



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Edwards J.**

The People at the Suit of the Director of Public Prosecutions

V

John Walsh

20/11

Respondent

Appellant

Judgment of the Court delivered on the 27th day of March 2015 by

Mr. Justice Birmingham

1. On the 8th December, 2010, the appellant, Mr. John Walsh was convicted of the offence of murdering John McManus between the 29th October, 2008 and the 7th November, 2008. The conviction came after a 28 day trial. The mandatory sentence of life imprisonment was imposed, but was made consecutive to another sentence of 8 years that the appellant was serving. The appellant now appeals against his conviction. He also appeals against the sentence imposed and has sought and been granted leave to add a ground in relation to sentence. The appeal against sentence arises in circumstances where the trial judge was made to understand by prosecution counsel, wrongly it is contended, and indeed now accepted, that the imposition of a consecutive sentence was mandatory.

2. Central to the appeal against conviction is the argument that certain remarks and observations of an incriminatory nature made by the appellant on the 6th November, 2008 at Tralee garda station and similar observations and remarks made by him on the following day in a garda car as he was being brought from the garda station to the District Court and again later that day when being brought from the District Court to Cork Prison should not have been admitted in evidence.

3. The arguments in relation to the admissibility of the admissions made in the garda station and in the garda car on the way to and from court as well as arguments relating to the seizure of the appellant's clothing while in garda custody will be considered in more detail. However, before doing so, it is necessary to refer to the grounds of appeal and to offer some factual background to the arguments and to provide a timeline in relation to the interaction between the appellant and members of An Garda Síochána.

4. The grounds of appeal set out in the notice of appeal are as follows:

(i) That verbal statements made by the accused on the 6th November, 2008 at 9.30 pm at Tralee garda station should not have been admitted in a situation where he was denied access, on an effective basis, to a solicitor and not informed that he was being investigated for the offence of murder;

(ii) A similar argument is made in relation to remarks made by the accused on the same date at 11.10 pm and in relation to remarks in the nature of admissions made by him on the 7th November, when being transferred to Kenmare District Court and again later that day when being transferred from Kenmare District Court to Cork prison;

(iii) The judge was wrong to deem lawful the arrest of the appellant for failing to appear in court when he and the person who was subsequently to be his co-accused were the only suspects for the murder of John McManus;

(iv) That the gardaí used the time that he spent at Tralee garda station following the arrest to record admissions and seize clothing;

(v) That the jury should have been discharged when a direction was given to the co-accused.

Factual background and timeline

5. **On the 30th October, 2008:** Tenants in a building in Wellington Road, Cork, in which the late Mr. McManus resided, noted "a lot of noise . . . loud banging and loud talking late at night" coming from the deceased's apartment. On the same night, the landlord of the apartment saw John Walsh and a woman who was on crutches going into the deceased's apartment. Mr. Walsh was known to the landlord, as the landlord has seen him assisting the deceased move his furniture into the flat. There were no sightings of Mr. McManus for a number of days and concern mounted.

On the 4th November, 2008: The landlord and members of An Garda Síochána entered the flat and carried out a search or inspection of the premises. It was noted that there was blood in various locations such as on the worktop and presses in the kitchen, on the carpet inside the door, on the wall alongside the dining table, on a locker in the bedroom and on the frame and mattress of the bed. A clear plastic refuse bag with a bloodstained duvet was found in the wardrobe. Two teeth were found, one in the lobby and another inside the door. There was an arm missing from an armchair in the bedroom and this was found in a wardrobe. A palm print which appeared to be made in blood was found on the wall in the hallway and in the kitchen there was a black refuse sack which contained bottles with a bloodlike pattern on them. There was also a knife, the handle and blade of which were bloodstained with the tip of the blade missing.

Also on the 4th November, the deceased's mother told gardaí that her son rang her on the 30th October, at 1.30 pm and told her that he needed €600 or €700.

On the 6th November, 2008: At about 12.45 pm Garda Daniel O'Connor of Ballybunion garda station was travelling between Ballybunion and Ballyheigue. His attention was drawn to a car in a lay-by. There was a woman in the passenger seat of the car and he saw a man jumping into the front seat and driving off. Garda O'Connor signalled the car to stop and then the driver staggered towards him with his eyes rolling in his head. The NCT certificate on the car had expired and the car was seized. The gardaí noted a shovel and a fork in the back seat and that there was blood on the floor of the boot of the car.

Garda O'Connor and his colleagues in Kerry entered details of the incident on PULSE. The PULSE entry was noted by gardaí in Cork and they asked their Kerry colleagues to carry out a search in the vicinity of where the car had been parked. At 5.30 pm the body of a man was found by gardaí searching the area where the car had been observed.

Gardaí in Cork then requested that the appellant be arrested on foot of a bench warrant which had been issued in the District Court in Cork on the 23rd September, 2008, following his non appearance in court. They also requested that Gillian Purcell, who was believed to be his companion, should be questioned.

The appellant was then arrested at a house at 7.00 pm on foot of the bench warrant and brought to Tralee garda station. There, he was processed in the usual way and was told of his entitlements in relation to consulting with a lawyer and was also given form C72S.

6. When processed at Tralee garda station and told of his rights including the right to consult a solicitor, he responded by saying that he wished to speak to his solicitor, Mr. Frank Buttimer. The appellant then had a conversation lasting some fifteen minutes with Mr. Buttimer by phone. Mr. Buttimer was not told anything and knew nothing about any murder investigation. Mr. Buttimer had been told, before speaking to the appellant that his client was in custody on foot of the bench warrant which had been executed and so it was in relation to the bench warrant and also the fact that the appellant's car had been seized in circumstances where the NCT certificate was out of date that Mr. Buttimer gave advices.

7. At 9.30pm Detective Sergeant Brennan and Detective Garda Riordan with the authority of the member in charge of the station went to the cell where Mr. Walsh was with the intention of asking him to hand over the clothes that he was wearing. What then transpired was described as follows by Detective Sergeant Brennan in evidence "What I actually said was; "you are in the vicinity, I must caution you" and I cautioned him, my lord, that he was not obliged to say anything unless he wished to do so but anything he did say would be taken down in writing. I requested his clothing but immediately he went on to say "I'm not a fool. I know you have me. I threw the body in the bushes. It was me, I didn't know what to do with him. He was my friend you know? I only got rid of the body. I was scared. I told him not to be hanging around with those guys. They were bad news. They killed him in his new flat. He was fine when I went to sleep. When I woke up, he was dead. I panicked. I really don't know which of them killed him. I put him in the boot of my car on my own. I put a quilt around him. It was near him. I have his clothes on me when I carried him out. No, no, wait let me think."

8. According to Detective Sergeant Brennan, a contemporaneous note of these remarks was made by him in his official garda notebook and he then asked Mr. Walsh to sign the note that had been recorded which the appellant did and it was then witnessed by him and Detective Garda Riordan.

9. According to the evidence during the course of a voir dire at trial, the appellant encouraged the members of the Gardaí to remain with him. This is recorded as follows by Detective Sergeant Brennan "He said, just as we closed the door, he said: "don't go away on me lads. I want to get this off my chest. I'll think about whatever pants I had on later on. Don't worry; I'm going to help you. Listen to me lads, I want to get this off my chest. I'm not a bad guy. I'm glad you got me. In the flat, there was a couple of lads first, some lads he knew from the jail. I didn't know them. He asked me to give him a hand when he was in trouble with some. He asked me to give him a hand. He was in trouble with some guys. He was into the heroin. He was taking all different types of pills. Gillian, my girlfriend, was in the flat with me. I don't know their names, that's honest. He knew them from the jail. I'm telling you, lads, they were bad news. I didn't want to be in their company. They were talking wild, silly stuff. Wild stuff. We left him in his flat for a few days. Well maybe another day or so. I'm still scared. I shouldn't ever have got involved. I was a friend. It wasn't me who killed him. Would you let me think for a while? Don't worry, I'll help now that I'm this far. I helped him move into his flat. I dumped him or I lifted him on my own to get his body out of the way. Gillian had to go to Kerry: that's why we went to Kerry. I didn't know where we were going, even though I used to live in Listowel before. That's all I can tell you now lads."

10. Detective Sergeant Brennan said that he asked Mr. Walsh to sign the note of this that had been made and again this was done and it was witnessed by the Detective Sergeant and his colleague Detective Garda Riordan.

11. At 11.10pm the appellant is said to have asked Detective Sergeant Brennan to visit him to give him a cigarette. On this occasion he is recorded as saying "give me a fag John. John, isn't it? Look the solicitor tells me to say fuck all. I just wanted to ask ye can ye leave Gillian out of it. She has enough troubles of her own. We stayed in a B&B and with a friend of Gillian's. Since then don't ask me where they were." As on the previous occasion Detective Sergeant Brennan made an entry in his notebook and invited Mr. Walsh to sign it which he did and it was then witnessed by Detective Sergeant Brennan and by Detective Garda Michael Healy who was also present.

12. The following day Mr. Walsh was brought from Tralee Garda Station to Kenmare District Court by Detective Sergeant John Brennan and Detective Garda Jim O'Donovan. The trial court was told that en-route Mr. Walsh observed "John, that's your name isn't it. I fucked up badly this time, didn't I. I gave him a few slaps alright. He owed me about €500." The evidence of Detective Sergeant Brennan was that at this stage he cautioned Mr. Walsh but that after the caution was administered the appellant continued "My solicitor told me say nothing". "He was telling me lies". He said the guards took his money off him, something to do with a forged prescription he was caught with. I know it was lies. His friends were laughing when he told me about the guards taking his money. I'll tell you man, I got an awful fright when I woke up and saw him dead. I wouldn't hurt a fly. Someone might have given him a few slaps after me. He could have hit his head maybe. They were gone when I woke up. One had stayed around for a small while. Gillian and I ran away then. Look John I'd better say no more, the solicitor said that." The notes were then signed by the gardaí, who were present, and dated and timed.

13. At Kenmare District Court the appellant was represented by a solicitor, whose attendance, it would seem, had been arranged by Mr. Buttimer. Despite an application for bail, which was opposed by gardaí, he was remanded in custody and was then brought from Kenmare to Cork Prison. In the course of this journey he is recorded as saying "Jesus I am after a rough few days. I am fucked, he shouldn't have died." At this stage it is recorded that Mr. Walsh was cautioned by Detective Garda O'Shea. On this occasion there were three Gardaí present Detective Sergeant O'Sullivan, Garda O'Donovan and Detective Garda O'Shea. When the caution was

administered, he was asked whether he understood it. He answered "I do. My solicitor has told me sign nothing and say nothing. He was a sound fella, it shouldn't have happened. He owed me a few bob and I called up for the money and we went drinking." He was then asked where they went drinking and answered, "In John's flat, I don't even know what day it was, I suppose this should never have happened. I don't know even why I moved the body. At least God forgives all." He was asked "For you John or for John McManus?" The response was "for John McManus I'd say yeah". He was then asked "How did you know John McManus?" and he answered, "I met him in the jail. Fuck it he shouldn't have died. He was harmless, he wouldn't hurt a fly. There was an argument and we were drunk. He owed me money but couldn't pay it. I am not a bad person, I got such a fright when I saw he was dead. I don't know why I put him into the car and drove down to that place in Kerry. I was driving for hours. Fuck it this shouldn't have happened. I'm not a bad person. I've never done anything like this before." At that stage he was asked "Why did you go to Kerry with the body?" and answered, "Look lads I don't want to talk about it, all I know is the man shouldn't have died." Then he was asked whether there was anything else he wanted to tell the Gardaí and he is recorded as responding, "No I'm not a bad person, John should never have died. He was a fine fella." The notes of this conversation were then read over by Detective Garda O'Shea. It is said that John Walsh agreed that they were correct but refused to sign the notes saying he was doing so on the advice of a solicitor. The notes were then signed by the gardaí who were present, dated and timed at 1.15pm.

14. On the 10th October, 2008, Chief Superintendent Hayes sought and obtained a warrant pursuant to s. 42 of the Criminal Justice Act 1999, authorising the arrest of the appellant who was then in Cork Prison.

15. On the 26th January, 2009 the appellant was taken from Cork Prison to Mayfield garda station where he was interviewed a number of times. Subsequently a videotape of one such interview, which commenced at 6.24 pm on the 26th January, 2009, was played to the Court. During that interview, the appellant said that the deceased fell a few times on the night and that there were a number of people drinking together earlier on, but by the end of the evening only he and the deceased remained. The appellant said that the deceased was bleeding from the head, but afterwards was walking and helped in the clean up of the flat. The appellant also stated that he himself was on heroin at the time. He said that when he woke the next morning that Mr. McManus was dead. The accused left the flat and did not return for a number of days. Mr. Walsh said that he later put the body in the car, but that he did not intend to bury the body.

16. During the course of the trial, there was evidence that the deceased's blood was found on tracksuit bottoms handed over by the appellant, on clothing found in the appellant's car and on the car boot. There was also evidence that the appellant's fingerprints were found in blood on the bed in the apartment, his palm prints found in blood in two places on a partition wall and there were also palm marks of the appellant on the window in the flat, on the side of a bed and on a plastic bag with refuse.

17. During the course of the trial a memorandum of interview which commenced at 12.57 pm on the 27th January, 2009, was read to the jury. In the course of this interview, he accepted that he owned the shovel and fork taken from the car, saying that he had acquired them to do a gardening job for a friend. Once more Mr. Walsh repeated that the deceased had fallen and banged his head a few times. The notes taken of the verbal admissions of the 6th and 7th November, 2008 were read to him, but he said he could not recall making those admissions.

18. At trial the appellant gave evidence in his own defence to the effect that on the night in question a fight had broken out between him and the deceased over a missing phone. At the time he and the deceased were the only ones in the flat. They had a punching match and the deceased was going for a knife, so "I picked up a piece of the chair and gave him a few whacks . . . we fell on the floor and he was walking to the bedroom". The accused said that he and the deceased tumbled around the flat and that he gave the deceased a few punches, but that he had not meant to knock his teeth out. When the row was over the deceased said that Mr. Walsh would have to help him clean the place up and he did so. The appellant gave evidence that he tied the deceased hands as he was going to bed as he did not trust him and feared that he would go and get a knife and attack him. Mr. Walsh said that the deceased had banged his head an awful bang on the chair which had smashed into pieces and Mr. Walsh accepted that subsequently, upon finding the body, that he had put it under the bed.

19. A consultant psychiatrist, Dr. Brian McCafferey, called by the defence, gave evidence that medication, Diazepam, provided to Mr. Walsh while he was in custody in Tralee garda station by a doctor who was called to the station at his request, would result in a situation where the individual taking the medication would appear calm while answering questions, but afterwards could have a total blank as to what they had said or what was said to them. The defence also called a forensic pathologist Dr. Declan Gilsenan who expressed the view that, on the basis of the injuries, it was unlikely that there was an intent to kill or to cause really serious injury.

Legal submissions

20. On behalf of the appellant it was submitted that by failing to inform his solicitor that Mr. Walsh was suspected of murder and would be requested to hand over his clothing for forensic examination, that the gardaí contrived to deny him effective and meaningful access to legal advice. Furthermore, it is submitted that by failing to afford the appellant the opportunity to be legally advised regarding the implications of handing over his clothing for forensic examination, that the gardaí caused the appellant to be denied his constitutional right to fair procedures and that the admissions that were made by the appellant flowed therefrom and so ought to have been ruled inadmissible. On behalf of the appellant it is argued that at least from the time the body of the deceased was discovered at 5.30 pm on the 6th November, 2008, that the appellant was suspected of involvement in the murder. The Garda Síochána must have been anxious to interview the appellant in connection with the murder and that they were at all times intent upon seeking to procure the appellant's clothing for forensic examination. However, An Garda Síochána, it is argued, took a tactical decision that the appellant's solicitor would not be made aware of the suspicions in relation to Mr. Walsh and what was intended would happen prior to the request for the handing over of the clothes and prior to Mr. Walsh being told that he was suspected of having committed a murder. Moreover, there was evidence that the appellant was in a fragile physical state and mentally vulnerable at the time of this arrest. Mr. Patrick Gageby S.C., who appeared for the appellant before this Court, but not in the Court below, concentrated almost all of his attention on what he contends was a denial of effective access by a solicitor to his client.

21. On behalf of the Director of Public Prosecutions it is submitted that there is no question of the arrest on foot of the bench warrant having been a colourable device, there was a valid warrant in existence and the gardaí were entitled to act on it and execute it. What the appellant had to say on the various occasions was said voluntarily and made of his own volition, and was not the result of questioning or prompting or breaches of any right whether constitutional or otherwise.

22. The prosecution perspective was concisely summarised by Detective Inspector Quilter at day 7, p. 21, where he observed:

" . . . Mr. Walsh was a person of interest to An Garda Síochána . . . and we certainly would not be flagging it with Mr. Buttimer that we would be interviewing him in connection with . . . we are entitled to ask questions of any person whether suspect or not, put questions to them."

23. There are significant powers available to the gardaí which can be exercised during the course of a criminal investigation. This includes arrest, detention and the taking of samples. The *quid pro quo* for this is that a person, in respect of whom those powers are exercised, has certain rights: the right to have people notified of his presence in the garda station, the right to have access to a legal adviser, now, the right to have his legal adviser present at interviews and so on. This case raised the question of what the position is when the gardaí suspect an individual of participation in a crime but do not intend to invoke their statutory powers or do not need to. In those circumstances is there an obligation on the gardaí to tell a suspect, or a "person of interest", to use the language of Detective Inspector Quilter, what the position is and/or is there an obligation to bring the suspicions held within An Garda Síochána to the attention of the legal adviser of the suspect.

24. In the Court's view the answer to that question will always be one of degree. At one end of the spectrum there is no doubt that if the gardaí invoke their powers in respect of an individual by arresting and detaining him and so on, that means that all of the rights of the suspect come into play. On the other end of the spectrum it could not be suggested seriously that merely because the gardaí suspect an individual of involvement in a crime, and indeed seriously suspect an individual who is at liberty in the community, that there is any obligation to go to him or to his lawyer and tell him that he is suspected of participation in a crime and that, accordingly, he should avoid doing or saying anything that might tend to incriminate himself.

25. The present case falls somewhere in between those two very clear situations, the gardaí did not arrest or detain Mr. Walsh exercising their powers in that regard as part of the murder investigation on the 6th November, 2008, but he was deprived of his liberty at a time when he was suspected of involvement in the murder of Mr. McManus. He was not interviewed or interrogated in relation to the murder until the 26th January, 2009.

26. As the Supreme Court has made clear in a number of cases, most recently in the case of *The People (Director of Public Prosecutions) v. Gormley and White* [2014] IESC 17 (unreported, Supreme Court, 3rd of June 2014), the right to access to a legal adviser on the part of a person in custody is a very important constitutional right. It behoves the courts to be astute to identify any attempt to devise stratagems so as to restrict the exercise of that right and to react strongly to such attempts. That is the approach that informs this Court's consideration of the present case.

27. Unlike many cases where matters begin with a prearranged raid on a particular location and an arrest, often, as Hardiman J. pointed out in *Gormley and White*, early in the morning, the events with which this Court is concerned began with a chance encounter between a uniformed garda and the appellant. Certainly it is the case that once details of that encounter were posted on the PULSE system that the garda interest in Mr. Walsh must have been at a very high level indeed. Mr. McManus was missing and there clearly had been a very serious violent incident at the McManus apartment where Mr. Walsh had been seen along with a female companion. Mr. Walsh was seen in a car with a fork and shovel and there was blood visible in the boot of the car. However, while the gardaí had much to be suspicious about, there were also significant gaps in their information even after the body was discovered. While there was every reason to suspect and believe that the body that had been located was that of Mr. McManus, it was sometime before an identification was made and some time before a cause of death was known.

28. It may have been fortuitous from the perspective of An Garda Síochána that they were required to arrest Mr Walsh on foot of the bench warrant that was in existence, with the result that he was deprived of his liberty at a time when further enquiries were being conducted into the death of Mr McManus. However, the decision to arrest and detain Mr Walsh on foot of the bench warrant cannot be categorised as a colourable device. The bench warrant had been issued in respect of a serious matter, when Mr. Walsh failed to appear for service of a book of evidence. The Gardai have no discretion as to whether or not to arrest a person who is the subject of a bench warrant. They are obliged to do so. Moreover, they must do so within a reasonable time. See *Dunne v Director of Public Prosecutions* (Unreported, High Court, Carney J., 6th June, 1996); and *Director of Public Prosecutions v Cormack and Farrell* [2009] 2 I.R. 208.

29. In the Dunne case, Carney J. stated:

"A warrant of apprehension is a command issued to the Gardai by a Court established under the Constitution to bring a named person before that Court to be dealt with according to law. It is not a document which merely vests a discretion in the Guards to apprehend the person named in it; it is a command to arrest that person immediately and bring him or her before the Court which issued it."

Carney J. added:

"Members of An Garda Síochána to whom a warrant is issued for execution must be accountable to the Court which issued the warrant for its prompt execution and in default of a prisoner being expeditiously produced, have an explanation for his non-production and furnish an explanation of what steps were taken to bring about his apprehension."

30. In *Director of Public Prosecutions v Cormack and Farrell* [2009] 2 I.R. 208 the Supreme Court was concerned, inter alia, with delay on the part of An Garda Síochána in executing a bench warrant. Giving judgment for the Supreme Court, Kearns J. quoted with approval the remarks of Carney J. cited above, and stated:

"In the context of delay therefore, the legal position in relation to the execution of bench warrants may be simply stated. There is an obligation on the Garda Síochána to execute same promptly or within a reasonable time."

31. It is noteworthy that the gardaí, dealt with the co-accused, Ms. Purcell, by calling on her, asking her to give an account of her movements and inviting her to hand over items of clothing which she agreed to do. They adopted this approach in a situation where there was no bench warrant in existence in respect of Ms. Purcell and so she remained at liberty. In all the circumstances, the decision to deprive Mr. Walsh of his liberty when there was a substantial legal basis in existence for doing so was a justified one. However, that did not mean that the gardaí were at large in terms of what actions they could take while Mr. Walsh was in custody. Any attempt to interview or interrogate him would have been inappropriate, but there is no suggestion that occurred. What the gardaí did do though, was to ask Mr. Walsh to hand over his clothing and indeed the observations made by Mr. Walsh that were recorded were a response to this request. The net question therefore, is whether the gardaí were justified in asking an individual who is suspected of having been involved in a very serious crime, but who was in custody on a different basis, to agree to hand over his clothing. Following a lengthy *voir dire*, the trial judge concluded his ruling by saying that it would have been negligent not to do so. It is the case that here there was no trickery or subterfuge. Mr. Walsh was told that the gardaí were interested in his clothing because he had been seen close to an area where a body was found which it was believed was the body of Mr. McManus. It was open to Mr. Walsh to decline that request and certainly he could have remained silent, but he did not do so. Mr. Walsh had been told of his right to consult a solicitor and there can be absolutely no doubt that he was fully aware of his rights in that regard. There was nothing to

prevent him responding to the request put to him in relation to his clothing by saying that he wished to consult his solicitor before deciding what to do, but he did not do so. Moreover, the circumstances of his encounter with Garda O'Connor in the layby, the fact of the seizure of his car and his subsequent arrest meant that he must have realised from the very earliest stages that the gardaí must inevitably harbour suspicions as to what his role was in relation to the disappearance of Mr. McManus. He was aware of his right to consult a solicitor and it was at all stages open to him to seek advice in relation to the situation in which he found himself.

32. The Court is of the view that there was nothing improper in the request for the clothing. Once Mr. Walsh decided in response to make certain observations then it was of course incumbent on the gardaí to record what he said and this is what they did. When Mr. Walsh later in the evening requested gardaí to join him in the cell area there was no reason why they should not have done so. Having been arrested on foot of a bench warrant, it was essential that he be brought from the garda station to the District Court, and having been remanded in custody there, that he be brought from the court to the prison to which he was remanded. The Court is very aware of the advice of Hardiman J. in *Gormley* that courts should approach reports of conversations which were not video recorded with scepticism, and respectfully agrees with the views so clearly expressed. It is clear however that the trial judge approached the *voir dire* in just that frame of mind. In the course of his ruling, he referred to the fact that his experience, from his time at the Bar, was that the back seat of a garda car on the way to a police station was a favourite place for "planting verbals", but that having viewed the video of the January 2009 interview, he was satisfied that all was in order. The reference by the trial judge to his experience as a Barrister is indicative of a healthy scepticism on his part.

33. There has been reference to the condition of the appellant during his time in the garda station and afterwards and to the fact that he claimed to have taken heroin and to have drunk alcohol. This was an issue that was explored in considerable detail during the course of a *voir dire* over some five days. The trial judge, who heard the evidence of all the witnesses called on the issue as well as viewing the videotaped interview, concluded that he was satisfied beyond reasonable doubt that the admissions were made voluntarily and made when the accused was mentally in control of himself. He stated that he reached the conclusion on the basis of the evidence of all those who had dealings with the appellant, but in particular on the basis of the evidence of the doctor who visited him while in custody and the evidence of his solicitor Mr. Buttimer who spoke to Mr. Walsh following his arrival at Tralee garda station. That is a finding of fact which this Court cannot disturb. In the circumstances, the Court must dismiss the appeal against conviction and will now address the issues raised in relation to sentence.