**THE COURT OF APPEAL**

**Birmingham J.**
**Sheehan J.**
**Mahon J.**

**No. 12/16**

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

**Respondent**

**V**

**James Connors**

**Appellant**

**JUDGMENT of the Court delivered on the 21st day of December 2016 by**

**Mr. Justice Birmingham**

1. On the 17th December, 2015, the appellant was convicted of the offence of murder following a thirteen day trial. The verdict was by a 10 – 2 majority. The appellant now appeals against that conviction.

**Background**
2. In summary the evidence at trial was that on the night in question, the 24/25th January, 2012, the appellant called to the home of the deceased at No. 14 Hollyville Heights, Wexford. Words were exchanged between the appellant and the deceased while the deceased was at the window of his apartment on the second floor and the appellant was on the ground outside the apartment. As the appellant walked away from the door, the deceased emerged from the apartment and followed the appellant carrying a miniature baseball bat with metal studs. The prosecution suggested that CCTV footage established that the appellant waited for the deceased to emerge from the apartment and to begin following him.

3. A physical altercation took place between the appellant and the deceased in another part of the housing estate, outside No. 26 Hollyville Heights. The location of the actual physical altercation was not covered by CCTV. There were independent witnesses who suggested that the first blows were struck by the deceased with the baseball bat. The altercation ended and the deceased was seen on CCTV walking back towards his apartment still carrying the miniature baseball bat but holding his side. When he arrived home his girlfriend/partner was concerned about his condition and called an ambulance and also the gardaí. It emerged that he had been wounded in the side and he died from his injuries.

4. In subsequent interviews with gardaí, the appellant admitted stabbing the deceased a number of times during the altercation, but claimed that he was acting in self defence in circumstances where the deceased had attacked him first and was striking him with the baseball bat.

5. It was not in dispute at the trial that the deceased died as a result of wounds inflicted by the appellant, but the issue was whether the appellant was acting in self defence. The appellant sought a verdict of not guilty, but as a fall back position a verdict of not guilty of murder but guilty of manslaughter. The appellant now appeals and has advanced a number of different grounds of appeal.

6. These might be summarised as follows. Grounds contending that several elements of inadmissible evidence were in fact admitted. A ground of appeal relating to the extension of the appellant's period of detention. Grounds relating to the judge's charge, the length of the jury deliberations and a contention that the verdict of murder was perverse and against the weight of the evidence.

**Inadmissible evidence**
7. This ground gives rise to a number of sub issues namely two issues arising from the evidence of witness Samantha Hoare, an issue arising from the evidence of witness Mary Connors and an answer given by the appellant during the course of questioning while detained.

8. The two issues that arise from the evidence of Samantha Hoare relate to evidence given by her about an earlier altercation between the deceased and the appellant which took place some weeks before the fatal incident and also evidence given by her about telephone conversations that she had with the appellant some three years earlier. To put these arguments in context, it is necessary to explain that Samantha Hoare was the girlfriend/partner of the deceased. She had in the past been in a relationship with the appellant and that relationship ended at a time that James Connors was serving a prison sentence.

9. Her evidence was that as the relationship ended, that Mr. Connors rang her on a number of occasions from prison and in the course of these calls, stated that when he got out that he would kill whoever it was that she was with at that stage. Her evidence was also that there was a physical altercation between the appellant and the deceased prior to Christmas 2011 during the course of which the deceased was stabbed by the appellant.

10. The admissibility of each of these aspects of the evidence was challenged, but the trial judge ruled that the evidence sought to be tendered by the prosecution was admissible.

11. There was also a procedural aspect to this arising from the fact that the statement of evidence of Samantha Hoare that was contained in the book of evidence did not deal with either of these issues. This was so notwithstanding the fact that the statement of evidence taken by the gardaí shortly after the incident had seen Ms. Hoare deal with both topics and it appeared that her original statement was then edited for inclusion in the book of evidence by the deletion of the sections that dealt with these issues.

12. On the first day of the trial on the 30th November, 2015, the prosecution served a notice of additional evidence to be given by Ms. Hoare dealing with the two topics. The position then was that the evidence that was now being indicated as that which would be given by Samantha Hoare coincided with her original statement made to the gardaí which had been made available to the defence as part of the disclosure process.

13. Counsel for the appellant has accepted that he was not in a position to make the argument that the conduct of the defence had been impaired by reason of the late service of additional evidence, but said that what had happened was wrong and unfair.

14. The Court would deprecate the fact that the defence was only informed on the first day of a trial that had been listed previously on two occasions that the prosecution intended to adduce significant additional evidence. However, while that was far from a satisfactory state of affairs it was evidence of which the defence were on notice and it is accepted that the defence were not impaired in the conduct of the defence. In those circumstances the focus has to be on the substantive issues of whether the specific sections of the evidence should have been admitted.

**The prison phone calls**

15. Ms. Hoare's evidence was that about "three years ago" when Mr. Connors was in prison that she had told him that their relationship was over but that he "kept ringing me from prison and he said 'no matter who you are with when I get out, I'm going to kill him'. I think he thought I was with someone else at that stage, which I wasn't".

16. On behalf of the defence it has been argued that this amounted to evidence of prior misconduct which was not sufficiently relevant to any particular issue in the case and to the extent that the evidence had any probative value at all, that this was clearly outweighed by its prejudicial effect. The appellant says that this evidence was very tenuous and that the phone calls, if made, were made long before Ms. Hoare had started going out with the deceased Jason Ryan. Accordingly they could not be construed as a threat directed at the deceased and so they had very limited probative value.

17. In the Court's view the telephone evidence was of probative value. The accused threatened that when he got out of prison that he would kill whoever was the person that Ms. Hoare was going out with. He did exactly that and in a situation where a key issue at trial was whether the accused was acting in self defence or whether he intended to kill or cause serious injury, then the relevance of this evidence is obvious. The Court is of the view that the evidence in relation to the phone calls received was highly relevant and it was properly admitted. The defendant has contended that the evidence was prejudicial in that it established that the appellant had been in prison some three years prior to the incident and by implication since then. The jury had heard through admissions made pursuant to s. 22 of the Criminal Justice Act 1984, that he had been released, on temporary release from prison on the 18th December, 2011, and so this was indicating to the jury that the matter which had led to his imprisonment was a serious matter giving rise to a significant sentence. However, while that is the defence contention that is not necessarily so. While it was possible that the appellant's imprisonment at the time of the fatality and some three years before, was explained by a lengthy sentence where a matter of real seriousness was involved, it was also possible that the appellant had served a number of short sentences for minor matters.

**The pre-Christmas altercation**

18. Ms. Hoare was permitted to give evidence in relation to a physical altercation that she said had occurred "before Christmas" involving the deceased and the appellant in which she says that the deceased suffered stab injuries. The issue of particular concern from the perspective of the defence is that the evidence puts Mr. Connors in possession of a knife in a public place which he was prepared to use in certain circumstances to inflict injuries. The defence says that two evidential rules are engaged which should have resulted in the exclusion of the evidence namely, the general rule that even relevant evidence can be excluded when its prejudicial effect exceeds it probative value and secondly, the so called rule against misconduct evidence. The classic statement of the rule against misconduct evidence is to be found in the case of *Makin v. the Attorney General for New South Wales* [1894] AC 57. There Lord Chancellor Herschell, in a much quoted passage, commented:-

> "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it is relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

It may be noted that the Lord Chancellor went on to add:-

> "The statement of these general principles is easy, but it is obvious that it may often be very difficult to draw the line and to decide whether a particular piece of evidence is on the one side or the other."

19. The passage of time has proved the correctness of that observation about the difficulty in drawing the line.

20. The matter was the subject of detailed consideration by the Supreme Court in the case of *People v. Kirwan* [1943] I.R. 279. There, the appellant had been convicted of the murder of his brother. He had served a term of penal servitude for another offence previously and for a number of different reasons the prosecution was anxious to adduce evidence arising from his period in custody. The prosecution case was that a limbless trunk of a human body had been found in a bog some distance from where the brothers lived. There was evidence that the dismembering of the body could have been effected only by a person possessed of some anatomical skill and knowledge such as that possessed by a doctor, veterinary surgeon or butcher and the prosecution was anxious to establish that the appellant had that knowledge. The complicating factor was that he had acquired the knowledge because he had on a number of occasions butchered the carcases of pigs while in custody in a manner that was very similar to what had been performed on the torso. The prosecution was also anxious to put before the jury evidence that while in custody the appellant had been administered a particular drug "luminal" for insomnia and had thus become acquainted with the effects of that drug. The relevance of this was that the prosecution were suggesting that an occupant of the Kirwan house had been drugged with luminal so that he would not observe the disposal of the body and clothing of the deceased. The third matter of interest to the prosecution was that it was suggested that the appellant was in possession of significant sums of cash shortly after his brother disappeared, his brother having been in possession of significant sums of cash and the prosecution was anxious to establish that during the years the accused spent in custody he was not in a position to earn money. The Court of Criminal Appeal and the Supreme Court, to which the matter went on a s. 29 certificate, were all agreed that the appeal should be dismissed, but there were certainly differences of approach evident in the Supreme Court. Black J. in particular felt that the evidence in relation to butchering skills and familiarity with luminal could have been adduced, if that was sought without any reference being made to the fact that the appellant had at one stage been a prisoner.

21. The issue is considered in recent time in the Supreme Court in the case of *DPP v. McNeil* [2011] IESC 12. This case raised the issue of whether or not so called "background evidence" is admissible in a case involving allegations of sexual abuse where the prosecution sought to adduce evidence of abusive conduct outside the parameters of the indictment.

22. In the course of her judgment, Denham J. pointed out that "background evidence" in the context under consideration had a

specific meaning. It was evidence which is relevant and necessary to a fact to be determined by the jury. At para. 50 of her judgment, under the sub-heading "The Test", she observed as follows:-

> "In considering whether background evidence may be admitted, relevant consideration may include:-
>
> (i) Consideration of whether the background evidence is relevant to the offence charged.
>
> (ii) Consideration of whether background evidence is necessary to make the evidence before the jury complete, comprehensible, or coherent. Whether without such background evidence the evidence may be incomplete, incomprehensible or incoherent.
>
> (iii) Consideration of evidence of the commission of an offence with which the accused is not charged, but that is not of itself ground for excluding the evidence.
>
> (iv) Consideration of whether the background evidence may be necessary to show the real relationship between the relevant persons.
>
> The test to be applied by the court is whether the background evidence is relevant and necessary. The test is not that it would merely be helpful to the prosecution to admit the evidence."

23. The defence has focused in particular on the statement that the test to be applied is whether the background evidence is relevant and necessary and the further statement that the test is not that it merely be helpful to the prosecution to admit the evidence.

24. In contending that the evidence in relation to the physical altercation was of little if any probative value, the appellant has emphasised the fact that the witness commented that she did not know who "struck the first blow". However, in the view of the Court, the focus on the comment that she did not know who struck the first blow does not fully reflect the tone and tenor of her evidence and hence its relevance in the context of the case. Her overall evidence to this topic left no room for doubt but that in her view it was the appellant who initiated contact and it was he who was the aggressive party. It was he who according to her started the row. Indeed, in the course of cross examination she indicated that before the appellant approached her late boyfriend and herself that he had been hiding in bushes outside the apartment.

25. In these circumstances the question of whether the appellant was initiating a physical confrontation some weeks before the fatal incident was of considerable significance and the fact that he was prepared to use a knife and inflict wounds was also of significance. Accordingly, in the Court's view the issue was of such significance and such relevance it was properly admitted in evidence.

**Issues arising from the evidence of Mary Connors**

26. This issue arose on day 4 of the trial. Ms. Connors was a distant relative of the appellant and it appears that he was staying with her during the period that he was on temporary release from prison. He had an amount of contact with her on the night of the fatal stabbing. In particular Ms. Connors arranged to collect the appellant at a location known as the Faythe in Wexford and did so just before he was arrested by the gardaí for being unlawfully at large. According to her statement in the book of evidence, as the appellant got into her car, a garda car pulled up alongside them and gardaí got out and approached her car. Her statement stated that the appellant dropped a phone in the passenger seat and told her to "delete the numbers". Ms. Connors took the phone home and according to her deleted the numbers but also went further and deleted the "call logs and texts". The admissibility of the evidence as to what was said to Ms. Connors by the appellant was challenged by the defence on the basis that it was prejudicial. It was said that the jury might speculate that the appellant might have wanted to have the numbers deleted because the phone would provide an indication that he was involved in some form of criminal activity other than the incident involving Jason Ryan.

27. The prosecution contended that the evidence was admissible as it showed the destruction of potential evidence in circumstances where the accused had just recently been involved in a violent incident as a result of which someone had been stabbed and had died. Before this Court, counsel for the Director has indicated that the prosecution interest was in part motivated by the fact that it showed the appellant in control of his situation and making decisions for himself and that went some distance to rebutting the suggestion from the defence that he was very intoxicated and not fully in control of his actions. The Court was somewhat surprised at this submission on the part of the prosecution as it was not an argument that was addressed to the trial judge.

28. In considering the significance of this aspect of the evidence and the extent to which it is prejudicial, the Court notes that there was evidence at trial that Mr. Connors had burned a hoodie that he had been wearing and that Ms. Connors washed the clothes that he was wearing. Against that background, the evidence in relation to the phone was really of quite limited significance. Taken in conjunction with the evidence in relation to the washing of clothes and the hoodie it does indicate that the appellant's instincts were to block or impede garda lines of inquiry. Such evidence is relevant and that the prosecution would have an interest in adducing it is understandable. In the view of the Court, they were entitled to do so.

**Failing to exclude a portion of an interview dealing with CCTV cameras**

29. The issue arises out of a question put to the appellant during the course of interview No. 3 of his detention. The question and answer in dispute were as follows:-

> "Q. Have you ever been at Jay's house before?
>
> A. No, never in Jay's house but would have walked past it on the way to Jim's. Too many cameras around here. I wouldn't live up here. I remember saying to Jim or Womper."

30. The defence objected to the reference to "too many cameras around here" and said that the prejudicial effect of this answer exceeded its probative value. The prosecution submitted that the evidence was relevant to their case that the appellant was very aware and cognisant of the location of cameras and deliberately lured the deceased to a part of the estate which was not covered by CCTV cameras. The judge dealt with this issue by saying that if it was part of the prosecution case that the accused man lured the victim into an area where there were no cameras, then in her view that was relevant and so the phrase "too many cameras around here" should not be redacted from the memorandum of interview. However, she felt that the balance of the answer namely "I wouldn't live up here, I remember saying to Jim or Womper" should be deleted.

31. The Court agrees with the trial judge's approach. The prosecution was making the case that the appellant set out to lure the deceased to a particular part of the estate and did so for a very particular reason. In those circumstances the prosecution had a

legitimate interest in establishing his level of awareness in relation to CCTV cameras. Both at trial and on appeal, the appellant has drawn attention to the fact that the issue was raised in the course of a later interview, interview No. 5, when the question was asked "would you have been aware there is CCTV in Hollyville Heights" and the answer given "yah". However, in the Court's view this later question does not tip the balance against admitting what was said in interview No. 3.

**The failure to exclude evidence arising from the period of detention following the purported extension of the detention by Chief Superintendent Roche at 10.32 pm on the 27th January, 2012**

32. This issue arises against the following background. On the 25th January, 2012, James Connors was arrested at 11.00 a.m. at Wheatfield Prison. He was brought to Wexford garda station where Garda David Fitzgerald was acting as Member in Charge by Detective Garda Patrick O'Brien and Garda Brian Cummins. Garda Fitzgerald decided to detain Mr. Connors when an application in that regard was made to him pursuant to s. 4 of the Criminal Justice Act 1984.

33. At 4.50 p.m. that day, Superintendent Gralton, on foot of an application from Detective Sergeant Griffin, authorised the extension of the detention. Then, at 10.32 p.m. a further detention for a period of twelve hours was authorised by Chief Superintendent John Roche. During the course of detention, the appellant was interviewed on seven occasions in all. The fourth interview was in progress at the time that Chief Superintendent Roche extended the detention further. There were no admissions to murder at any stage and in broad terms Mr. Connors took a consistent position that he had acted in self defence. However, while no admissions as such were made, the defence took the view that answers given by Mr. Connors during the course of the last three interviews, interviews conducted following the extension of the detention by Chief Superintendent Roche, were unhelpful from their perspective and they sought the exclusion of evidence arising from this period. In that regard, it is the case that the prosecution referred to certain matters that arose from these later interviews when closing the case which lends support to the defence view that Mr. Connors situation was not helped by what he had to say at the later interviews.

34. The primary ground on which the admissibility of the later interviews is challenged is that the extension of the detention was not recorded in writing by Chief Superintendent Roche, or perhaps more accurately that there was no evidence before the Court that the extension was recorded in writing. While that was the issue in the case, the defence also pointed to the fact that there was no evidence that Superintendent Gralton, who had authorised an earlier extension, had recorded that in writing and a point was also raised about the validity of the decision by Member in Charge Fitzgerald to initially detain the appellant.

35. While there was no issue about the admissibility of what was said during the earlier interviews, the roles played by Member in Charge Fitzgerald and Superintendent Gralton were significant because the prosecution in seeking to establish that Chief Superintendent Roche had validly extended the detention were required to establish that at the time he purported to do so that Mr. Connors was in lawful custody.

**The role of the Member in Charge**

36. Garda Fitzgerald gave evidence in the course of a voir dire that at 12.35 on the 27th January, 2012, he was acting as Member in Charge when Garda Brian Cummins, the arresting garda, applied to him seeking the detention of Mr. Connors pursuant to s. 4 of the Criminal Justice Act 1984. He gave the following evidence:-

> "Q. And did Garda Cummins inform you of the reasons why he was requesting you to do this?
>
> A. He did.
>
> Q. And did he explain the ongoing investigation into the death of Mr. Ryan?
>
> A. He did judge. As part of that conversation, judge, Garda Cummins informed me that a large number of inquiries had been made involving door to door inquiries and examination of CCTV for the area concerned judge. He also informed me that there was a large number of witness statements – had been – made and had been recorded in writing within those witness statements, judge. Garda Cummins informed me that Mr. Connors had been placed at the scene of the alleged incident before and after the incident judge.
>
> Q. Yes? And having considered the information given to you by Garda Cummins, I think you made a decision to grant his application to have Mr. Connors detained?
>
> A. That's correct judge."

37. It was submitted on behalf of Mr. Connors that the evidence that was adduced was not sufficient to establish either that the Member in Charge had the requisite opinion required by s. 4(2) of the Criminal Justice Act 1984, or, if he did have that opinion that there were no reasonable grounds for such a belief. The defence say that at its height, the evidence of Garda Fitzgerald was that information was given to him which put Mr. Connors at the scene, but did not go any further than that and did not indicate that there was any basis for believing that he had any involvement in the crime.

38. The prosecution submitted that the evidence established that the Member in Charge, both subjectively and for objective reasons believed that the appellant's detention was necessary for the proper investigation of the murder of the deceased. The trial judge dealt with the matter in these terms:-

> "This Court is satisfied that on the evidence of Garda Fitzgerald as a Member in Charge at the relevant time, notwithstanding that he did not give direct evidence, that he subjectively believed that Mr. Connors' detention was necessary and objectively that he was satisfied that there was reasonable grounds for his belief, that he did in fact subjectively believe his detention was necessary, and that there were reasonable grounds for his belief. And this Court can satisfactorily infer the same given that he clearly stated in his evidence that he had been informed that Mr. Connors had been arrested on suspicion of the murder of Jason Ryan, and following a consideration of the information given to him by Garda Cummins he made a decision to have Mr. Connors detained in accordance with s. 4 of the Criminal Justice Act 1984. Accordingly, the Court rejects the submissions of the defence in relation to that aspect of the application."

39. In the Court's view this was essentially an issue of fact to be resolved by the trial judge. In the Court's view the conclusion arrived at by the trial judge was one that was open to her. One aspect that was relevant to her consideration, which is also relevant to the role played by Garda Fitzgerald, was that this was a case where Mr. Connors was taken from prison to be arrested and that had happened on foot of a warrant issued by a court. Therefore this ground of appeal fails.

**The lack of evidence that the decisions to extend the detention were recorded in writing**

40. This is an issue which arises in relation to the authorisations from both Chief Superintendent Roche and Superintendent Gralton to extend the detention of the appellant. Neither officer dealt with the question of whether their decision to authorise an extended detention was recorded in writing. Following argument the matter was dealt with as follows by the trial judge:-

> "This Court is not in a position to find on the evidence of either Superintendent Gralton or Chief Superintendent Roche that the oral extension granted was recorded in writing as soon as practicable. There is simply no evidence in that respect. However, the Court considers that a failure to comply with this requirement does not necessarily lead to a conclusion that the prisoner's continued detention therefore becomes unlawful. It is of course the statutory requirement touching upon the right to liberty, but within the general context of the section it cannot be considered to be of the first importance.
>
> The Court is satisfied on the evidence of both the Superintendent and the Chief Superintendent that the first and second extensions of detention were validly granted. There is no suggestion that the accused was not properly informed of each extension of detention. There is no indication of a policy to ignore the record and requirements of the Act. In the circumstances and on reading the section the Court finds that the failure to prove compliance with this particular aspect does not oblige you to rule that either of the extended periods of detention should be regarded as unlawful. The Court having considered the evidence, the submissions made, the statutory authority and the case law relied upon is satisfied that the application by the defence fails on all grounds."

41. The statutory provision which was in issue here is s. 4 (3)(c) of the Criminal Justice Act 1984 which provides a direction to extend the detention of a detained person made under para. (b) or (bb)) may be given orally or in writing and if given orally shall be recorded in writing as soon as practicable. Paragraph (b) relates to the power of a Superintendent to direct a further detention for a period not exceeding six hours and para. (bb) relates to the power of a Chief Superintendent to direct the further detention for a period not exceeding twelve hours.

42. The defence says that the obligation is clearly mandatory and that there is nothing in the terms of s. 4 to indicate that a failure to comply with the requirement shall not of itself affect the lawfulness of the detention or the admissibility of evidence. It points out that this is to be contrasted with the provisions of s. 5 of the Criminal Justice Act 2006, in relation to the designation of a place as a crime scene which again provides that the direction may be given orally or in writing and if given orally that it shall be recorded in writing as soon as reasonably practicable, but it goes on to provide that a failure to record the direction shall not by itself render any evidence inadmissible. It is of course also the case that there is a provision that a breach of the custody regulations as distinct from a breach of the Criminal Justice Act does not of itself render any evidence inadmissible.

43. In the Court's view, the conclusion reached by the trial judge was the appropriate one. The position is that a Superintendent has the power to direct the further detention for a period of six hours and the Chief Superintendent, the power to direct the detention for a still further twelve hours. That the Superintendent and Chief Superintendent authorised the extended detentions was not in dispute and the evidence in that regard was unchallenged. In those circumstances, in the view of the Court, the fact that there was no evidence from either the Superintendent or Chief Superintendent dealing with the recording in writing does not render the detention unlawful or the evidence arising from that detention inadmissible.

44. In passing and in passing only, because the issue was not dealt with in the course of argument, the Court would simply draw attention to the evidence of Garda David Fitzgerald on the 7th December, 2015. At p. 5 of the transcript, the following exchange between prosecution counsel and Member in Charge is recorded:-

> "Q. I think the prisoner was returned to his cell and at 16.50 hours you were informed that an extension of questioning had been granted by Superintendent Gralton for a period of six hours, is that right?
>
> A. That's correct judge.
>
> Q. I think its 16.51 you spoke to the prisoner and informed him of this and by whose authority and the length of time of the extension?
>
> A. That's correct judge."

At p. 6 the following question and answer is recorded:-

> "Q. Now, at 22.46, I think you informed Mr. Connors that his period of detention had been further extended by Chief Superintendent Roche?
>
> A. That's correct judge.
>
> Q. And this extension was for a period of twelve hours commencing from 22.32 is that right?
>
> A. That's correct judge.
>
> Q. And this was in accordance with the provision of the Criminal Justice Act 1984 and I think at 23.31 hours, the fourth interview concluded?
>
> A. That's correct judge."

At p. 10 the following questions and answers are recorded:-

> "Q. And during his detention, I think you say – did you – did you look after all the provisions of the Criminal Justice Act, Treatment of Persons in Custody Regulations?
>
> A. Yes judge I believe I did so.
>
> Q. Yes and made all relevant entries into the custody record?
>
> A. Yes Judge.

Q. And that custody record is there?

A. Yes judge I have it here with me."

45. It is abundantly clear from a reading of the transcript of the evidence of Garda Fitzgerald that he was giving his evidence by reference to the custody record so that in fact it appears that the authorisations to extend detention were recorded. It will be noted that the statutory obligation is not on the Superintendent or Chief Superintendent to record the directions in writing, but rather the directions should be recorded. It should also be noted that Chief Superintendent Roche, concluded his direct evidence by saying that he directed Detective Sergeant Griffin, who had sought the extension of the detention, to inform the Member in Charge of his decision and to have his decision recorded in the custody record of the prisoner at Wexford garda station. It is slightly surprising that the trial judge was not reminded of this aspect of the decision. In truth there appears to be little substance to this point.

46. A further issue is raised that is specific to the evidence of Chief Superintendent Roche. The issue arises in the following circumstances. In the course of his direct evidence, Chief Superintendent Roche stated as follows:-

> "Judge, I authorised the further detention of the prisoner at 10.32 p.m. as I had reasonable ground for believing that the further detention was needed for the proper investigation of the offence for which he had been arrested and detained."

47. In cross examination the following exchange took place:-

> "Q. At the time you made that decision, what to your mind was that offence?
>
> A. It was a serious assault at – at the time."

48. On behalf of the appellant it was submitted that the prosecution was required to prove that the Chief Superintendent had the requisite state of mind and that such state of mind had to relate to the "proper investigation of the offence concerned". In this case the offence was murder, but it was argued that the evidence established that Chief Superintendent Roche erroneously believed that Mr. Connors was being detained on suspicion of an assault.

49. The trial judge dealt with this matter as follows:-

> "This Court is satisfied to infer from the evidence of Chief Superintendent Roche that he had the requisite state of mind, that the further detention of Mr. Connors was necessary for the proper investigation of the offence in respect of which he had been detained up to that point, namely, the offence of murder. And the Court does not accept the contention by the defence that the answer given in cross examination by the Chief Superintendent in relation to serious assault could only relate to s. 3 or s. 4 in the light of the whole of the evidence as given by Chief Superintendent Roche."

50. In the Court's view the conclusion reached by the trial judge was certainly one that was open to her. This emerges with particular clarity if one looks to the introductory questions to the examination in chief. There it is recorded:-

> "Q. [Mr. Clarke (prosecution counsel)] Sorry, did you receive a communication from Detective Sergeant Griffin of Wexford garda station?
>
> A. That's correct judge, he telephoned me.
>
> Q. Yes and were you made aware of circumstances under which James Connors had been arrested?
>
> A. Yes judge.
>
> Q. And that he was being detained under the provisions of s. 4 of the 1984 Act, as amended, is that right?
>
> A. Yes, judge, yes judge.
>
> Q. Did Detective Sergeant Griffin explain to you the background facts and the investigation which was in progress?
>
> A. Yes judge he did.
>
> Q. Did he inform you concerning the detention of James Connors?
>
> A. Yes judge.
>
> Q. And did he set out reasons why he was requesting an extension of the detention?
>
> A. Yes judge, he did.
>
> Q. Can you tell the Court what they were as you recall?
>
> A. Yes judge. My recollection – my recollection, judge is that the prisoner had been interviewed on three occasions and the fourth interview had just commenced. It was outlined to me that there was extensive CCTV footage from the scene in the estate of Hollyville Court to be viewed and the – and to be analysed and the result of examination of that CCTV was to be put to the prisoner. There was a number of exhibits including an alleged weapon used in the alleged incident to be put to the prisoner during further interview. There was mobile phone analysis of both the prisoner and the witnesses after the alleged incident, and the result of the analysis was to be put to the prisoner during further interview. And also the statements and interviewing of the potential witnesses had not yet been completed and when completed the result of such statements was still to be put to the prisoner.
>
> Q. As a result of all that information, what decision did you make?
>
> A. Judge I authorised the further detention of the prisoner at 10.32 p.m., as I had reasonable grounds for believing that the further detention was needed for the proper investigation of the offence for which he had been arrested and detained.

Q. And authorised that he be detained for a further twelve hours?

A. Yes judge. At 10.32 p.m. I authorised the prisoner's twelve hour detention and I informed Sergeant Griffin of my decision and I also directed Sergeant – Detective Sergeant Griffin to inform the Member in Charge of my decision, and to have my decision recorded in the custody record of the prisoner at Wexford garda station.

Q. Yes thank you."

51. If the evidence of the Chief Superintendent is viewed in the round there was certainly a basis for the judge concluding that the Chief Superintendent was very much on top of the investigation and aware of the developments that had taken place up to that point including the details of his arrest and detention. Therefore the appellant is unsuccessful with this ground of appeal.

**Issues that were grouped together in argument**

**Failure of the trial judge to properly relate the principles governing self defence to the evidence in the case**
52. It is acknowledged by the defence that the trial judge gave the jury comprehensive directions in relation to the general principles of law governing self defence. However counsel on behalf of the appellant submitted that at that stage the trial judge made only a very brief reference to the evidence in the case which was of relevance from a defence perspective. At another stage in her charge, the trial judge, it is accepted by the defence, provided a comprehensive summary of the evidence, but it is said that this was not related by the trial judge to the general legal principles. At the conclusion of her charge, the trial judge was requisitioned and the judge indicated that she had no difficulty re-charging the jury. However, it is said that in re-summarising the evidence she omitted to deal with witnesses that were significant from a defence perspective.

53. In the Court's view, this was a case where the issues were very straightforward. It was not in dispute that Mr. Ryan had met his death at the hands of James Connors, but the issue was whether James Connors was acting in self defence. No elaborate direction was required to be given to the jury in order for them to identify all of the evidence that they had heard that was relevant to this issue. Read as a whole, the charge and re-charge were careful, comprehensive and balanced and this ground is rejected.

**Refusal to discharge the jury after they had completed in excess of nine hours deliberation**
54. At first sight this might seem a somewhat surprising requisition. Indeed, it becomes even more surprising if one has regard to the contents of the transcript. At 4.00 p.m. on the 15th December, 2015, (day 12 of the trial) after the jury had been deliberating for nine hours and 30 minutes, the following exchange took place between the trial judge and the foreman:-

"Judge: Right, Mr. Foreman thank you very much. Is there any prospect of you reaching a majority decision or are you disagreed?

Foreman: I think if we had another half an hour, maybe an hour, we could reach a decision."

55. The jury were asked to retire at that stage and in their absence counsel for the appellant applied to have the jury discharged having regard to the lengthy period of time they had been deliberating. The trial judge refused the application and, because it was not possible for the Court to sit later that day or indeed on the following day, the jury was asked to return on Thursday the 17th December, to resume their deliberations. On that morning when the judge asked the jury to resume their deliberations, she informed them that if a majority of at least ten of them could not agree, that was called a disagreement and that the issue paper should be completed accordingly. At that stage the jury retired and deliberated for a further period of 1 hour and 41 minutes before reaching a majority verdict.

56. In fairness to counsel for the appellant, he explained that this ground of appeal, and the next which contends that the verdict of the jury was perverse and against the weight of the evidence is to be seen in the context of the fact that this was a particularly finely balanced case. The Court does not disagree that this was a finely balanced case, but it was nonetheless entirely proper that in a situation where the jury were indicating that further time would be of use to them and that they were likely to be in a position to reach a verdict to give the jury the opportunity to conclude their deliberations. The Court has no hesitation in rejecting this ground of appeal.

**The verdict of the jury was perverse and against the weight of the evidence.**
57. The Court has accepted that this was a finely balanced case, but it was quintessentially a case for the jury to consider. There is no possible basis on which this Court could substitute its view of the facts for that of the jury. The findings of fact in this case were, by virtue of the Constitution, a matter for the jury and the jury alone. For this reason, the Court must dismiss the appeal. In doing so, it has regard to well established jurisprudence such as the case of *the People (DPP) v. Luke Egan* [1990] ILRM 780 about the primacy of the jury as judges of fact.

58. The Court has considered each of the grounds of appeal but it has not upheld any of them and so the Court must dismiss the appeal and affirm the conviction.