**THE COURT OF APPEAL**

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

**89/12**

**The People at the Suit of the Director of Public Prosecutions**

**V**
**Greg Crawford**

**Appellant**

**Judgment of the Court delivered on the 16th day of February 2015, by Mr. Justice Birmingham**

1. On the 9th March, 2012, in the Central Criminal Court a jury returned a unanimous verdict convicting the appellant of murdering Gareth Brosnan Grant on the 8th October, 2007, at St. Ita's Street, St. Mary's Park, Limerick. He now appeals against that conviction.

2. The core evidence at trial may be summarised as follows. At about 9.30 pm on the 8th October, 2007, David Grant, brother of the deceased, went to visit his brother at 31 St. Ita's Street. Present at the time of the visit were the deceased, the deceased's partner Claire Ronan, and their three children as well as the mother of the deceased Gabrielle Brosnan. Mr. David Grant stayed about 20 minutes and at about 9.55 pm left to go to his father's house which was a short distance away on St. Munchin's Street. When he was getting into his car to make this short journey, he saw the appellant, Greg Crawford, who was known to him, at the junction of St. Ita's Street and St. Colmcille Street. When Mr. Grant gave evidence at trial, defence counsel put it to him that he was mistaken and that he had not seen Mr. Crawford. Mr. Grant for his part disagreed with this proposition.

3. Ms. Claire Ronan gave evidence that about 10 minutes after David Grant left the house, her partner, Gareth Brosnan Grant, told her that he was going down the road for about a minute. Very shortly thereafter she heard a shot. She went from her kitchen in the front of the house onto the street. Her evidence to the trial was that she saw the appellant and saw her partner lying on the ground. She screamed "Gay, its Gareth" and her evidence was "he – Greg Crawford turned and looked and he pulled his hood and turned and ran". Sgt. Gerry Cleary arrived on the scene almost immediately after the shot, he had been in the area at the time. Ms. Ronan, without objection, gave evidence that, when Sgt. Cleary was taking her to the hospital following the ambulance, in reply to the question "who was it?" she said "it was Greg Crawford." Sgt. Cleary's evidence was that, as a result of what was said to him by Ms. Ronan, he went to the home of Greg Crawford at 91 St. Munchin's Park. There he observed "Greg Crawford coming out of a small room off the kitchen – he appeared freshly showered, his hair was wet, he had fresh clothes on him". At 10.35pm, he asked the appellant to give an account of his movements, and then arrested him under s. 30 of the Offences Against the State Act and brought him to Henry Street garda station.

4. There was also evidence at trial relating to items located at 97 St. Ita's Street, the home of the appellant's grandparents, Patrick and Catherine Kennedy. At 11.00 pm on the evening of the 8th October, Det. Sgt. Patrick O'Callaghan sought a search warrant pursuant to s. 29 of the Offences Against the State Act from Det. Super. James Brown, which was granted. There was an initial inspection of the premises, but because of the amount of material to the rear of the house a request was made to Det. Super. Brown that the premise be declared a crime scene, which it was. The house was searched the following morning and a handgun was located under a beer barrel in the rear garden. The handgun was wrapped in a woollen glove and there was another woollen glove very close by. A bullet was recovered from the body of the deceased and this was compared with bullets discharged from the handgun found in the garden and the conclusion of the ballistic experts was that it had been discharged by that handgun found at 97 St. Ita's Street.

5. Evidence was given by two forensic scientists, Mr. Liam Fleury and Mr. Michael Burrington. The evidence of Mr. Fleury was that no firearm residue was found on the gloves. Had an individual been wearing gloves on discharging a handgun, he would have expected to find firearm residue. Mr. Burrington took DNA tape lifts from the inner surface of the gloves which matched the profile of samples provided by the appellant. It was accepted that DNA in the gloves could be explained by secondary transfer ie. could have come from someone in close contact with something else handled by Mr. Crawford.

6. Another aspect of the evidence was that which was given by Sergeant Gerard Cleary, who attended the home of Greg Crawford on the 8th October 2007 and took an account of Greg Crawford's movements for that evening. The appellant claimed to have been home all night but he was shown on CCTV footage at a local garage, approximately one hour before the murder. The summary of the evidence, which has been referred to is a summary of the prosecution evidence. The defence in this case did not go into evidence.

**The Grounds of Appeal**
7. In the written submissions four grounds of appeal were advanced. These were:

> (i) "That the learned trial judge erred in law in refusing the application of counsel for the accused for a direction,"
>
> (ii) "That the learned trial judge erred in law in refusing requests of both counsel for the prosecution and defence to summarise the evidence of Mr. Liam Fleury, Forensic Scientist, for the benefit of the jury in the course of his charge to the jury,"
>
> (iii) "That the learned trial judge erred in law in refusing the request of counsel for the accused to particularise the *Casey* warning to the particular circumstances of the case for the benefit of the jury in the course of his charge to the jury, and"
>
> (iv) "That the learned trial judge erred in law in ruling as admissible the evidence obtained on foot of a warrant issued pursuant to s. 29 of the Offences Against the State Act 1939, as amended when same had been deemed unconstitutional."

8. The major focus of attention during the oral submissions was on ground 3, the ground dealing with the adequacy of the Casey warning, which will be dealt with later on in the judgment.

9. **Ground 1***: that the learned trial judge erred in law in refusing counsel for the accused application for a direction*. This point was

not pressed in oral submissions and understandably so. On an application for a direction, the test is whether a jury, properly charged, could convict. On day 5 of the trial, after the prosecution case closed, counsel for the accused sought a direction. The trial judge dealt with the application as follows:-

> "I am satisfied there is evidence capable of going to the jury. There are undoubtedly infirmities in the evidence and contradictions in the evidence. That is a matter entirely for the jury to resolve. This is trial by jury and I do not enter the arena in relation to matters of fact. Insofar as circumstantial evidence is concerned, it is a matter for the jury and not for me to decide whether the evidence combines in such a fashion as to make a rope. Case goes to the jury."

10. In the view of the Court, there was abundant evidence to justify letting the matter go to the jury. Indeed, to withdraw the case would have involved a usurpation of the role of the jury. The question was whether the state of the evidence was such that a jury properly charged could, not necessarily would, convict. There was evidence from David Grant putting the accused at the junction of St. Ita's Street and St. Colmcille's Street at 9.55 pm approximately. There was the evidence of Ms. Ronan that when she went out onto the street immediately after the shot was discharged she saw the appellant in close proximity to her partner's body. There was the evidence of Sgt. Cleary that when, as a result of what was said to him by Ms. Ronan, he went to the home of Greg Crawford that he found him coming out of a shower room, freshly showered and with fresh clothing. Then there was the evidence that the firearm used in the shooting was found in the rear of the home of the accused's grandparents wrapped in or covered by a glove from which DNA samples were taken which matched the DNA of the accused and finally there was the evidence that the accused had claimed to be at home all night in his parents home when CCTV footage from the garage suggested otherwise. On the application for a direction, the prosecution case had to be taken at its high watermark. It is true that the defence, both in cross examination and in closing submissions had criticised aspects of the evidence, in particular the identification/recognition evidence to which there will be reference in the context of later grounds of appeal. However, the fact that evidence was challenged or criticised did not provide a basis for withdrawing the case from the jury. The trial judge was clearly correct to refuse the application for a direction.

11. **Ground 2***: that the learned trial judge erred in law in refusing requests of both counsel for the prosecution and defence to summarise evidence of Mr. Liam Fleury, Forensic Scientist, for the benefit of the jury in the course of his charge to the jury*. Mr. Fleury gave relatively brief evidence on day 4 of the trial. His evidence was that he had received a firearm residue kit relating to the hands and face of the accused and had also received the brown knitted gloves that had been referred to. In relation to the gloves, his evidence was that he was satisfied that there was no firearm residue on them. The kits relating to the face and hands of Mr. Crawford were not examined for firearm residue in circumstances where the protective layer adhering to the sampling tapes had not been removed prior to sampling. In the course of cross examination by defence counsel, he agreed that if a person discharged a gun while wearing a glove, you would certainly expect to find residue on it and, if the individual was not wearing a glove on the exposed surface of the hands, on clothing and in the immediate area where the firearm had been discharged. He described the failure to remove the plastic covering from the kits as an error. In re-examination by counsel for the prosecution he stated that if a person, on whom particles were deposited by reason of the discharge of a firearm had a shower, that the particles would be removed.

12. The ground of appeal refers to the request of both counsel for the prosecution and counsel for the defence to the trial judge to summarise the evidence of Mr. Fleury. However that is to overstate the position somewhat. The trial judge did not deal with the evidence of Mr. Fleury while reviewing the evidence. When the jury retired, prosecution counsel commented: "Sorry my Lord, it may be an oversight on your part, my Lord, but you did not deal with the evidence of Mr. Fleury" at which point the learned trial judge interjected "no I didn't", counsel continued "if – but I'll just, if it wasn't an oversight my Lord, then –". At that stage it was the turn of defence counsel to make requisitions. He began "yes I was going to raise the same point". He then went on to deal with other matters and in particular with the identification/recognition evidence issue.

13. There is absolutely no obligation on a trial judge to deal with the evidence of every witness called during the course of the trial. In this case the trial judge prefaced his review of the evidence by saying:-

> "Now I am going to refer to salient features of the evidence and I will not be referring to everything and I am no purporting to refer to everything. It is my experience that counsel in cases always want their favourite bit of evidence to be rehearsed by the trial judge, but that is not what I am at, so don't expect it."

14. In this case, the evidence of Mr. Fleury was of very limited significance. He was clear in both direct examination and cross examination that there was no firearms residue found on the gloves and that if a person discharged a firearm while wearing a glove that one would certainly expect to find firearm residue on it. He was also clear that if a person who had discharged a firearm and on whom particles as a result were deposited, showered then the particles would be removed. In these circumstances, it was certainly open to the trial judge to take the view that the evidence of Mr. Fleury was not of such significance that it required to be addressed during the review of the evidence. The trial judge's decision not to summarise the evidence of Mr. Fleury, and he was clear it was a decision as distinct from an oversight, is to be contrasted with his treatment of the evidence of Mr. Burrington. He observed that such was the significance attached to the evidence of this witness by defence counsel that he was going to deal with this evidence in its entirety from the transcript and he then did so, devoting almost six pages of the charge transcript to the exercise. This ground also fails.

15. **Ground 4:** *that the learned trial judge erred in law in ruling as admissible the evidence obtained on foot of a warrant issued pursuant to s.29 of the Offences Against the State Act 1939, as amended when same had been deemed unconstitutional*. This issue was dealt with on day 3 of the trial. It was addressed in circumstances where the Supreme Court had, very shortly before on the 23rd February, 2012, delivered judgment in the case of *Damache v. DPP and Ireland* [2012] IESC 11. Following legal debate and having heard evidence on the issue from Inspector (then Detective Sergeant) O'Callaghan who sought the s. 29 warrant and Det. Super. Brown who issued it, the trial judge then ruled as follows:

> "Yes, I am not all happy about the situation which has arisen. I am not a judge who seems a discretion is something to be exercised only in favour of the prosecution. The situation here is that there is a wealth of statute law which has to be brought to bear on this section. Section 5 of the Criminal Justice Act seems to run forever. And it is wholly unusable legislation for guards to have to operate under in an emergency situation in the middle of the night. I am satisfied it is legal rights we are concerned with here, not constitutional rights. And I first of all find as a fact that there was an implied consent given by the grandparents who raised no objection to what the guards were doing and what they told them they were doing. I accept Mr. Creeed's submission that what happened here, insofar as any illegality is concerned was unintentional. I do not see who the guards could have coped with the statute law they are expected to cope with in an emergency situation in the middle of the night. I accept that we are not dealing with something of a trivial or technical nature and I accept that there were circumstances of urgency and I reluctantly think public policy justifies the excusing of any legality. I say reluctantly because, as I said, I am not a judge who exercises his jurisdiction at every discretion to go one way at the end of the day. In relation to the crime scene provision, at the end of an almost incomprehensible

section, there is a savour for other powers and that would include common law powers and this seems to me to be a situation where the common law rights to seize and preserve evidence would be appropriate to the situation, accordingly, I allow the evidence."

16. In the view of the Court there are a number of points that require consideration. The premises at 91 St. Munchin's Park was not the appellant's dwelling. So there was no question of his constitutional right to the inviolability of his dwelling being engaged by the search, nor indeed were there any property rights of the accused/appellant engaged. It is also noteworthy that the gun and gloves were found not on the night that the s. 29 warrant issued, but on the following day after the premises had been declared a crime scene. Section 5 of the Criminal Justice Act 2006, so far as is relevant, provides as follows:-

> 5.— (1) Where a member of the Garda Síochána is in—
>
> (a) …
>
> (b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,
>
> and he or she has reasonable grounds for believing that—
>
> (i) …
>
> (ii) there is, or may be, in the place evidence of, or relating to, the commission of an arrestable offence that was or may have been committed elsewhere,
>
> he or she may, pending the giving of a direction under subsection (3) in relation to the place, take such of the steps specified in subsection (4) as he or she reasonably considers necessary to preserve any evidence of, or relating to, the commission of the offence.
>
> (2) A member of the Garda Síochána who exercises powers under subsection (1) shall, as soon as reasonably practicable, request or cause a request to be made to a member of the Garda Síochána not below the rank of superintendent to give a direction under subsection (3) in relation to the place concerned.
>
> (3) A member of the Garda Síochána not below the rank of superintendent may give a direction designating a place as a crime scene if he or she has reasonable grounds for believing that—
>
> (a) either—
>
> (i) …
>
> (ii) there is, or may be, in the place evidence of, or relating to, the commission of an arrestable offence that was, or may have been, committed elsewhere,
>
> and
>
> (b) it is necessary to designate the place as a crime scene to preserve, search for and collect evidence of, or relating to, the commission of the offence.
>
> (4) A direction under subsection (3) shall authorise such members of the Garda Síochána as a member of the Garda Síochána not below the rank of superintendent considers appropriate to take such steps as they reasonably consider necessary to preserve, search for and collect evidence at the crime scene to which the direction relates
>
> …
>
> (7) A direction under subsection (3) in relation to a place other than a public place shall, subject to subsections (9) to (11), cease to be in force 24 hours after it is given.
>
> …
>
> (18) Nothing in this section shall prevent—
>
> (a) the designation of a place as a crime scene, or
>
> (b) a member of the Garda Síochána from taking any of the steps referred to in subsection (4) at a place so designated,
>
> if the owner or occupier of the place consents to such designation or the taking of any of those steps.
>
> (19) In this section—
>
> "evidence" means evidence of, or relating to, the commission of an arrestable offence;
>
> "preserve", in relation to evidence, includes any action to prevent the concealment, loss, removal, contamination or destruction of, or damage or alteration to, the evidence.

17. The power in s. 5(3) vested in a Garda Superintendent to declare a location a crime scene does not appear to be dependent on the conditions specified in s. 5(1) being satisfied. Accordingly, it does not appear that the evidence was illegally obtained, as it was found at a place which had been designated as a crime scene. Moreover, there was evidence to support the conclusion of the trial judge that there was an implied consent by the grandparents who raised no objection. Indeed, in that regard there was evidence, albeit in the course of the trial proper following on the ruling on the challenge to the admissibility of the evidence, that on the morning of Tuesday, 9th October, 2007, the owner of the premises, Mr. Paddy Kennedy, specifically allowed the gardaí to enter the premises. However, whatever about that, the trial judge was clearly correct that the case at its height, from the perspective of the defence, involved illegally obtained evidence, and that if the evidence was illegally obtained he had a discretion to exercise and was exercising it in favour of admitting the evidence. Given that he was not dealing with evidence obtained by underhand methods or anything of that nature, it is understandable that he would exercise a discretion as he did. Indeed, if one bears in mind that the gardaí, in a situation of urgency were acting in strict conformity with the terms of a statute which had been on the statute books some 68 years at that stage, it is inconceivable that the discretion would have been exercised in any other way. Accordingly, grounds 1, 2 and 4 are rejected. The court therefore turns to ground 3, which is the ground on which most reliance was placed by counsel for the appellant.

18. **Ground 3:** *that the learned trial judge erred in law in refusing the request of counsel for the accused to particularise the Casey warning to the particular circumstances of the case for the benefit of the jury in the course of his charge to the jury*. Two witnesses offered identification/recognition evidence. It is appropriate to consider this evidence briefly and then see how the issue was dealt with the trial judge in his charge. The first of these witnesses was David Grant, who gave evidence of sitting into his car to go down to his father's house and that he then saw Greg Crawford at the junction of St. Ita's Street and St. Colmcille Street. His evidence was that he knew it was Greg Crawford because he could see him clearly. That he knew it was Greg Crawford from seeing him around on the road every day. He would know him. When asked what the person that he saw was wearing, he said "I think he was wearing a coloured top. Now, don't ask me what colour it was because them kinds of lights, once they shine on a top, you could call it whatever colour you want. You wouldn't notice in the dark, but it was a bright colour top, coloured". The cross examination of Mr. Grant concluded with counsel putting to the witness that he was mistaken and had not seen Mr. Crawford. The witness disagreed and repeated that he had seen Mr. Crawford.

19. Then, Mr. Grant was followed to the witness box by Claire Ronan. In her direct evidence, she said that on hearing the shot, she ran to the front door and that when she got to the wall of her house, she noticed Greg Crawford, her partner Gareth was on the ground. She said that she screamed and that Greg Crawford turned and looked, pulled his hood, turned around and he ran. She was asked did she know Greg Crawford and she responded "I do know Greg Crawford". She that as she held her partner's head on her lap, that she said "Gay, it was Greg Crawford".

20. Defence counsel in his cross examination asked her whether in the course of a statement that she had given to the gardaí two days after and which she had signed, she had said in relation to the person on the road "I did not see his face". It was suggested to her that it was only a couple of months later that she decided that she had seen his face and she responded "I didn't decide that I had seen his face. I saw his face. I saw that it was him. I told the guard there that night that is was him. I was just frightened. My head was all over the place. It had been 48 hours and my partner had been murdered. My whole world had crumbled in a space of a few minutes because of what he had done". She accepted that in the statement two days after the incident that she had said that it was somebody with a similar build. Similar to whom was not clarified on the transcript, but the closing address of defence counsel seems to indicate that it was similar Greg Crawford. It was suggested to her that after two months she met the gardaí and said that she had got a glimpse of the face. There was some debate about the timetable, but she did not dissent from the central proposition that was put to her. She was asked whether she had said to the gardaí that she had been playing the whole thing over and over and over in her mind and her response was "it's not something that I would forget". The cross examination concluded as follows:-

Q. It was the previous two months you had been playing it over and over and over in your head and having played it over and over in your head, you told the gardaí that you got some form of a glimpse of the person as they ran away?

> A. Well it wouldn't be a glimpse, he looked at me like this and when I screamed it was from that I had explained to the guards that I had seen his face.
>
> Q. I see.
>
> A. And when I said this from this, they said that because this was missing, this can't be actually full face because his chin was missing over the way that he looked.
>
> Q. Yes?
>
> A. So I couldn't say full face.
>
> Q. And did you describe to the gardaí in your first statement that the person you saw was wearing a black hood, black clothing and a hood?
>
> A. Dark coloured clothing.
>
> Q. And hood up?
>
> A. The hood was pulled when I screamed and he turned to me and when I screamed then –
>
> Q. But it was a black hoodie as you describe it?
>
> A. It could have been dark navy but it was dark coloured clothes.
>
> Q. You see I am going to suggest to you that you are mistaken in what you tell us here in relation to your identification?
>
> A. I'm in no way mistaken.
>
> Q. I see.

21. The trial judge addressed the question of a Casey warning having dealt with the respective roles of judge and jury, the presumption of innocence and the burden of proof. He did so in these terms:-

"Now there is evidence in this case of recognition. Now, as Mr. Hartnett correctly told you the Supreme Court in this country, in advance of our nearest neighbours, laid down that in relation to either recognition or identification evidence a special warning had be given and this is on account of the experience of the courts in this area that mistakes have been made and can be made and Mr. Hartnett named some of the celebrated cases in this area. So, accordingly, the Supreme Court, a very long time ago and as I say followed by our nearest neighbour and other countries in the common law world said as follows:-

"We are of the opinion that juries as a whole may not be fully aware of the dangers involved in visual identification nor of the considerable number of cases in which such identification has been proved to be erroneous; and also that they may be inclined to attribute too much probative effect to the test of an identification parade. In our opinion, it is desirable that in all cases where the verdict depends substantially on the correctness of an identification, their attention should be called in general terms to the fact that in a number of instances such identification has proved to be erroneous, to the possibilities of mistake in the case before them and the necessity of caution. Nor do we think that such warning should be confined to cases where the identification is that of only one witness. Experience has shown that mistakes can occur where two or more witnesses have made positive identifications. We consider juries in cases where the correctness of an identification is challenged should be directed on the following lines, namely, that if their verdict as to the guilt of the prisoner is to depend wholly or substantially on the correctness of such identification, they should bear in mind that there have been a number of instances where responsible witnesses whose honesty was not in question and whose opportunities for observation had been adequate made positive identification on a parade or otherwise, which identifications were proved to be erroneous, and accordingly, they should be especially cautious before accepting such evidence of identification as correct; but that if after careful examination of such evidence in the light of the all the circumstances, and with due regard to all the other evidence in the case, they feel satisfied beyond reasonable doubt of the correctness of the identification, they are at liberty to act on it." This, of course, was a direct quote from *People (Attorney General) v Casey (No.2)* [1963] I.R. 33.

22. The judge then continued:-

"So bear in mind that warning and bear in mind in particular Mr. Hartnett's criticism of the circumstances of the identification dealt with not only in cross examination of the witnesses, but in his speech and it is a matter I will come to again in reviewing salient features of the evidence. So bear in mind that warning from the Supreme Court; bear in mind the circumstances' assess the infirmity of the circumstances of this case and as the Supreme Court say if after having considered the warning and the circumstances of the case, you are satisfied all twelve of you to the standard beyond reasonable doubt then you are entitled to act on it."

23. When it came to the stage that the judge was reviewing the evidence, he referred to the points that had been raised in cross examination of both Mr Grant and Ms Ronan.

24. When the charge had been concluded, there was an exchange as follows between counsel for the defence and the trial judge:-

"The O'Reilly case appears to suggest the trial judge should bring to the attention of the jury to the frailties in visual identification in the particular case before them."

Judge: "Yes I did, insofar as I am prepared to do it."

Counsel: "Very good."

Judge: "I referred to the summary of the evidence I was being given to your cross examination and to the allegations of frailty in your speech. I take the view that for me to even state a question of fact is to take a position of it. This is a trial by jury, it is not, to use your great word Mr. Hartnett, trial by ambush before the trial judge."

Counsel: "I see."

**Comment**

25. The requirement for juries to be given a warning about the experience of the courts in relation to danger of the identification/recognition evidence has been a key feature of our criminal law for upwards for half a centaury, a fact which was made clear the jury by both the trial judge and defence counsel. The obligation will not be fulfilled and what the Supreme Court has laid down as necessary will not be achieved by a mere stereotyped formulaic recitation of a warning. Rather it is necessary that the warning should be related and indeed tailored to the particular case. So much is clear from cases such as *People v. O'Reilly* [1990] 2 I.R. 415*, People v, McDermott* [1991] I.R. 359 and *DPP v O'Donovan* [2005] 1 IR 385, which provide examples of convictions being quashed when this has not happened. The requirement to particularise and tailor the warning is clear and a failure to do so has and does lead to convictions being set aside. However, what is required will depend on the circumstances of the particular case. It will not always be the case that merely reading an extract from the Law Reports will suffice. That is not in any way to criticise the practise which may have the merit of impressing upon the jury the central significance of the warning by referring directly to the concerns of the Supreme Court and solemnly drawing their attention to the language of the Court. Whether that is helpful is a matter for the trial judge. By the same token it will not always be adequate to invite the jury to have regard to what has been said by defence counsel. However, again, such an approach may in some circumstances be particularly advantageous to the defence as the jury hears the trial judge endorse the defence view of the evidence.

26. However, just as the warning does not lend itself to a stereotypical formulaic recitation, nether should the requirement to tailor, particularise or contextualise be reduced to that. What is required will be determined by the facts and issues in a particular case. So, if there are issues around the circumstances of the identification or the personal attributes or capacity of the person making the identification one would expect to see these aspects highlighted by the judge and failure to do so would call into question the safeness of the conviction.

27. So far as the present case is concerned, it is a striking feature of it that there was little if any focus by the defence on the circumstances surrounding the purported identifications/recognitions or the capacity or ability of the persons making the identification to do so.

28. While in the case of David Grant, it was put to him formally that he was mistaken, and likewise this happened in the case of Ms.

Ronan, in the case of the principal witness, Claire Ronan, all the focus was on whether she had in fact recognised and identified Greg Crawford on the evening in question, while her partner lay on the ground. The question was not so much whether Ms. Ronan was mistaken in the identification, but rather the question of fact was whether she had, as she claimed, made an identification at all at the time. That this is so is abundantly clear from her cross examination and from the closing speech by defence counsel which, on this recognition aspect of the case, focused on the fact that the identification was not made until two months after the incident and then by a witness who had made a statement to gardaí two days after the shooting saying that she had not seen the face of the person.

29. Ordinarily, the requirement to particularise will be a requirement to address issues that have featured in this case. However, where as here the defence was saying that no timely identification had been made, the judge might well have been criticised if, of his own motion, he had raised issues about the opportunity for identification, the fact that the incident did not occur during the hours of daylight or whatever. In a case where the issue was whether an identification had been made it was not for the trial judge to introduce a new theory that there had been an identification, but that it might have been wrong. Had the judge rehearsed the defence arguments that the identification was made only two months after the incident, it is likely that he would have felt the need to remind the jury that in the immediate aftermath of the incident that Ms. Ronan had said to Gabriel Brosnan and then to Sgt. Cleary, that it was Greg Crawford. That would not have advantaged the defence. Had the judge taken it upon himself to introduce and then address issues about the circumstances in which the identification was made, the time of the evening at which it was made, the fact that Ms. Ronan must have been in a very shocked state as her partner lay on the ground, and the like, then he would very probably have felt it appropriate to refer at the same time to the features of the case which suggested that the identification, if made, was reliable. Again, this would not necessarily have been to the advantage of the defence.

30. In the circumstances of this case, the court is satisfied that the judge's charge was adequate, and accordingly, this ground also fails. In these circumstances the court will dismiss the appeal.