Neutral Citation Number: [2009] IEHC 100

THE HIGH COURT

2009 286 SS

IN THE MATTER OF AN APPLICATION UNDER ARTICLE 40.4.2 OF BUNREACHT NA hÉIREANN

BETWEEN

S. C.

APPLICANT

AND

THE CLINICAL DIRECTOR,

ST. BRIGID'S HOSPITAL ARDEE CO. LOUTH

RESPONDENTS

JUDGMENT of Ms. Justice Dunne delivered on the 26th day of February, 2009

An order was made herein on Friday 20th February, 2009, by the High Court (Laffoy J.) directing that the Clinical Director of St. Brigid's Hospital, Ardee, Co. Louth, produce the body of the applicant and certify in writing the grounds of his detention. The matter came before me for hearing on Tuesday 24th February, 2009.

Background Facts

On the 5th February, 2009, the applicant herein drove his vehicle the wrong way down a one way street and then drove straight into a shop. He fled the scene of the incident, returned to his home and some twenty minutes or so later walked into the Garda station in Drogheda. Not surprisingly, he was arrested. Following his arrest he was detained by the Gardaí pursuant to the provisions of s. 4 of the Criminal Justice Act 1984. Having been advised of his right to avail of the services of a solicitor, he contacted Michael Finucane, Solicitor of the firm, Michael Finucane Solicitor. Mr. Finucane in an affidavit sworn herein noted that having had conversations with investigating Gardaí and the applicant he became concerned and proposed to the Gardaí in charge of the applicant's detention that he be reviewed by a psychiatric professional. There is no dispute whatsoever that Mr. Finucane had genuine and proper concerns in relation to his client and that as a result of that, the applicant's GP Dr. H.P. Barry who had already seen the applicant in custody indicated that he would be prepared to recommend psychiatric treatment of the applicant at an approved centre and was willing to sign the necessary forms in that regard. The applicant's father, J.C., agreed to make the application to a registered medical practitioner (Dr. H.P. Barry) for the admission of the applicant. The necessary steps in relation to this process were taken and consequently the applicant was conveyed to an approved centre within the meaning of the Mental Health Act 2001, namely St. Brigid's Hospital, Ardee. Following his detention overnight in St. Brigid's Hospital the applicant was reviewed by a consultant psychiatrist, MacDara McCauley. Following the review, Dr. McCauley declined to make an admission order in respect of the applicant and he was returned to the custody of the Gardaí. I will refer to this aspect of the matter later on.

Having been returned to the custody of the Gardaí in Drogheda Garda station, the applicant was interviewed by the Gardaí during the 6th February, 2009. He was charged with two offences contrary to s. 2 and s. 3 of the Criminal Damage Act 1991, at approximately 7.00 pm that evening. He was brought before the Dublin District Court the following day, Saturday, 7th February, 2009, and remanded in custody. The applicant was granted bail on Tuesday, 10th February, 2009, and took up his bail that evening.

It is not necessary to set out the terms upon which the applicant was granted bail in any detail, save to say that he was required to sign on at Drogheda Garda station on Mondays, Wednesdays and Fridays. Having been released on bail he was remanded to appear in the District Court again on the 20th February, 2009.

On Thursday, 19th February, 2009, the applicant was detained in St. Brigid's Psychiatric Hospital, Ardee and it is that detention that is the subject matter of this application. It is necessary to set out in some detail the steps that led to that detention. It appears that during the period of time that the applicant was remanded in custody in Cloverhill Prison, he came under the care of Dr. Conor O'Neill, Consultant Forensic Psychiatrist, Central Mental Hospital, Dundrum, Dublin. Dr. O'Neill wrote to Sergeant Declan Power/Inspector Marry of Drogheda Garda station by letter dated the 13th February, 2009, in relation to the applicant herein. In that letter he stated that:-

> "His father informs me that Mr. C. has threatened him on a number of occasions in recent months. S.C. is suffering from an acute psychotic episode and requires admission to St. Brigid's Hospital as a matter of urgency. I have discussed his case at length with Dr. McCauley, Consultant Psychiatrist at St. Brigid's Hospital, Ardee, who has agreed to provide an admission bed. Mr. C.'s father, J.C. informs me that while he wants his son to go to hospital for treatment he is afraid of the repercussions were he to sign the application.
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> I am concerned by Mr. C. poses a significant risk to the general public and specifically to his father as a result of his psychotic symptoms.
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> It would be helpful if it were possible for a member of the Gardaí to act as applicant for admission to St. Brigid's Hospital, given the immediate risks identified and the dangerousness of his recent offence."

That letter was followed by a letter dated the 17th February, 2009, from Dr. McCauley to Garda Inspector Marry,

Drogheda Garda station. It stated as follows:-

> "I would like to emphasis our concerns regarding the above named gentleman. We have notes from Dundrum services urging us to organise an involuntary admission. I exhausted all avenues with Mr. C.'s family and have been unable to organise an admission. There are serious concerns about the risks he poses to his family and to the public. We would greatly appreciate your assistance to secure this man's admission."

During this period of time it is clear that the applicant's solicitor was kept informed as to the concerns of the psychiatrist's who had been dealing with the applicant.

On the 19th February, 2009, at approximately 12.00 midday, a number of members of the Gardaí arrived at the family home of the applicant herein and arrested him pursuant to s. 12 of the Mental Health Act 2001. Mr. Finucane was informed of this later that afternoon sometime before 4.00 pm. He was told that the reason for the arrest was that concerns had been expressed to the Gardaí in writing by two psychiatrists, Dr. O'Neill of the Central Mental Hospital and Dr. McCauley of St. Brigid's Psychiatric Hospital. Subsequent to the arrest of the applicant, he was brought to Drogheda Garda station. At approximately 12.16 on the 19th February, 2009, an application was made by Inspector Marry pursuant to s. 12 of the Mental Health Act 2001, for a recommendation for the involuntary admission of the applicant. The reasons stated for the application was:-

> "Because of two reports by Consultant Psychiatrist who state the named S.C. (sic) poses a significant risk to the general public and his family. I believe S.C. to be suffering from a mental disorder."

Following that application a recommendation was then signed by Dr. Harry P. Barry, the applicant's GP at approximately 1.00 pm. Section 7 of the recommendation provides for a series of boxes to be ticked by the examining doctor. It provides the following:-

> "In my opinion this person is suffering from a mental disorder where
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> (a) Because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons,
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> or
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> (b) (i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure of to admit the person to an approved centre would be likely to lead to a serious deterioration in his or his condition or would prevent the administration of appropriate treatment that could be given only be such admission, and
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> (ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.
>
> or
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> (a) as above and (b) as above."

As I mentioned it is then for the medical practitioner to tick the appropriate boxes in relation to the various matters set out in paragraph 7. Dr. Barry ticked all three boxes. At para. 8 of the recommendation he gave a description of the person's mental condition as follows:-

> "Patient has a history of delusions; drove car into shop front recently; history of chronic has use; patient admits to hash use; denies previous delusions today in relation to other people knowing information about him on net."

Following that recommendation, the applicant was conveyed to St. Brigid's Psychiatric Hospital. In the course of these proceedings Dr. Jackson, the Clinical Director of St. Brigid's Hospital, has certified that the applicant is being detained by her pursuant to s. 14 of the Mental Health Act 2001, on foot of an admission order for his detention made on the 19th February, 2009. The admission order was signed by Dr. McCauley at 4.45 pm on the 19th February, 2009. It appears from the admission order that the applicant was admitted to St. Brigid's Hospital at 1.40 pm on that day. He was examined at approximately 4.00 pm on that day by Dr. McCauley and the order was made thereafter. It is interesting to note in relation to para. 8 of the involuntary admission order which sets out the nature of the mental disorder at issue and is in similar terms to para. 7 of the recommendation order that only one of the boxes contained in para. 8 was ticked by Dr. McCauley, namely:-

> "This person is suffering from a mental disorder where (b)(i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission and (ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent."

Mr. Rogers, S.C. on behalf of the applicant herein places particular emphasis on the fact that Dr. McCauley did not tick the box at 8(a) namely that:-

> "This person is suffering from a mental disorder where (a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons."

In the involuntary admission order the clinical description of the person's mental condition was described as follows:-

> "Patient is expressing paranoid ideation and threatening to break out lacks insight."

It is on foot of that involuntary admission order that the applicant is presently detained.

The Law
Section 12 of the Mental Health Act 2001, provides as follows:-

> "(1) Where a member of the Garda Síochána has reasonable grounds for believing that a person is suffering from a mental disorder and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons, the member may either alone or with any other members of the Garda Síochána –
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> (a) take the person into custody, and
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> (b) enter if need be by force any dwelling or other premises or any place if he or she has reasonable grounds for believing that the person is to be found there.
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> (2) Where a member of the Garda Síochána takes a person into custody under subsection (1), he or she or any other member of the Garda Síochána shall make an application forthwith in a form specified by the Commission to a registered medical practitioner for a recommendation.
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> (3) The provisions of sections 10 and 11 shall apply to an application under this section as they apply to an application under section 9 with any necessary modifications.
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> (4) If an application under this section is refused by the registered medical practitioner pursuant to the provisions of section 10 the person the subject of the application shall be released from custody immediately.
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> (5) Where, following an application under this section, a recommendation is made in relation to a person, a member of the Garda Síochána shall remove the person to the approved centre specified in the recommendation."

The Issues
At the outset of his submissions, Mr. Rogers S.C. on behalf of the applicant noted that had the application herein been made to detain the applicant pursuant to the provisions of s. 9 of the Mental Act 2001, as opposed to s. 12 of the Act, then there would be no issue in relation to the detention of the applicant. What is at issue in these proceedings is the invocation of s. 12 of the 2001 Act. Mr. Rogers S.C. commented that the procedure under s. 9 contained procedural safeguards at subss. 4 and 5 which provide that:-

> "(4) A person shall not make an application unless he or she has observed the person the subject of the application not more than 48 hours before the date of the making of the application.
>
> (5) Where an application is made under subsection (1)(d), the application shall contain a statement of the reasons why it is so made, of the connection of the applicant with the person to whom the application relates, and of the circumstances in which the application is made."

He also referred to the disclosure provision contained in s. 11 of the Act.

In addition he referred to the requirement under s. 10 for a recommendation of a registered medical practitioner. Of course, it must be remembered that the procedure provided for under s. 12 also provides as set out above that the provisions of ss. 10 and 11 apply to an application under s. 12.

The core argument of Mr. Rogers S.C. in relation to this case is that the Gardaí should have made an application under s. 9 of the 2001 Act, rather than acting on foot of the power contained in section 12. He argued that the power in s. 12 is limited to circumstances where "there is a serious likelihood of the person causing immediate and serious harm" to himself or others. He argued that because of the use of s. 12, the applicant lost out on the procedural safeguards contained in section 9. Mr. Rogers contended as the arrest of the applicant under s. 12 was impermissible that the subsequent involuntary admission order was tainted by that illegality and therefore he contended that the involuntary detention order was invalid.

Although the point was not directly made in the course of submissions, I think it is as clearly the case that a member of the Gardaí could not have invoked s. 9 of the 2001 Act, because of the provisions of s. 9(4) given the obligation that the person making the application has to have observed the person the subject of the application not more than 48 hours before the date of the making of the application. I am aware of the fact that the applicant in this was under an obligation to sign on at Drogheda Garda station on Monday, Wednesday and Friday as a condition of the bail which had been granted to him, but there is no suggestion that any incident occurred during the signing on which might have provoked an application under s. 9 and indeed there is no suggestion that that process provided any appropriate or necessary period of observation.

Mr. Rogers in the course of his submissions highlighted a number of matters which emerged from the affidavit of Dr. McCauley. First of all he noted that Dr. McCauley referred to the fact that he had concerns based on his earlier examination of the applicant on the 6th February, 2009, in respect of the mental state of the applicant and the risk that he presented. Nonetheless, Mr. Rogers noted, Dr. McCauley released the applicant into the custody of the Gardaí to be questioned notwithstanding those apparent concerns.

Mr Rogers also referred to the fact that Dr. McCauley took no further steps in the matter until such time as he received a phone call from Dr. O'Neill of the Central Mental Hospital informing him that the applicant had been released on bail. Dr. O'Neill communicated to Dr. McCauley that he had grave concerns about the applicant's mental state. As a result of that

conversation, it appears that Dr. McCauley contacted a number of people including the applicant's GP and the Gardaí in Drogheda Garda station and members of the applicant's family. As a result of those contacts and further conversations with Dr. O'Neill, Dr. McCauley wrote the letter of the 17th February, to the local Gardaí.

The next point raised by Mr. Rogers relates to the circumstances in which s. 12 of the 2001 Act, can be invoked. As referred to previously, the power of arrest exists where a member of the Gardaí has reasonable grounds for believing that a person is suffering from a mental disorder and that there is a serious likelihood of the person immediate and serious harm to himself or others. Mr. Rogers challenges the basis for invoking s. 12 given what occurred subsequently. The recommendation of Dr. Barry made on the 19th February, 2009, referred to the opinion of Dr. Barry that the applicant was suffering from a mental disorder where "because of the illness, disability or dementia there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons". By the time the applicant was brought to St. Brigid's Hospital and was examined by Dr. McCauley some three hours later, Dr. McCauley in his opinion did not refer to any serious likelihood on the part of the applicant concerned "causing immediate and serious harm to himself or herself or other persons". On that basis it was submitted that the order detaining the applicant on its face demonstrates that the arrest was wholly unjustified. Finally Mr. Rogers contended that the intention of the Oireachtas in enacting s. 12 was to give a power of arrest to the Gardaí in the interest of public safety. He emphasised the phrase "immediate and serious harm" used in s. 12 of the 2001 Act.

I now want to look at some of the arguments of Mr. Rogers as to the consequences of what he contends to be an illegal arrest in this case. It is contended that the arrest of the applicant herein in his home constitutes a breach of Article 40.5 of Bunreacht Na hÉireann. Based on that assertion, reference was made to the well known case of *The People (Attorney General) v. O'Brien* [1965] I.R. 142, which deals with the rule that evidence that has been obtained by the State as a result of a deliberate and conscious violation of the constitutional (as opposed to the common law) rights of an accused person should be excluded save where there are "extraordinary excising circumstances". By analogy, Mr. Rogers contends that the arrest of the applicant was a conscious and deliberate act on the part of the Gardaí in this case and a breach of the constitutional right to the applicant pursuant to Article 40.5 that any step thereafter taken is tainted and must be viewed as invalid. Mr. Rogers made the point that there was no urgency such that that the applicant posed an immediate danger to himself or any member of the public. The fact that following the admission of the applicant to St. Brigid's Hospital, he was not found to be an immediate and serious harm to himself or to others was, Mr. Rogers contended, indicative of the fact that the power of arrest under s. 12 should not have been exercised. Accordingly the detention made on foot of that arrest should be set aside.

Mr. Dignam in dealing with the facts of this case argued that there was not a deliberate and conscious wrong or act on the part of the Gardaí in exercising the power of arrest under s. 12 of the 2001 Act. He referred to the two letters which were sent to Inspector Marry from Dr. O'Neill and Dr. McCauley. The Gardaí, he contended, were acting on information from those who had examined the applicant and who had serious concerns in relation to the applicant which prompted them to write to the Gardaí. He referred to the decision in the case of *C.C. v. Clinical Director of St. Patrick's Hospital and the Mental Health Commission,* (Unreported, High Court, McMahon J., 20th January, 2009). At p. 4 of the judgment in that case, the court dealt with the issue raised on behalf of the applicant that because the applicant was unlawfully detained and delivered to the hospital by the Gardaí, the whole process that followed was tainted and infected by the initial illegality. McMahon J. dealt with this by saying:-

> "There can be no question, however, of the respondents being responsible for the wrongful conduct of third parties over whom they have had no control and whom they did not instruct at the time the applicant was detained by the Gardaí. Furthermore, although the hospital was aware that the applicant was delivered to the hospital by the Gardaí, they were unaware of any historical wrong committed by the Gardaí prior to that presentation. Nor were there any special circumstances which would have alerted the respondents that anything was amiss."

Mr. Dignam also contended that Dr. McCauley and indeed by inference Dr. O'Neill acted entirely properly in passing information to the Gardaí in respect of their concerns. He added that there was no suggestion of anything untoward on the part of the respondent in respect of their detention of the applicant.

I was referred also to the decision of the High Court and on appeal to the Supreme Court, in the case of *R.L. v. The Clinical Director of St. Brendan's Hospital and Others*, (Unreported, High Court, Feeney J., 17th January, 2008 and Supreme Court, Hardiman J., 15th February, 2008). I think it would be helpful to refer briefly to p. 10 of the judgment of the High Court in that case in which there was a complaint with the manner in which a person was brought to the hospital but the court considered whether a valid detention order had been made pursuant to s. 14 of the 2001 Act. At p. 10 Feeney J. stated:-

> "In this case the first instance of detention is the admission order and if complaint is to be made in relation to a suggested breach of Section 13 it is a matter to be taken under O. 84 and a matter to be pursued by means of judicial review. This Court makes no finding in relation to the suggested breaches of s. 13. If, as is suggested, there were breaches of s. 13 it does not contaminate and it does not interfere with the validity of the admission order made. The Applicant having been received in hospital the fundamental requirement is that at that stage detention must be considered under Section 14.
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> O'Neill J. went on at page 20 of the same judgment to indicate:
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> > 'In this case the defects in the Section 184 Order or the defects in the renewal order of 2nd January, 2006, are neither cured, excused or ignored. What has occurred is that in the process of events the applicant has lost competence to lay claim to or place reliance on these defects to challenge the validity of the renewal order of 28th March 2007. In this regard the domino effect much feared by the Respondents is voided.'
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> That equally applies in this case if there is any true complaint in relation to the alleged unlawful removal of the applicant that is cured in that the provisions of s.14 have been fully applied. As soon as the applicant was received by the Clinical Director an examination for the purposes of an admission order took place."

I would also very briefly the Supreme Court judgment in that case and to a passage at p. 4 in which Hardiman J. noted:-

> "The court has to agree that there is, on the face of it, a breach of s. 13(2), I say nothing about the other sections because there may be some evidence of factual excuse. I will digress to say that that last requirement that the removal be by members of the staff at the centre seems an extraordinary one given that the need for a removal under the section may arise suddenly and may arise in circumstances much more acute than those exhibited in this case. It would seem ludicrous to provide by statute for a position that if no nurses or other staff members were available, it could not happen at all. . . . But the question, the legal question has to be isolated. This is, does that breach of s. 13 or the to put it even more widely, let us presume that the other two breaches alleged by Mr. Finlay are established, do those breaches of s. 13 operate to prevent the making of an admission order under s. 14 and if it did that would it logically also prevent the making of further orders under the Act?
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> The court can simply see no reason whatever to believe that in either irregularity or a direct breach of s. 13 would render what is on the face of it a lawful detention on foot of an admission order invalid. . . . the court cannot see and it does not believe that there is any authority for the proposition that s. 14 cannot work at all, simply cannot be operated, if there is a defect in the execution of the removal under section 13. There was no argument is advanced as to why that proposition is true and it would appear to contrary to the scheme and spirit of the Act."

Finally in his submissions Mr. Dignam re-emphasised that there had been no deliberate and conscious violation of the constitutional rights of the applicant by the Gardaí. He was arrested pursuant to s. 12 on the basis of the genuine concerns of the two psychiatrists and indeed of the Gardaí. Following his arrest, the safeguards contained in s. 12 were observed, in that a GP provided a recommendation and as a result of that recommendation the applicant was brought to the hospital. Thereafter an examination under s. 14 of the 2001 Act, took place. It was then that the admission order was made. On that basis, it was submitted that the admission order was not tainted. Reliance was placed on the decision of Supreme Court in the case of R.L. Finally Mr. Dignam pointed out that there was no challenge to the admission order made pursuant to s. 14 as such. The validity of the order is challenged on the basis of what went before.

Conclusion

The fundamental plank of the argument in this case is that the arrest carried out by the members of the Gardaí pursuant to the provisions of s. 12 of the 2001 Act, was a deliberate and conscious violation of the constitutional rights of the applicant herein. This argument is based essentially on the contention that the Gardaí could not have had reasonable grounds for believing that there was a serious likelihood of the applicant causing immediate harm to himself or other persons. That contention as I have already indicated is based on the events leading up to the arrest on the 19th February, 2009. One of the matters relied on is that Dr McCauley on the 6th February, did not see fit to detain the applicant. In this regard I think it is useful to set out in full para. 7(l) of the affidavit sworn herein by Dr. McCauley were he stated:-

> "I examined Mr. C. on the 6th February, 2009, I had very serious concerns in relation to Mr. C.'s mental state at this time. However, I was also aware that Mr. C. was engaged in the criminal process at that time. I have previously worked on the Central Mental Hospital and I am aware of the Central Mental Hospital's involvement in the criminal legal system and individuals within that system who may be suffering from psychiatric difficulties. I believe that the most appropriate manner in which Mr. C. should be dealt with was to receive the forensic psychiatric services available within that system and in those circumstances I did not form a view as to whether Mr. C. was or was not suffering from a mental disorder within the meaning of the 2001 Act at that time. In those circumstances, he was brought back by the Gardaí in Drogheda Garda station."

I said earlier that I would comment briefly on the views of Dr. McCauley as outlined in that paragraph. I have no doubt whatsoever that Dr. McCauley in dealing with the matter as he did acted from the best of motives. Given his previous involvement with the Central Mental Hospital, he was of the view that that the appropriate way for Mr. C. to be dealt with was through the psychiatric services available within the criminal system. Unfortunately, that was not an appropriate way to deal with Mr. C. Dr. Mc McCauley had very serious concerns in relation to Mr. C.'s mental state at that time. Notwithstanding that, he was released back to the custody of the Gardaí and he remained in custody pursuant to s. 4 of the Criminal Justice Act 1984, and was questioned by the Gardaí during the course of his detention and ultimately was charged with two offences later that evening. There is no evidence before me to indicate if the applicant was in a fit state to be questioned by the Gardaí when Dr. McCauley examined him. I do not propose to comment further on this matter in the absence of evidence on this issue given that there may be another forum in which it would be more appropriate to do so and the appropriate evidence may be available to that forum but I feel that I should say that whilst I have no doubt as to the good intentions of Dr. McCauley in this regard, it was in my view, unwise to deal with the applicant in that way.

I now want to consider as to whether or not the Gardaí had reasonable grounds for the arrest of the applicant on the 19th February, 2009. The Gardaí acted on foot of two letters from Dr. O'Neill and Dr. McCauley. I have already set out in detail the terms of those letters. The first of those letters was from Dr. O'Neill and was dated the 13th February. It indicated the Dr. O'Neill was concerned that the applicant posed a significant risk to the general public and specifically to his father as a result of his psychotic symptoms. The second letter was dated the 17th February, 2009, and stated:-

> "I exhausted all avenues with Mr. C.'s family and have been unable to organise an admission. There are serious concerns about the risks he poses to his family and to the public."

It is not unreasonable to expect that the letter of Friday, the 13th February, was received by the Gardaí in relation to the letter on the following Monday, the 16th February. It is also reasonable to suppose that the letter of the 17th February, 2009, was received on the 18th February. In each of the letters, reference was made to the serious concerns about the risks posed to the public and to members of the applicant's family as a result of the applicant's mental state. Some criticism was made in the course of this hearing by Mr. Rogers as to the delay particularly on the part of Dr. McCauley in taking any steps having regard to his concerns. It does seem to me that Dr. McCauley, as set out in his affidavit in detail, made a number of appropriate enquiries and communicated with a number of individuals in relation to the welfare of the applicant. I would refer in this regard to para. 7 (l) of his affidavit. I do not think he can be faulted in regard to his conduct in this respect. However that is not the issue I have to consider. The issue is whether the Gardaí had reasonable

grounds to carry out the arrest under section 12. In my view the answer to that question is in the affirmative. The Gardaí acted on the basis of the information contained in the letters. The letters both referred to the serious risk posed by the applicant as a result of his mental state. Therefore it is not my view that there was a conscious and deliberate violation of the applicant's constitutional rights in the exercise by the Gardai of the power of arrest under s. 12 of the 2001 Act. The fact that Dr. McCauley on his examination on the 19th February did not tick the box at para. 8(a) of the involuntary admission order relating to serious likelihood of the person concerned causing immediate and serious harm does not mean that the Gardai did not have reasonable grounds to act under s. 12.

One of the matters emphasised by Mr. Rogers was the time lag between the initial examination of the applicant by Dr. McCauley in the 6th February, and the 19th February, when the arrest was carried out. I agree with his submission that there must be a temporal link between the event or events giving rise to reasonable grounds under s. 12 and the exercise of the power of arrest under that section. However, as I have explained above this is not a case in which Dr. McCauley had no involvement with the matter after the 6th February albeit that he did not personally examine the applicant between the 6th February and the 19th February, 2009. I have already set out at length the various steps that occurred between those dates and I do not think it is necessary to deal with them any further save to say that it is clear that Dr. O'Neill and Dr. McCauley in their discussions had serious concerns and those serious concerns led Dr. O'Neill in the first place and Dr. McCauley to write to the Gardaí as outlined above. The Gardai then acted promptly on foot of the correspondence from the two psychiatrists.

I have to say that I am of the view that had the Gardaí failed to act on foot of the letters of the 13th February and the 17th February, 2009, serious criticism would have been made of the Gardaí if any harm had come to the applicant, any member of his family or any member of the public. At that point in time an application under s. 9 was simply not open to any member of the Gardaí given the provisions of s. 9(4).

I have indicated that I am satisfied that the arrest under s. 12 was a valid arrest. It is therefore not necessary for me to consider whether an illegal arrest which also amounts to a breach of the constitutional rights of an individual under Article 40.5 of the Constitution could, by analogy with the principles identified in the O'Brien case referred to above, taint the detention of an individual under s. 14 of 2001 Act. However, I should add that it seems to be clear from the authorities opened to me, namely, the cases of *C.C. v. Clinical Director of St. Patrick's Hospital* and *The Mental Health Commission and R.L. v. The Clinical Director of St. Brendan's Hospital* that as a general proposition a breach of the provisions of s. 12 of the 2001 Act, would not affect the subsequent process by which someone may be detained. Mr Rogers in the course of his submissions referred to the safeguards under s. 9 of the 2001 Act, which he said were set at nought by the exercise of the power of arrest under section 12. However it has to be noted that under s. 12(2) a person arrested must be the subject of an application to a registered medical practitioner for a recommendation. If a recommendation is refused then the person the subject of the application must be released from custody immediately. If a recommendation is made, that person must then be removed to an approved centre. Once received into the approved centre the person the subject of the recommendation must be examined by a consultant psychiatrist as soon as may be thereafter and it is only following that examination that an admission order can be made, if appropriate. There are in those circumstances and within the scheme of the act a number of safeguards that apply. I repeat the words of Hardiman J. in the Supreme Court in the case of *R.L.* at p. 6 where he said:-

> "The court cannot see and it does not believe that there is any authority for the proposition that s. 14 cannot work at all, simply cannot be operated, if there is a defect in the execution of the removal under s. 13. There was no argument advanced as to why that proposition is true and it would appear to be contrary to the scheme and spirit of the Act."

In the circumstances I am satisfied that the applicant was lawfully detained on foot of the admission order made herein on the 19th February, 2009.