3) if the member of the Garda Síochána in charge of the station concerned has at the time of the arrested person's arrival at the station or his or her arrest in the station, as may be appropriate, reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence.

(3) (a) The period for which a person may be detained pursuant to subsection (2) shall, subject to the provisions of this subsection, not exceed 6 hours from the time of his or her arrest.

(a) A member of the Garda Síochána not below the rank of superintendent may direct that a person detained pursuant to subsection (2) be detained for a further period not exceeding 18 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

(b) A member of the Garda Síochána not below the rank of chief superintendent may direct that a person detained pursuant to a direction under paragraph (b) be detained for a further period not exceeding 24 hours if he or she has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.

…."

72. Regulation 4 of the Regulations of 1987 contains the following provisions with respect to a "*Member in Charge*":-

"*Member in charge*

(1) In these Regulations 'member in charge' means the member who is in charge of a station at a time when the member in charge of a station is required to do anything or cause anything to be done pursuant to these Regulations.

(2) The superintendent in charge of a district shall issue instructions in writing from time to time, either generally or by reference to particular members or members of particular ranks or to particular circumstances, as to who is to be the member in charge of each station in the district.

(3) As far as practicable, the member in charge shall not be a member who was involved in the arrest of a person for the offence in respect of which he is in custody in the station or in the investigation of that offence.

(4) The superintendent in charge of a district shall ensure that a written record is maintained in each station in his district containing the name and rank of the member in charge at any given time."

73. It will be noted that while sub-regulation (3) of regulation 4 of the Regulations of 1987 does impose a requirement of independence with respect to the Member in Charge, it is not an absolute requirement, but one that is to be adhered to "as far as practicable". Moreover, neither the Act of 2007 nor the Regulations of 1987, nor for that matter the Criminal Justice Act 1984 (the Act of 1984) under which the said regulations were first promulgated, impose any requirement that in order to validly extend a detention a superintendent of An Garda Siochána, or higher officer, should be independent of the investigation.

74. The custody schemes provided for in both the Act of 1984 and the Act of 2007 (and also their analogue in the custody scheme under Criminal Justice (Drug Trafficking) Act 1996) allow for the lawful abrogation of the right to liberty of an arrested person, which is otherwise guaranteed by Article 40.4 of the Constitution. Although the right to liberty is not absolute, and although it may be lawfully abrogated, it is clear from various authorities, including the seminal case of *Heaney v Ireland* [1994] 3 I.R. 593 (concerning interference by the Oireachtas with constitutionally protected rights), that there requires to be proportionality between any proposed interference with an individual's constitutionally protected right to liberty and the public interest, the protection of which is said to require such an interference. Any such interference should be to the minimum extent necessary to achieve the legitimate aim being pursued and, further, it is desirable that there should be adequate safeguards against possible abuses.

75. The argument advanced by the appellant is built around that which had proved successful before the Supreme Court in *Damache v. Director of Public Prosecutions* [2012] 2 I.R. 266. In the *Damache* case, s. 29(1) of the Offences Against the State Act 1939 was found to be repugnant to the Constitution on the grounds that it permitted a search of the appellant's home on foot of a search warrant which was not issued by an independent person. The Supreme Court held that, save in extraordinarily urgent or otherwise exceptional circumstances, the constitutional inviolability of the home was such that the issuance of a warrant to search a dwelling should adhere to fundamental principles, encapsulating an independent decision maker who was able to assess the conflicting interests of the State and the individual in an impartial manner, and in a process that may be reviewed.

76. By analogy, it is argued in the present case that any garda officer considering either an initial detention or any extension to an existing detention of an arrested person under s. 50 of the Act of 2007 should be independent of the investigation, in order to be able to assess the conflicting interests of the State and those of the arrested person in an impartial manner.

77. While this argument is superficially attractive at one level, it seems to this Court that it is flawed in that it assumes that in the case of any proposed authorisation by the Oireachtas of an interference with a constitutionally protected right, the only effective safeguard against inappropriate use, or possible abuse, of the powers to be so created will be to confine their exercise to a decision maker who is independent. We do not consider that such an assumption is justified, and we are satisfied that the facts underlying the decision in *Damache v. Director of Public Prosecutions* [2012] 2 I.R. 266 were very different from those of the present case and that that case is legitimately distinguishable.

78. In so far as the right to liberty is concerned, a person detained in accordance with the custody schemes variously provided for in the Act of 1984, the Act of 1996 and the Act of 2007 has the benefit of a great many safeguards.

79. First, in all of these schemes the initial detention is authorised by the Member in Charge, who must be satisfied that there are reasonable grounds for believing that the suspect's detention is necessary for the proper investigation of the offence for which he or she has been arrested. If the Member in Charge is so satisfied, he authorises the suspect's detention for a period not exceeding the initial period provided for in the relevant legislation (6 hours in the case of s. 4 of the Act of 1984, s. 2 of the Act of 1996 and s. 50 of the Act of 2007). It is important to appreciate that detention is not authorised by the Member in Charge for any fixed period. It is detention for a period not exceeding a relevant fixed period.

80. Secondly, the Member in Charge is required in so far as is practical to be, and in this case actually was, independent of the investigation.

81. Thirdly, the Member in Charge's role includes informing the detainee of the basis on which he is being detained, advising the

detainee at the time of his detention concerning his rights both orally and in writing, opening and maintaining a written record concerning the detainee's custody, and maintaining throughout the detainee's detention on overall supervisory role with respect to his/her treatment while in custody. It is uncontroversial that all of this in fact occurred in the present case.

82. Fourthly, in each of the analogous statutory custody schemes alluded to, it is expressly provided that if at any time during the detention of a person pursuant to the relevant provision *"there are no longer reasonable grounds for believing that his or her detention is necessary for the proper investigation of the offence to which the detention relates, he or she shall be released from custody forthwith"* unless he or she is to be charged, in which case the person must be brought before a court "as soon as may be" (subject to a qualifier contained in all of the said custody schemes (but not relevant to the circumstances of the present case) providing for the person's possible further detention in appropriate circumstances for the proper investigation of another offence).

83. Fifthly, amongst the rights about which the detained person must be advised is his right to consult a solicitor.

84. In the present case, the appellant having been so advised, availed of his right in that regard and consulted on numerous occasions with his solicitor in the course of his detention. In particular, following his initial detention at 10:29 p.m. on the 10th of January, 2010, he spoke by telephone to his solicitor, Mr. Ruane, at 10:37 p.m. Mr. Ruane subsequently visited him at Kevin Street garda station, and they had a conversation in private in the doctor's room from 11:51 p.m. to 12:05 a.m. (on the 11th of January, 2010).

85. Sixthly, under each of these broadly similar custody schemes, it is possible for there to be an extension, or a number of extensions, of the period of time during which the prisoner may be detained, up to a legislatively specified maximum period and subject in all cases to the continued existence of reasonable grounds for believing that the prisoner's detention remains necessary for the proper investigation of the offence for which he/she was arrested. Moreover, each application for an extension of the prisoner's detention must, up to a certain point in time, be authorised by a garda officer of legislatively specified minimum rank, and beyond that point in time (if continued detention is possible under the scheme) it may only be authorised by a judge.

86. In the case of detention under s. 50 of the Act of 2007, the Member in Charge may authorise an initial detention for up to six hours. That initial six hour period may be extended in the first instance for up to a further eighteen hours, provided that an officer of superintendent rank or higher authorises it. Thereafter, it may be extended for a further twenty four hours provided that, once again, an officer of chief superintendent rank or higher authorises it. However, no prisoner may be held beyond forty eight hours in total under s. 50 solely on the basis of garda decisions. The legislation goes on to provide that to have a prisoner detained beyond forty eight hours in total, under s. 50, requires the making of an application by a garda officer of chief superintendent rank or higher either to a judge of the District Court or, alternatively, to a judge of the Circuit Court. Either court may, on foot of such an application, authorise the continued detention of the prisoner for a further period not exceeding seventy two hours in the first instance. Either court may then, on foot of a further such application or applications, authorise the continued detention of the prisoner for a further period or periods not exceeding forty eight hours in total. No person may be detained under s. 50 of the Act of 2007 for more than 168 hours in aggregate.

87. In this case, a first extension of the appellant's initial six hour period of detention was authorised by Detective Superintendent O'Gara at 5:35 a.m. on the 11th of January, 2010, for a further period not exceeding eighteen hours commencing at 6:00 a.m. on that date. This was the controversial extension. The appellant was duly informed by the Member in Charge at 5:39 a.m. that his detention had been so extended. Having been so informed, the appellant again spoke to Mr. Ruane by telephone for three minutes at 8:37 a.m.

88. Seventhly, at all times a detainee who considers that he is in unlawful detention or that his constitutional rights are being breached has the possibility of having the lawfulness of his detention reviewed, by applying to the High Court for an order of habeas corpus (an enquiry under Article 40.4 of the Constitution of Ireland).

89. In this case the appellant sought no such relief, notwithstanding that he was in continuous custody from the time of his arrest at 9:25 p.m. on 10th January, 2010, until he was released from the provisions of s. 50 detention at 7:25 p.m. on the 15th of January, 2010, and had had access to legal advice at all stages during this period.

90. In any consideration of the safeguards applicable to the custody schemes alluded to, it requires to be recognised that while in each of them the respective roles of a Member in Charge on the one hand and a superintendent or higher officer on the other hand overlap to a degree, they are not identical, and the Member in Charge has functions not shared by garda officers of superintendent rank or higher who may be involved in the granting of extensions. Although it is true that in general a Member in Charge is required to be independent of any investigation, it is not a case of comparing like with like. In particular, and unlike a superintendent or higher officer involved in the authorisation of an extension, it is clear that the Member in Charge maintains on overall supervisory role throughout the prisoner's detention with respect to his/her treatment while in custody, whether that be during any initial period of detention authorised by the Member in Charge himself, or any extended period of detention authorised either by a senior officer or, indeed, by a court. Arguably, it is that aspect of the Member in Charge's role that makes it particularly important that he be independent.

91. It also bears reiterating that there is no mention in the legislation of any requirement that a garda officer of superintendent rank or higher involved in authorising the extension of a prisoner's detention should be independent of the investigation. Moreover, the Act of 1984, the Act of 1996 and the Act of 2007 are all post 1937 statutes and enjoy a presumption of constitutionality. The appellant has not sought to challenge the constitutionality of s. 50 of the Act of 2007 which creates the specific custody scheme with which we are concerned. These considerations suggest that the trial judge was correct in his ruling that the appellant was at all times in lawful custody, and *prima facie* would seem to be dispositive of the issue raised by the appellant. However, the appellant's case goes further in that he contends that even if the legislation is not unconstitutional in its terms, it must still be operated in a constitutional fashion. According to this argument, notwithstanding the absence of any express requirement in the statute that the decision maker with respect to an extension of detention should be independent, such a requirement must necessarily be implied if the legislation is to be operated in conformity with the Constitution.

92. If such a requirement were held to exist, it is not difficult to see how it could give rise to significant practical difficulties in everyday policing, given the number of persons detained nationally every day. A significant consideration in this regard is that the cohort of gardaí (who may act as members in charge) is numerically very much greater than the cohort of officers at the rank of superintendent or higher (who may authorise extensions). While it is possible to routinely appoint a garda who is not involved in a particular investigation to act as Member in Charge of his/her garda station, it requires to be recognised that, in the case of superintendents, there might be only a single officer of that rank in a particular garda district at any time. Due to the organisational structure of An Garda Siochána, which is divided into divisions (which may comprise a number of districts) presided over by chief superintendents and districts (which in turn embrace a number of individual garda stations) presided over by superintendents, not to

mention detective and specialist units, middle ranking officers such as chief superintendents and superintendents (and particularly the latter) will often be actively involved in investigations of serious crimes, at least to the extent of co-ordination of resources and provision of oversight. While as a matter of common sense the higher the rank of the officer concerned the more likely it is that he/she would not actually be involved in a particular investigation in any hands on sense, and would be *de facto* independent of that investigation, this would not invariably be the case. It is therefore not difficult to appreciate how in many situations an officer of superintendent rank or higher who is independent of the investigation might not be readily available.

93. All of that having been said, in the present case Detective Superintendent O'Gara was not in fact a district superintendent. Rather, he was an officer of superintendent rank in a detective unit based at Kevin Street garda station, which is a major urban garda station and which, it may be inferred, was likely to have had at least one other officer of superintendent rank based there, namely the district superintendent.

94. Be that as it may, we are not satisfied that there is any requirement, express or implied, that a superintendent or higher officer of An Garda Siochána who is considering an application to extend a detention should be independent of the investigation, providing other safe guards exist to ensure that an appropriate balance is maintained between the conflicting interests of the State and those of the person sought to be further detained. We are satisfied that in the circumstances of the present case there were more than adequate safeguards in place to ensure that any deprivation of the appellant's liberty was proportionate. Chief amongst these were the fact that he was fully informed as to the basis for his initial detention and the proposal to further detain him, that he was fully aware of his rights, that his conditions of detention were being supervised by an independent Member in Charge, that he had the benefit of legal advice at all stages, and that he had the right to seek *habeas corpus* (an enquiry under Article 40.4) if he believed that he was being unlawfully detained.

95. We also feel that, in considering this issue, there has to be some engagement with the actual facts of the present case, particularly with reference to Detective Superintendent O'Gara's involvement. It seems to us that the chronology as to what actually happened in the lead up to the controversial extension of the appellant's detention is significant, particularly in terms of assessing the reality of the complaint made and whether there is in fact any credible basis for believing that, in the circumstances of the case, the appellant's rights were breached by Detective Superintendent O'Gara authorising the extension of the appellant's detention when he lacked independence from the investigation.

96. The appellant arrived at Kevin Street garda station at 10:10 p.m. on the 10th of January, 2010, having been arrested by Sergeant Paul Tallon. He was introduced to Sergeant Brian Sourke who was the relevant Member in Charge pursuant to the Regulations of 1987. Following a conversation with Sergeant Tallon, Sergeant Sourke authorised the detention of the appellant pursuant to s. 50 of the Criminal Justice Act 2007, having been satisfied that there were reasonable grounds for believing that his detention was necessary for the full and proper investigation of the offences for which he had been arrested. The appellant's hands were noted by Sergeant Sourke to have been in tamper proof bags. Sergeant Tallon also requested that the appellant should not see any visitors until such time as samples were taken from him under s. 2 of the Criminal Justice (Forensic Evidence) Act 1990, as amended.

97. At 10:29 p.m. the appellant was informed in the custody area by Sergeant Sourke that he was being detained under s. 50 of the Criminal Justice Act 2007. He was further informed by Sergeant Sourke of the periods of possible detention, and was advised of his rights. Following this, the appellant requested to speak with Yvonne Bambury of Fahy Bambury McGeever Solicitors.

98. At 10:37 p.m. Sergeant Sourke then contacted the nominated solicitor's firm and, though Ms. Bambury was not immediately available, he spoke with her associate Conor Ruane for approximately five to six minutes. The appellant was then permitted to speak with Mr. Ruane over the phone in the custody area.

99. At 10:45 p.m. Detective Superintendant Gabriel O'Gara authorised the taking of samples under s. 2 of the Criminal Justice (Forensic Evidence) Act 1990, as amended. The appellant was taken to the custody area in the first instance while this was being organised.

100. At 11:05 p.m. Mr. Ruane arrived at Kevin Street garda station and was informed that swabs were about to be taken from the appellant, authorisation having been given for same. Mr. Ruane was also informed that the preservation of evidence was a priority, that Mr. Howard had yet to be searched and also that he required medical attention. Sergeant Sourke informed Mr. Ruane of his belief that a visit with the appellant at this stage could result in a cross contamination as Mr. Ruane had informed Sergeant Sourke that he was also representing other persons arrested in connection with the offence for which the appellant had been arrested.

101. At 11:08 p.m. the appellant was informed that his solicitor was present and that on completion of swabs being taken, he could consult with him. Then, at 11:12 p.m. the appellant was taken to the doctor's room in Kevin Street garda station for the purpose of forensic samples being taken from him along with his clothing.

102. At 11:40 p.m., following samples being taken, the appellant was asked whether he wished to consult with Mr. Ruane or to see the doctor. The appellant stated that he wished to see the doctor, and he was then seen by Dr. Maloney. Following this, Dr. Maloney informed Sergeant Sourke that the appellant was to be moved to hospital for treatment. The appellant was then allowed to consult with Mr. Ruane in the doctor's room from 11:51 p.m. until 12:05 a.m. (on what is now the 11th of January, 2010). Upon exiting the doctor's room, Mr. Ruane was informed that the appellant was to be moved to hospital for treatment.

103. At 12:20 a.m. the appellant was removed from Kevin Street garda station to the Mater Hospital and was informed that his detention was being suspended for the period during which he would be attending the hospital. At 2:55 a.m. the appellant was returned to Kevin Street garda station. He was then informed that his detention was no longer suspended, and he was placed in a dry cell.

104. At 5:35 a.m. Detective Superintendent Gabriel O'Gara, whom it is accepted was involved in the investigation, authorised the appellant's further detention pursuant to s. 50(3) (b) of the Criminal Justice Act 2007 for a further period of 18 hours from 6:00 a.m. The appellant was informed of this at 5:39 a.m.

105. It is clear from this chronology that at the time of Detective Superintendent O'Gara's decision to extend the appellant's detention, the appellant had not yet been interviewed. The greater part of the first six hour period had been taken up with the need to process him into detention, with the taking of forensic samples, with facilitating his right to access legal advice, and with ensuring that he was provided with appropriate medical attention. It was beyond peradventure that, in the context of the double murder investigation that was ongoing, the investigating gardaí would require to interview the appellant in due course for the proper investigation of the offence for which he had been arrested. In the circumstances it could not be contended on any credible basis that there was anything remotely abusive of the appellant's rights, and in particular his right to liberty, in Detective Superintendent

O'Gara's decision to authorise his continued detention beyond 6:00 a.m. on the 11th of January, 2010. It would be fanciful to suggest otherwise.

106. We are satisfied, in all of the circumstances, that this ground of appeal cannot be upheld.

(iv) The ground of appeal relating to the learned trial judge's charge to the jury.
107. Ground of appeal no. 7 complains that the trial judge misdirected the jury in that he failed to put the case for the appellant fairly before them and, further, that he failed to do so despite being requisitioned to that effect on behalf of the appellant.

108. The trial judge charged the jury on Day 25 of the trial and provided a summary of the evidence in the case to the jury during the course of it. The following requisition was raised about the trial judge's charge in that regard. The trial judge was asked to re-address the jury on an issue relating to the CCTV evidence in the case. Two specific witnesses were identified in this requisition:-

> *"Mr. Gillane: The other thing is- and I know obviously and I'm not asking the Court to go through this evidence – it's an evidential matter. The Court indicated to the jury that Garda Michael Moore gave them evidence in relation to CCTV and timing. Could I ask your Lordship to just remind the jury that two other witnesses also gave evidence on timing and that's Patricia Johnson by way of section 21, and Garda Fiona Deevy also. I'm not asking you to go though that evidence but just to remind them of that fact.*
>
> *Judge: Okay. Could we have them back please."*

109. When he re-charged the jury, the trial judge stated:-

> *"Now, the other matter is in relation to Garda Moore. I told you that there were considerable adjustments in times and I'm simply asked to bring to your attention that in relation to two other witnesses similar considerations arose in that times fell to be adjusted. I'm just asked to bring that to your attention and not even to take time giving you their evidence…."*

110. The evidence of Patricia Johnson and Garda Fiona Deevy, respectively, related to the retrieval of CCTV footage from a Spar Shop on Hanover Street, which was close to the murder scene. Garda Deevy had outlined in her evidence that the footage in question was three minutes behind the talking clock.

111. The importance of this evidence was that the CCTV evidence shown to the jury by Garda Michael Moore had identified that a man had entered Pearse House at 18:30 hours and exited from it at 18:41 hours on the relevant date. The prosecution case was to the effect that this man was the perpetrator of the two murders.

112. However, the CCTV footage of a man leaving the area on a bike and travelling along Windmill Lane past the Spar Shop camera was timed as having occurred at 18:40 hours by Garda Moore on the basis of a corrected time. This was, itself, incorrect as Garda Deevy had identified that the timing on the camera was three minutes slow rather than six minutes slow as stated by Garda Moore. This put the correct timing of the footage from the Spar Shop camera as being 18:37 hours.

113. As previously stated, the footage from Pearse House identified the murderer as leaving that complex at 18:41 hours. However, the person on the push bike in question was, according to the footage from the Spar Shop on Hanover Lane, already leaving the vicinity some four minutes earlier at 18:37 hours. Moreover, even if Garda Moore had been correct in his timing, which on the evidence he was not, that would have put the person on the bicycle as cycling past the shop cameras at 18:40 hours, still at a time before the alleged murderer was recorded as having left the Pearse House complex. In either scenario the footage from the Spar Shop was ostensibly inconsistent with the prosecution case.

114. The defence have contended that the CCTV evidence has a particular importance as the appellant's admissions (most notably in interviews on Thursday, 14th January) refer to his use of a bike as a getaway vehicle for the murder, and he made admissions after sight of the CCTV footage in question. It was a major aspect of the defence case that such admissions were contradicted by the CCTV evidence, in as much as the person to be seen cycling away from the scene on the push bike was doing so at a time when the murderer was still in Pearse House.

115. It has been submitted that in those circumstances the CCTV evidence and, in particular, the evidence of timings given by Garda Deevy with reference to the Spar Shop footage, had a particular importance in the case. It was submitted that the requisition made by counsel for the appellant was restrained yet of vital importance to the defence. It was a request to refer to two named witnesses who had given evidence, namely Garda Deevy and Patricia Johnson. That, it was contended, would have alerted the jury to the issue in question. However, the trial judge did not set out their names to the jury even though it appeared that he had agreed to do so.

116. Counsel for the appellant acknowledges that the trial judge had told the jury during the course of the charge that there were "*significant variations in time*" in the timings of the CCTV footage. However, it was submitted, the trial judge's charge did not mention the footage from the Spar Shop at all or, indeed, there was no reference to the footage of the person on the push bike in any real form. Rather, the CCTV evidence was dealt with in a perfunctory manner.

117. It was submitted that, in the circumstances, the trial judge had failed to put forward the defence case fairly and fully. The movements of the person on the push bike and, in particular, the uncontroverted evidence that that person had passed the Spar Shop at 18:37 hours (per the evidence of Patricia Johnson and Garda Deevy on timings), when the murderer was still within Pearse House, were particularly relevant to any consideration by the jury of the reliability and credibility of the appellant's alleged admissions to the murder.

118. It was submitted that the failure to alert the jury to the evidence of Patricia Johnson and Garda Deevy despite the request to do so by counsel for the appellant was unfair and prejudicial to the appellant. The trial judge made a vague reference in his re-charge to "two other witnesses" without identifying those witnesses to the jury. It was submitted that this was unfair where the jury had heard voluminous evidence from both civilians and gardaí in the case.

119. Counsel for the respondent has argued in response that the trial judge adequately re-charged the jury in response to the requisition that had been raised. He did so by reminding them that "*there were considerable adjustment[s] in times*", and that times fell to be adjusted for two witnesses. This was precisely the requisition raised by counsel, and that that is so is reflected in the fact that once the jury was re-charged on this issue, no further requisition was made on this or any other issue.

120. In addition, counsel for the respondent points out, the trial judge specifically told the jury during the course of his charge that there were "*significant variations in time*" in the timing of the CCTV footage. Having regard to this, and the requisition made and acceded to, it was submitted that the trial judge fairly put the appellant's case to the jury. It is suggested by the appellant that the trial judge had failed in this regard by "*failing to alert the jury to the issue concerning the CCTV*." However, this issue had been raised by counsel for the appellant in his speech to the jury, it was again addressed by the trial judge in his charge, and furthermore the trial judge had re-charged the jury specifically on what was requisitioned of him, namely that two witnesses other than Garda Moore had also given evidence on timing.

121. This Court has carefully considered the complaint made by the appellant but is not disposed to uphold it. We are satisfied that the trial judge dealt adequately with the requisition made of him and that the defence case was properly put before the jury. They had been specifically told that there were "*significant variations in time*" in the timing of the CCTV footage, and they were reminded that two witnesses other than Garda Moore had also given evidence on timing. The Court has considered the transcript of the closing speeches, and of the trial judge's charge and recharge. Having regard to the manner in which they had been addressed by counsel for the defendant in his closing, the jury could not have been under any misapprehension as to what the trial judge was alluding to in his re-charge. The fact that no request was made for a further re-charge is significant in our view and was indicative that defence counsel was satisfied at the time with the terms of the re-charge. Moreover, if the jury had indeed been mystified, or in any way uncertain or unclear as to what he was alluding to when he stated that "*in relation to two other witnesses similar considerations arose*", as is apparently now apprehended, one would have expected them to come back with a question seeking clarification. However, they did not do so.

122. We are satisfied that in all the circumstances of the case the requisition was adequately dealt with, and there was no unfairness to the appellant

123. We therefore reject this ground of appeal also.

Conclusion
124. In circumstances where the Court has not been disposed to uphold any of the grounds of appeal advanced by the appellant, the appeal against conviction is dismissed.