APPROVED **NO REDACTION NEEDED**

THE COURT OF APPEAL

[2024] IECA 267

Record Number: 234/2021

McCarthy J.
Kennedy J.
Burns J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

REPONDENT

- AND -

GAVIN RYAN

APPELLANT

JUDGMENT of the Court delivered on the 14th day of October, 2024 by Ms. Justice Tara Burns.

1. This is an appeal against conviction. On 29 July 2021, the appellant was found guilty by unanimous verdict before Waterford Circuit Criminal Court of Count 1 (Possession of a firearm with intent to endanger life contrary to s. 15(1)(a) of the Firearms Act 1925, as amended ("the 1925 Act")); Count 2 (Assault causing serious harm contrary to s. 4 of the Non-Fatal Offences Against the Person Act 1997); Count 3 (Possession of ammunition with

intent to endanger life contrary to s. 15(1)(a) of the 1925 Act); and Count 4 (Unlawful possession of a controlled drug for the purpose of sale or supply contrary to s. 15 of the Misuse of Drugs Act 1977, as amended).

2. On 25 November 2021, the trial judge sentenced the appellant to concurrent sentences of 13 and a half years imprisonment, with the final 2 years suspended on certain terms and conditions in respect of Counts 1 and 2; 9 years imprisonment in respect of Count 3; and 2 and a half years imprisonment in respect of Count 4. The sentences were backdated to 24 December 2019 to reflect when the appellant entered custody.

Background

3. On 23 December 2019, the injured party, Mr. Clifford Power, was shot in the chest at point blank range outside a convenience store located beside the Mount Suir apartment complex situated in County Waterford. This occurred when Mr. Power came to speak to two men who were standing outside the shop. These two men, who were wearing distinctive tops, had previously been in the shop. The prosecution case was that the appellant was the shooter and that he was in the company of David O'Neill. Both men fled the scene running into the apartment complex where they each resided.

4. Gardaí obtained CCTV footage from the convenience store and the apartment complex which depicted the movements of the two men before, during and after the shooting. The CCTV depicted the shooter purchasing a number of items in the convenience store moments before the shooting, to include a bottle of orange juice and a Müller yogurt. He paid for these items with a €50 note, which was recovered by gardaí and subsequently forensically linked to the appellant.

5. David O'Neill was identified on the CCTV footage by a guard who responded to the incident. His apartment was searched. While making door-to-door enquiries in the apartment complex, Garda T.J. Coughlan noted that the door to the adjacent apartment was open. This transpired to be the appellant's apartment. Garda Coughlan entered the apartment whereupon he noted a metal ammunition box and drug paraphernalia in the sitting room. He left the apartment and informed the investigation team. Subsequently, Sergeant Patrick Kelly, having received Garda Coughlan's information, entered the appellant's apartment because of concern for the potential welfare of any occupant. He observed a Müller yoghurt carton and a bottle of orange juice, which matched the description of the items bought in the convenience store by the shooter.

6. A search warrant was subsequently obtained from the District Court pursuant to s. 29 of the Offences Against the State Act 1939 ("the 1939 Act") in respect of the appellant's apartment on foot of an Information sworn by Detective Sergeant Keith Goff. The sworn information referred to information which Detective Sergeant Goff received from Sergeant Kelly to the effect that the contents of the apartment were disturbed and that items which the shooter had purchased prior to the shooting were located in the apartment.

7. The search warrant was subsequently executed whereupon items of evidential value were seized, namely, a round of ammunition, which was forensically matched to the spent shells located at the scene of the shooting; amphetamine to the value of €1,690, located in four separate bags; and a bottle of orange juice and yoghurt carton, which matched the items the shooter had been seen purchasing earlier at the convenience store. The orange juice bottle and carton of yogurt were subsequently forensically linked to the appellant.

8. The following day, a witness informed gardaí that he had seen two men leaving the area and disposing of a plastic bag after the shooting. Gardaí recovered a plastic bag which contained a distinctive navy-blue "*Boss*" hoody. The CCTV footage depicted the shooter wearing such a hoody. A forensic examination revealed the appellant's DNA on the cuffs and neck of the hoody, and firearms residue matching the residue from the two spent bullet shells recovered at the scene was also located on the hoody.

9. On 24 December 2019, a community guard stationed in Clondalkin, Garda Keith Gough, noted two men, namely the appellant and David O'Neill, acting suspiciously in a car outside the Ibis Hotel in Clondalkin. He approached the men and asked them to identify themselves. The appellant gave a false name to the guard. The guard detained the two men and brought them to Clondalkin Garda Station for the purpose of a drug search, after they refused to be searched at the location. Upon entering the names of the men into the PULSE system, he became aware that they were sought in connection with the shooting offence in Waterford the previous day. The appellant was subsequently arrested by Garda Gough pursuant to s. 30 of the 1939 Act.

Grounds of Appeal

10. By Notice of Appeal dated 16 December 2021, the appellant indicated his desire to appeal his conviction. Included in his grounds of appeal were the following:-

> *"1. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence CCTV footage, harvested from numerous sources, and still photographs created from the said CCTV footage where the said footage was created and/or procured by An Garda Siochana from its creators in breach of the Appellants Constitutional right to privacy and/or in breach of*

the General Data Protection Regulation (EU 2016/679) and/or the Data Protection Act, 2018.

2. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence a compilation of CCTV footage harvested from numerous sources, where the said footage was created and/or procured by An Garda Siochana from its creators and/or the said compilation made by An Garda Siochana in breach of the Appellants Constitutional right to privacy and/or in breach of the General Data Protection Regulation (EU 2016/679) and/or the Data Protection Act, 2018.

3. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence a narrative commentary by a member of An Garda Siochana on the contents of the said CCTV footage and still photographs generated therefrom.

4. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence that part of a narrative commentary by a member of An Garda Siochana on the contents of the said CCTV footage and still photographs generated therefrom. as purported to identify the Applicant from and in the said CCTV footage and, in particular but without prejudice to the generality of this ground, to rule admissible this evidence of his opinion by reason of him being a "de facto" expert in the analysis of CCTV footage and still photographs taken therefrom.

5. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence the result of an entry into and search of the Appellant's home at apartment 37 B, Mount Suir Apartments, and of the items found during the course of the

said search, which entry and search, conducted without warrant, was in breach of the Appellant's Constitutional rights.

6. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence the result of a search of the Appellant's home at apartment 37 B, Mount Suir Apartments, and of the items found during the course of the said search conducted on foot of a District Court warrant which warrant was procured on foot of information that was unconstitutionally obtained.

7. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence all evidence obtained during and arising from the Appellant's detention subsequent to the completion of the search of the Appellant pursuant to Section 23 of the Misuse of Drugs Act 1977 and the failure thereafter to release the Appellant from detention forthwith.

8. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence all evidence obtained subsequent to and in consequence of the arrest, and subsequent detention, of the Appellant in purported pursuance of the provisions of section 30 of the Offences Against the State Act 1939.

[…]

10. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence all evidence in respect of a live round of ammunition (CK 1) purportedly found in apartment 37 B, Mount Suir Apartments. in default of a chain of evidence in respect thereof.

11. The Trial Judge erred in law or in fact, or on a mixed question of law and fact, in ruling admissible as evidence, the evidence of Detective Sergeant David O'Leary comparing discharged cartridge cases EONMS 1 and EONMS 2 with the live ammunition round CK 1 having regard to the default of a chain of evidence in respect of the live ammunition round CK 1.

[…]

13. The Trial Judge failed to adequately or properly present the Defence case to the jury during the course of his charge and/or failed to present the Defence case in a manner which was fair to the Appellant in all the circumstances.

14. The Trial Judge failed to adequately or properly charge the jury on the evidence of Dejan Mihajlovic and in particular the evidence of Linda Heffernan."

11. The Notice of Appeal contained six further grounds which were abandoned prior to the commencement of the hearing before us.

Appeal Grounds Pursued at Hearing

12. At the hearing before the Court, Counsel for the appellant indicated that he only intended to make oral submissions in respect of grounds 5 and 6 but that he was relying on his written submissions in relation to all the grounds set out above.

Grounds 1 & 2 – Admissibility of CCTV Footage

13. An objection was raised to the admission of CCTV footage before the jury on the basis that the CCTV evidence was gathered in breach of the appellant's constitutional right to privacy and its generation and provision

to the investigating team was not in compliance with the Data Protection Act 2018, as amended ("the 2018 Act").

14. Having conducted a *voir dire* in relation to this issue, the trial judge determined to admit the CCTV evidence and, specifically, a CCTV montagecompiled by the investigation team.

Discussion and Determination

15. Oral submissions were not made by the appellant in relation to these grounds of appeal with an indication instead being given that the appellant was relying on his written submissions.

16. Recent case law from this Court has determined that, separate to the issue of whether there has been a breach of the Data Protection Acts, CCTV footage from public spaces is generally admissible in a criminal trial. (See *The People (DPP) v. Thompson* [2024] IECA 22; *The People (DPP) v. Dunbar* [2024] IECA 85; *The* P*eople (DPP) v. Anghel* [2024] IECA 90 ("*Anghel*"); *The People (DPP) v. Harrington* [2024] IECA 153 and *The People (DPP) v. Brady* [2024] IECA 170).

17. *Anghel* provides a comprehensive summary of this Court's view in relation to this issue, where Edwards J. stated (at paras. 152 – 156 of the Court's judgment):-

> "*152**.** We have no hesitation in rejecting the ground of appeal complaining about the admission of the CCTV evidence for breach of the appellant's right to privacy. The arguments advanced by the respondent are in our view unassailable. We would hold that view even if there had been no developments in the law in this area since the hearing of this appeal. However, since this appeal was heard there have been two decisions of this Court which we consider to be*

directly in point. We allude to this Court's decisions in The People (DPP) v Dunbar [2024] IECA 85, and in The People (DPP) v Thompson [2024] IECA 22. In both of these cases legitimate efforts were made by gardaÍ acting in the course of their duty to track and gather evidence concerning the movements of a murder suspect through public spaces, that had been captured in a non-targeted manner on privately owned CCTV equipment.

153. In the Dunbar case, we said with respect to such evidence (at paras 146 - 148):

> *"146. As this case demonstrates, many business premises and private dwellings are now equipped with CCTV cameras. That this is the situation is universally known. It would be impossible to frequent public areas without becoming aware of it. Over and above that, many vehicles are equipped with dash-cameras, and a high proportion of people are equipped with devices that allow them to take photographs or to record matters of interest. The comment that there can be no general expectation of privacy in a public place is not an unqualified one. While individuals may have no realistic expectation that their presence in a public place will not become public, they may well have an expectation that, in general, private, intimate, or sensitive conversations would not be recorded, certainly absent special circumstances or an appropriate authority.*
>
> *147. That one's presence in a public place may be recorded works to the advantage and disadvantage of individuals. If the individual recorded as being at a particular location is someone who is or has been or is about to become involved in criminal activity, that may be to the disadvantage of that individual, in one sense. In other cases, it may advantage an individual. In this case, there was a witness, AB, who, as the trial judge pointed out, was*

pleased that footage existed. The material available included footage showing him going in and out of his own home. On the part of the appellant, there was a suggestion that AB was involved in the killing or was present at the killing, but the availability of CCTV footage provided this witness with valuable cover.

148. In this case, the CCTV footage that was entered in evidence at trial was accessed as a result of requests to householders and businesses by gardaí, but it must be noted that there is nothing to suggest that the appellant was identified by any of the householders who provided the CCTV footage, or that any of those who made footage available might have identified the appellant as a data subject".

154. There were also objections to other CCTV evidence in the Dunbar case which are not pertinent to the present case. However, in concluding the section of its judgment dealing cumulatively with the various challenges to the CCTV evidence in that case, we further remarked:

"153. Overall, we are of the view that the challenge to the admissibility of the CCTV footage was not made out. It is, quite simply, misconceived. There was evidence there capable of being accessed which was highly relevant. In a particular case, it could advance the investigation, identify a suspect, and thereafter, provide relevant evidence at trial. In another case, the evidence might exonerate a suspect; indeed, in the present case, it has assisted a witness in rebutting unfounded allegations made against him. Consider what the situation would be if gardaí did not access evidence which had the potential to advance an investigation and contribute significantly to proving the guilt of a perpetrator, but which also had the capacity to exonerate a suspect who was innocent; how would the actions of the gardaí

be regarded; could failure to access the material be regarded as anything other than a grave dereliction of duty?

154. We have no hesitation in dismissing this ground of appeal, and we would hope that in the future valuable court time would not be taken up with such unmeritorious arguments".

155. In the Thompson case, we said:

"We are inclined to agree with the trial court that there was no breach of the appellant's right to privacy at all, and that individuals walking down a public street, driving a car on the public road, or even eating a meal in a restaurant open to the public do not, in this day and age, have a reasonable expectation that their movements will be immune from CCTV observation, certainly in a situation where no individual is being targeted for the purpose of gathering information and where the camera is simply gathering random information about persons or vehicles in the location. That being so, it was not necessary for the trial court to consider the principles applicable to the exclusionary rule (as discussed [People (DPP) v. JC [2017] 1 IR 417], and more recently in [People (DPP) v. Quirke [2023] IESC 20]).

90. If such an exercise had been required, significant factors in the balance would undoubtedly be that the degree of any privacy intrusion was minimal, that it arose from the conduct of private individuals (failing to register their systems with the Data Protection Commission) and not from any conduct on the part of the State or its agents, and that the evidence was collected by the Garda Siochána in the context of a specific murder investigation. As the Director submitted, the situation is akin to that in People (DPP) v. Gold [[2021] IECA 160] where the Court upheld the decision of the trial court to admit evidence where the voice

recording in question was created without any State involvement and where there was no suggestion that the State was complicit in unconstitutional actions taken by a private party to introduce evidence. However, in view of our agreement with the trial court that the appellant's constitutional right to privacy was not violated by the CCTV recordings of him in public places, it is not necessary to consider the 'balancing' exercise in this case.

91. Accordingly, this ground of appeal is refused".

156. In the present case there was nothing about the appellant's presence in Dublin city centre, or on the Luas, or in Tallaght, or in any of the other places in which he was captured on CCTV, to suggest that he could have had a reasonable expectation, by virtue of being engaged in something private, intimate or sensitive in a public place, that he would not be recorded, on a non-targeted basis, while, for example, just walking down the street, standing on a station or travelling on a tram. We are completely satisfied that he had no expectation of privacy in the circumstances of this case, and that once he became a person of interest in connection with the investigation into the death of Mr. Bob it was both appropriate and justified that An Garda Síochána should seek to track and gather evidence with respect to his movements to the extent that they may have been serendipitously captured on CCTV systems which were not specifically targeting him. We have no hesitation in dismissing this aspect of the challenge to the admissibility of the CCTV evidence."

18. The CCTV garnered in the instant matter related to public spaces where a member of the public could have no expectation of privacy. Furthermore, the appellant's position was that he was not depicted in any of the CCTV.

Accordingly, it is difficult to see how a right to privacy has been engaged by him.

19. Having regard to the previously expressed view of this Court in relation to evidence of this nature, and separate to the question as to whether there has been a breach of the 2018 Act, we are of the view that the trial judge did not err in his determination to admit this evidence. Accordingly, these grounds of appeal fail.

Grounds 3 & 4 – Narrative Commentary on CCTV Evidence

20. Oral submissions were not made by the appellant in relation to these grounds of appeal with an indication instead being given that the appellant was relying on his written submissions.

21. An objection was raised at trial as to whether it was permissible for a member of An Garda Síochána to provide a narrative commentary on the contents of the CCTV footage and still photographs which were to be produced before the jury as an exhibit.

22. The trial judge permitted such a narrative to be given on the basis that the proposed witness possessed the necessary expertise in relation to the CCTV at issue and that the jury would be directed that ultimately what was depicted in the CCTV was a matter for them.

Discussion and Determination

23. Evidence of this nature is routinely adduced before a jury from a witness who is an expert in watching CCTV footage and has gained expertise in the CCTV footage at issue by watching it closely on several occasions. The reason for permitting such a narrative to be adduced is to assist the jury to interpret the footage admitted into evidence in a timely fashion. Ultimately, it remains a matter for the jury to determine what they see depicted in the

footage and what they can be satisfied of beyond reasonable doubt. However, the availability of a narrative is a valuable tool in assisting a jury to consider CCTV in an effective and time efficient manner.

24. *People (DPP) v. O'Brien and Stewart* [2015] IECA 312 and *People (DPP) v. Sheehan* [2020] IECA 142 are both authorities for the proposition that evidence of this nature is properly admissible before a jury.

25. The trial judge did not err in permitting the expert's narrative be adduced before the jury, following an established line of authority in this regard. Accordingly, these grounds of appeal fail.

Grounds 5 & 6 – Search of the Appellant's Address

26. The appellant challenged the admission into evidence of items recovered following a search of his apartment, on foot of a search warrant, on the basis that the information grounding the search warrant was obtained in violation of the appellant's constitutional right to the inviolability of his dwelling.

27. The trial judge determined the issue as follows:-

> *"This voir dire concerns the admissibility of evidence derived from the garda search of apartment 37, block B in Waterford. […] The onus is on the prosecution to satisfy the Court as to the admissibility of this evidence.*
>
> *Its admissibility has been challenged by the defence, in the first case because of alleged unlawful and unconstitutional obtaining the search warrant for 37B […]*
>
> *…*

Objection is taken by the defence to what they describe as the unlawful manner in which Garda Coughlan who was engaged in house to house inquiries entered into the premises and made certain observations which he relayed to Garda Kevin Nolan who in turn passed the information to Sergeant Kelly who, again, in turn reported the matter to Detective Sergeant Gough.

Mr Fitzgerald describes this process of passing the information of the observations up the line as forensically laundering the evidence. He submits that not only would this bring the law into disrepute if it is allowed, but that the alleged illegality and unconstitutionally of what the gardaí did in the apartment taints all the evidence found on foot of the warrant and thus asks that it be excluded.

In making a determination as to whether the warrant is valid, the Court must examine whether to Detective Sergeant Gough could have had a reasonable ground or grounds for suspicion as set out in his sworn information.

Finnegan J in the [DPP] v. Philip O'Driscoll [[2010] IESC 42 …] stated, […] "It is clear from the perusal of the authorities that the test of reasonable cause for suspicion sets a very low threshold." […] It is also well established that a garda is entitled to rely on hearsay evidence, including that of another garda when it comes to form his suspicion. The garda may also rely on information which would be inadmissible before a jury, indeed as Charleton J said in [The People (as the suit of the Director of Public Prosections) v. Cash [2010] 1 IR 609 …] "Suspicion can take into account matters that could not be put in evidence at all, […] It has never been held that what would found a reasonable suspicion in the law requires to be based on the kind of evidence that would be admissible under the rules of evidence during the hearing of a criminal trial," […]

The crucial issue is did Detective Sergeant Gough have a reasonable ground to suspect what he set out in his information? The reasonable cause to suspect must be referenced to facts or information which would satisfy an objective observer. It is an objective test.

I do not see that this Court needs to make a determination on whether Garda Coughlan or Sergeant Kelly entered apartment 37B illegally on unconstitutionally. What is important is what Detective Sergeant Gough believed. He did not need to investigatively scrutinise the work of other members who supplied him with information of what had been observed. Indeed, he could have acted on an anonymous tip off. I am not deciding this issue and whether or not there was a trespass by the gardaí when they came on the highly unusual circumstances as described by Garda Coughlan.

He believed that it was prudent in all of the circumstances that presented themselves to him, a door that swung open on his knocking, a blast of heat in an apartment next door to an apartment with connection to a shooting incident. To consider if somebody was in trouble and needed assistance. When he looked in what he saw heightened his concerns, an ammunition box and drugs paraphernalia and he very correctly informed the member of the search team. Sergeant Kelly said that after 16 years as a garda he had an instinct when something wrong or bad had occurred. Sergeant Kelly also made observations and realising the significance of what he saw in plain view, the orange bottle and the yoghurt container which he knew to be connected with the investigation. He immediately made a report which ultimately led to the late-night search warrant application. Detective Inspector Whelan, the senior

investigating officer instructed the gardaí to withdraw from the scene.

If the accused believes he has suffered a trespass or some breach of his constitutional rights for the violation of his dwelling, he can no doubt pursue that claim elsewhere. I note however that when arrested the following day in Dublin he gave some location in Kilkenny as his address.

I cannot, however, see any prejudice to the accused in what occurred. What was observed was real evidence, its character does not change depending on whether it was observed legally or illegally. The observations were correctly passed up the line to Detective Sergeant Gough. He was entitled to form a reasonable suspicion on the basis of what he heard and taking into account all the other information he had concerning the case. Any possible illegality in the initial observations and I find it unnecessary to determine that issue, did not taint the legality of the warrant that the Judge issued or the lawful search that subsequently followed. The argument that it is otherwise confuses the rules of evidence in a criminal trial with the investigative procedures of the gardaí. The search of 37B was properly and lawfully conducted by the gardaí. The evidence that was found was real and significant and of significant probative value as it led to identifying the second suspect, the man the gardaí believed to be the shooter.

[…]

Finding as I do that the search warrant was valid, it follows that the search was lawful, therefore the evidence obtained in the search may be put before the jury."

Discussion and Determination

28. Counsel for the appellant submitted that the initial entries into the appellant's apartment by Garda Coughlan and Sergeant Kelly, without a search warrant, were in breach of his constitutional right to the inviolability of his dwelling and that, therefore, the information obtained was unconstitutionally obtained. It was submitted that, as the search warrant was grounded on foot of information obtained in breach of the appellant's constitutional rights, the evidence subsequently obtained on foot of the search warrant was inadmissible.

29. Counsel for the respondent submitted that the entry into the apartment was not in breach of the appellant's constitutional right to the inviolability of his dwelling as the purpose of entering the apartment was for the superior constitutional interest of the protection of life and limb. In the alternative, it was submitted that even if a breach of the appellant's constitutional right to the inviolability of his dwelling occurred, this did not have a significance to the search warrant issued, which was lawfully obtained based on Sergeant Gough's reasonable suspicion that a firearm was within the apartment, regardless of the fact that the reasonable suspicion was formed on foot of information obtained in the circumstances arising.

30. *The People (as the suit of the Director of Public Prosections) v. Cash* [2010] 1 IR 609 ("*Cash*") is relevant to the issue raised. In that case, the arresting garda's reasonable suspicion, which grounded the accused's arrest, was based on a record of fingerprints which the prosecution was not in a position to prove had been legally retained. The Supreme Court, upholding Charleton J. in the High Court, determined that an onus did not rest on the prosecution to prove the lawful provenance of material relied upon by a member of An Garda Síochána to form a reasonable suspicion to justify an arrest. Fennelly J., delivering the majority judgment of the Supreme Court,

approved the following passage from the judgment of the Charleton J. in the High Court, where he stated:-

> *"The crucial issue in this case is whether a suspicion arising from a piece of evidence the origin of which is uncertain as to whether it was properly obtained, or arriving from an illegally obtained piece of evidence, destroys the legality of an arrest. In that regard, it is claimed that the prosecution must prove that upon which a reasonable suspicion was founded was lawfully obtained. This argument seeks to import the rules of evidence into police procedures. It has no place there. If the prosecution was obliged to prove legality in respect of every step leading to an arrest or charge, this would have the result that the prosecution, in presenting a case, would be required not only to show, against objection by the defence, that the evidence which they proposed to lead was lawfully obtained, but to open to the court every facet of the investigation to ensure that no illegality ever tainted any aspect of police conduct."*

31. In *The People (at the suit of the Director of Public Prosecutions) v. JC* [2017] 1 IR 417 ("*JC*"), O'Donnell J, as he then was, considered *Cash*, stating (at p. 607 of the report) that the import of *Cash* was that "*unconstitutionally obtained evidence may nevertheless be a permissible basis for seeking a valid warrant*".

32. Counsel for the appellant submits that the Chief Justice was incorrect in his analysis of *Cash* and that the principle established in *Cash* did not go as far as stated by the Chief Justice in *JC*. Aside from noting that the Chief Justice acted as Senior Counsel in *Cash*, we are of the opinion that in light of the approval by the majority of the Supreme Court of the analysis by Charleton J. in the High Court in *Cash*, the *ratio decidendi* of *Cash*, as set out by O'Donnell J., as he then was, in *JC* is correct.

33. Accordingly, separate to the question of whether there was a breach of the appellant's constitutional right to the inviolability of his dwelling, the question as to whether the information received by Sergeant Gough was obtained in breach of a constitutional right is not of importance to the question of whether the search warrant issued and acted upon was valid.

34. Accordingly, the trial judge did not err in his determination of this issue or in his determination not to decide whether there had been a breach of the appellant's constitutional right to the inviolability of his dwelling.

35. These grounds of appeal, therefore, also fail.

Grounds 7 & 8 – Arrest & Detention of the Appellant

36. Oral submissions were not made by the appellant in relation to these grounds of appeal with an indication instead being given that the appellant was relying on his written submissions.

37. The appellant challenged the legality of his arrest and detention on the basis that the reasonable suspicion grounding his arrest was based on information garnered from the search of his apartment. As we have upheld the trial judge's ruling with respect to the legality of the search at the appellant's apartment, that part of the argument in relation to this ground of appeal automatically fails.

Discussion and Determination

38. With respect to the separate argument to the effect that the appellant was unlawfully detained for a period after the drugs search but before the s. 30 arrest, there is no merit in this argument whatsoever. The arresting guard checked the PULSE System relating to the appellant after the appellant gave a false name to him and subsequently explained that he had given a false name because of an outstanding bench warrant. On foot of this, Garda

Duffy became aware of information in relation to the appellant regarding the Waterford shooting incident and that information formed the basis of a reasonable suspicion that the appellant had an involvement in that incident.

39. Accordingly, the trial judge did not err in finding the appellant's arrest and detention lawful. These grounds of appeal also fail.

Grounds 10 & 11 – Chain of Evidence

40. Oral submissions were not made by the appellant in relation to these grounds of appeal with an indication instead being given that the appellant was relying on his written submissions.

41. At trial, Garda Craig Kenny gave evidence that he found a live round of ammunition during a search of the appellant's apartment in his bedside locker. Garda Kenny stated that he placed the ammunition in a sealed evidence bag, marked it as 'CK1', and handed it to the exhibits officer who he believed to be Garda Andrew Barrett. The evidence of Garda Barrett was that he did not receive any exhibit from Garda Kenny marked 'CK1'. However, the exhibits officer, Garda Eugene O'Neill, gave evidence that he received the sealed evidence bag containing 'CK1' from Garda Craig Kenny.

42. The appellant submitted that the evidence of a live round of ammunition, marked 'CK1', should not have been admitted into evidence before the jury due a critical break in its chain of custody.

Discussion and Determination

43. *The People (as the suit of the Director of Public Prosecutions) v. Hawkins* [2014] IECCA 36 is determinative of this issue. We are therefore surprised that this point was made in the manner it was at trial, and then subsequently pursued before us, particularly in circumstances where the appellant failed to abandon this ground of appeal when given an opportunity to do so by the Court.

44. *Hawkins* establishes that issues in relation to the chain of custody of an exhibit are a matter for a jury to consider so as to determine whether they are satisfied beyond reasonable doubt that the exhibit introduced into evidence (and in this case subsequently forensically examined) is the same exhibit found at a searched location, rather than a legal issue for a trial judge to determine with a view to refusing to admit the exhibit into evidence. A determination of such a nature is not a question of law but rather a question of fact with the attendant question of what weight should be attached to the evidence. Such a determination falls within the jury's remit.

45. Accordingly, the trial judge did not err in admitting this evidence before the jury.

46. There is no merit in these grounds of appeal whatsoever and they fail.

Grounds 13 & 14 – Charge to the Jury Failed to Present the Defence Case

47. Oral submissions were not made by the appellant in relation to these grounds of appeal with an indication instead being given that the appellant was relying on his written submissions.

48. Counsel for the appellant asserted that the trial judge failed to properly present the defence case to the jury. This issue related to two prosecution witnesses, who were well acquainted with the appellant, who did not identify the appellant on the CCTV footage from the convenience store and of the shooting when asked by the gardaí to view the footage. The trial judge was requisitioned in relation to his charge and asked to remind the jury of this evidence. He declined to recharge the jury about this issue, determining that he had given a fair and balanced charged and that it would

unfairly highlight the strongest plank of the defence case if he were to accede to this requisition.

Discussion and Determination

49. It transpires that a perusal of the transcript of the charge of the trial judge reflects that the jury were referred to the evidence of the two witnesses at issue and reference was made to the fact that neither witness, both of whom were acquainted with the appellant, recognised him in the footage from the convenience store.

50. Accordingly, there is no merit in these grounds of appeal whatsoever and they therefore fail.

Conclusion

51. In circumstances where we have not upheld any of the appellant's grounds of appeal, his appeal against conviction is dismissed.