

## THE HIGH COURT

[2015 No. 4958 P.]

BETWEEN

LAURA KELLY

PLAINTIFF

AND

COMMISSIONER OF AN GARDA SÍOCHÁNA,

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND ATTORNEY GENERAL

DEFENDANTS

**JUDGMENT of Mr. Justice Barr delivered on the 16th day of December, 2016****Introduction**

1. This action arises out of a search which was carried out by the emergency response unit of An Garda Síochána at the plaintiff's property at 4 Maryville, Dunleer, Co. Louth, in the early hours of 10th July, 2010. It is alleged that in the course of carrying out this search, certain gardaí assaulted the plaintiff. In particular, she alleges that while being brought down the hallway in the property, going towards the spare room, she was kicked on the legs a number of times by a garda, who was walking behind her. She further alleges that while sitting on the sofa in the spare room, when there was only one male garda in the room with her, that that garda stood very close to her, with his knees touching her knees, so as to prevent her getting up from the couch. The plaintiff further alleges that when she was taken back up the hallway from the spare room, she was brought to her bedroom and thrown onto the bed. She states that while being thrown onto the bed, the same gardaí stood on her pyjama bottoms, causing the leg of the pyjamas to rip.

2. The plaintiff alleges that as a result of these assaults, she was caused to suffer physical injuries in the form of bruising to her legs. It is also alleged that she subsequently developed symptoms of Post Traumatic Stress Disorder [hereinafter; P.T.S.D.] and experienced a moderate depressive reaction.

3. The gardaí admit that a search of the property was carried out on the date in question, but deny that the plaintiff was assaulted either in the manner alleged, or at all, in the course of the search. It is further denied that the plaintiff suffered the alleged or any personal injuries as a result of any wrongdoing on the part of the gardaí.

**Liability – the Plaintiff's Evidence**

4. The plaintiff's evidence was that on 10th July, 2010, she was a tenant of the property at 4 Maryville, Dunleer, Co. Louth. She lived there on her own, but her boyfriend at the time, used to stay over for a number of nights each week. On the night in question, she was alone in the house.

5. At approximately 03:00hrs on the morning of 10th July, 2010, she was lying in her bed, watching an episode of Big Brother on television. She was nineteen and a half years old at that time, having been born on 25th October, 1990.

6. In her evidence in chief, the plaintiff stated that she had first heard a gentle bang on the front door. Then she heard a louder one. She got out of bed and went to the front door. She could see through the yellow glass in the front door, that there were a number of men outside. She stated that she could see some of them moving about. There was no light in the hall or outside the front door, so she could not see that clearly. When she opened the door, she saw a large number of men. One of them was holding a sheet of white paper. She stated that some of the men grabbed her and brought her down the hallway and into a back room where she was thrown on a sofa. She stated that the men then left the room, leaving one man who stood in front of her with his leg touching against her knees. She stated that when she asked him what was going on, he said "*Shut the fuck up*". She could hear the other men moving around the house.

7. She stated that the men were dressed in dark combat type clothing. She stated that a man in a white shirt came into the room and was carrying a photograph of her boyfriend and her and he asked if the man in the photograph was her boyfriend. He then left the room. The man in the white shirt then came back and told the other man in the room to take her to another room. She was grabbed by the garda who had been in the room with her and was brought up the hallway to her bedroom, where she was thrown on the bed.

8. She stated that while she was being thrown on the bed, the garda stepped on the leg of her pyjamas and they tore. She stated that she was very frightened at this stage, as she did not know that these men were Gardaí. She stated that she thought she might be raped. She stated that she was left in the room for approximately 20 minutes and that the same man was left in the room with her. Then the man who was dressed differently to the others, in the white shirt, came in and said that she was to be brought into the sitting room. She stated that she was shown a number of items, including a balaclava, two baseball bats a pellet gun belonging to her boyfriend and some false number plates. The gardaí also took her mobile phone. She stated that she told the men that she would need her phone if she wanted to contact someone. The man in the white shirt said to her that they would have to take the phone. The plaintiff stated that it was only when she saw the Garda evidence bag, that she realised the men were gardaí.

9. She stated that the men then left through the front door. She said that she was crying and did not know what was going on. The men got into vehicles, which she thought were jeeps and drove off. There had been a large number of men, she thought approximately twelve, involved in this episode. She stated that she did not see any garda insignia on their clothes. They did not tell her that they were gardaí. She recalled that she had seen a white piece of paper, but she did not know what it was. It was not read over to her.

10. She stated that she did not understand what was going on. She did not remember anybody offering to let her use their mobile phone, or offering to make a phone call on her behalf.

11. The plaintiff stated that the men had been in the house for approximately one hour. After they left, she sat on the floor for approximately half an hour. Then two of her friends arrived to bring her over to her mother's house. They had heard that her

boyfriend's mother's house had been searched. They brought her over to her mother's house. The plaintiff stated that she was very upset at this stage and that her mother wanted to take her to a Garda Station, or to a hospital. However, she said that she was too scared to leave the house and she remained in her mother's house that night.

12. Five days later, on 15th July, 2010, the plaintiff and her mother went to the Garda Station in Drogheda, where she made a statement of complaint in relation to the incident. This was to ground a formal complaint to An Garda Síochána Ombudsman Commission [hereinafter; G.S.O.C.]. The plaintiff stated that the garda brought her and her mother into an office, where she made the complaint. He wrote down the complaint and she signed it. She stated that she was still in shock at the time. She stated that she did not know whether she was "coming or going". Her statement to G.S.O.C. was in the following terms:-

*"A knock came on my door at 03:15am. I was in the house on my own and I didn't know who was at the door. There was a bit of shouting outside the door and I opened the door and there was a plain clothes garda holding a warrant and his badge. Fellas in combats and with guns came into the house and picked me up and brought me into one of the back rooms. They were very rough with me and threw me down on chairs in the back room. I felt sick and one of the fellas in the combats stood up and wouldn't let me go to the toilet. They wouldn't tell me a thing that was going on or why they were there. They took my phone and left me there with no way to contact anyone to come out and collect me. They destroyed the house and my legs are covered in bruises."*

13. The plaintiff stated that after the incident, her mother was begging her to go and see the doctor, as she was afraid that she might do something to herself. She could not sleep at the time and when she did sleep, she had nightmares. She was very frightened when the house was in darkness. On 30th July, 2010, the plaintiff went to her G.P., Dr. O'Reilly. The doctor's note of that consultation was in the following terms:-

*"Was living alone when house raided at 3.00am by about ten – fifteen gardaí all male with search warrant – says they were very rough with her and kicked her – bruise on right inner thigh approximately 6cms, yellow/blue, says it happened approximately 3/52 ago (get date). Boyfriend was being followed by gardaí who stopped him on suspicion of carrying 'something' possibly explosives in her car. He was arrested and is now in Portlaoise Prison. Laura has broken up with him because of this. Had to move out of flat, now living with her sister – difficulty sleeping, flashbacks, fearful of traffic sounds, tearful on and off. Advised counselling as matter of urgency. CBT to help her get over trauma. Stilnoct 10mg half to one Nocte, breathing exercises. See 2/52."*

14. The plaintiff returned to her G.P.'s practice on 18th August, 2010, where she was seen by a locum doctor. It was confirmed to her at that time, that she was pregnant. This was the first time that she learnt that news.

15. The plaintiff stated that after the search she learnt that her boyfriend had been arrested and his mother's house had also been searched. She thought that he was arrested for membership of an illegal organisation, possession of explosives and driving a stolen car. She stated that that car had been in her garage for approximately a week prior to the search. In addition, some other men, who had been driving her car on the night in question, were also arrested. She stated that she had no idea that her boyfriend was involved in subversive activity. She learnt this for the first time on the night of the search. She ended the relationship with him in August 2010. She stated that her boyfriend was convicted of membership of an illegal organisation and possession of explosives. She thought that he had been sentenced to six years imprisonment, with three years suspended.

16. She stated that after her son was born in April 2011. She brought him on an number of occasions to visit her ex-boyfriend in Portlaoise Prison.

17. The remainder of the plaintiff's evidence in chief dealt with her mental state after the search. It is not necessary to go into that evidence at this stage.

18. In cross examination, the plaintiff accepted that she had told a number of her doctors that she was very frightened during the search, as she did not know who the men were and she feared that she might be raped or murdered. It was put to her that she knew well that the men were gardaí, as the majority of them were wearing garda issue raid jackets, which had the garda insignia clearly on the front of the jacket and had the word "Garda" written in large letters on the back of the jacket. They were also wearing garda baseball caps which had the garda insignia on the front of the cap. The plaintiff accepted that that may have been the case.

19. The plaintiff stated that she did not have any clear recollection of Detective Sergeant Malone. It was put to her that he was the "man in the white shirt" that she had referred to in her evidence in chief. She did not recall him talking to her at the front door, nor did she recall him saying that her boyfriend had been arrested. She accepted that she had been shown a piece of white paper. She had no recollection of him saying that she could read it. The plaintiff stated that she did not recall Detective Sergeant Malone showing her his badge. When it was put to her that she had stated in her statement of complaint to G.S.O.C. made on 15th July, 2010, that she had seen the search warrant and his badge, she stated that she could not recall if she had mentioned that in her statement. She stated that she merely repeated in her statement what the garda had said to her, that she must have been shown a warrant and a badge. The plaintiff stated that it was only at the end of the search, when she was shown the garda evidence bag containing the items that were going to be removed from the property, that she realised that the men were gardaí. She stated that they did not inform her that they were gardaí at any stage.

20. It was put to the witness that Detective Sergeant Malone would say that he produced the search warrant and his badge on entering the property and told the plaintiff that she could read the warrant. He would further state that she went back into her bedroom and was accompanied by Garda Coleman and Garda O'Dowd. The plaintiff stated that she did not remember being brought into her bedroom for a short period. The plaintiff stated that when the front door opened, she was brought straight to the back room. She stated that she could not recall which of the men brought her to the back room. She stated that she was picked up beneath both her arms by the men and was dragged to the back room. She stated that she did not walk down the hallway ahead of Detective Sergeant Malone. She stated that she was dragged approximately 25ft to the back room. It was put to her that Detective Sergeant Malone would say that she walked down the corridor ahead of him unaided. She stated that that was not true.

21. She stated that in the back room she was thrown onto the sofa and there was only one garda left in the room with her. She stated that there was definitely only one garda in the room. She stated that the garda who was in the room, was standing. He pushed her down onto the sofa and stood in front of her. His legs were touching her legs and were strongly pressing against her legs. She stated that she had moved forward on the sofa as she thought that she was going to get sick. She stated that the garda might have thought that she was going to run away.

22. The plaintiff denied that she had told Dr. Haider Hussain in November 2012, that she had been kicked around and thrown on the

floor. She stated that she had been kicked while going down the hallway. She stated that she was in shock when she saw Dr. Hussain.

23. Dr. Hussain's note dated 29th November, 2012, reads as follows in relation to the plaintiff's account of the incident:-

*"Lived in a house in Dunleer. Plain clothes police came into the house. Says was taken into a room and kicked around – says they did not identify themselves. Says they forced her down on the floor and did not let her go to the bathroom. She says she did not know what was happening. While leaving they took the phone and she then figured out they were gardai."*

24. It was put to the plaintiff that she had given a different account to Dr. Fionn Kelly when she told him that a garda had stood on her feet. The plaintiff stated that that was not correct, the garda in the room did not stand on her feet. She stated that there was only ever one garda with her. She stated that this garda was standing beside her.

25. It was put to the plaintiff that Gardaí Cahill and Casey would say that at all times the two of them were with her in the back room. They would state that they were standing approximately 5 – 6ft from the sofa on which she was sitting. The plaintiff was adamant that there was only one garda with her in the room. She stated that she remembered Detective Sergeant Malone coming down to the room and the same garda who was in the room, took her by the arm and brought her to the front living room. It was put to her that Detective Sergeant Malone would say that he accompanied her to the front living room. She said that she was brought to the front living room and was showed some items including a balaclava, baseball bats and fake number plates. She stated that she was very shocked by what she was shown. She could not recall if she was asked whether she had any complaints about the manner in which the search was conducted. She stated that she was upset because her phone was being taken from her.

26. The plaintiff stated that she did not recall Detective Sergeant Malone making any offer to call someone on her behalf. She said she could not take in what had happened in her house that night and also could not take in the involvement of her boyfriend in subversive activity. She did not recall giving Detective Sergeant Malone her name and date of birth. If Detective Sergeant Malone said that she gave these details at the conclusion of the search, she could not remember doing so.

27. It was put to her that in her statement to G.S.O.C., she had stated that her legs were covered in bruises, whereas when she was seen by the G.P. on 30th July, 2010, there was only reference to one bruise. The plaintiff stated that the other bruises had disappeared by the time she went to the G.P. The plaintiff stated that she had been kicked by a garda, as she was being dragged into the back room. She said that the garda who kicked her, was behind her. It was put to her that if he was behind her, he could not have dragged her down the corridor. The plaintiff stated that he was shoving her along the hallway. That was when she got the bruise on her inner thigh.

28. It was put to the plaintiff that she had attended hospital approximately one month before the search when she had been rammed in the pelvis by a cow. The plaintiff stated that that incident had occurred on 6th June, 2010. She had gone to hospital after that incident and had had a CT scan of her abdomen and brain. She could not recall if she had fallen backwards as a result of being hit by the cow. However, she stated that the bruise was not from that incident.

29. It was put to her that she had told her solicitor that she had attended with her doctor approximately four to five days after the search. She accepted that she was wrong in that and that she had got her dates mixed up. The plaintiff stated that she only discovered she was pregnant when she returned to the G.P. practice on 18th August, 2010. She stated that three weeks later in September 2010, she nearly lost her baby.

30. The plaintiff accepted that her G.P., Dr. O'Reilly, had advised counselling at the visit on 30th July, 2010, but she did not have any, as she could not afford it. She saw the locum G.P. on 18th August, 2010, where she learnt that she was pregnant. However, she did not return to her G.P. in relation to the incident. The next visit to her G.P. concerning any injury arising from the search, was on 28th November, 2012, when she was referred to the psychiatric services at St. Brigid's Hospital. On the following day, she attended there and was seen by Dr. Hussain. That concluded the plaintiff's evidence in relation to the search.

31. Evidence was given by the plaintiff's sister, Ms. Katie Kelly. She stated that in July 2010, she was sixteen years of age. She recalled waking up when her sister, the plaintiff, arrived at her mother's house. She heard crying downstairs. She went down to the kitchen, where the plaintiff was sitting in a chair and the leg of her pyjamas was rolled up, showing a bruise on the inside of her right leg. It was a large bruise, which was purple/blue in colour. She stated that it looked like it had been freshly done. She stated that the plaintiff was very upset. She was crying and shaking and she said something about men coming into her house. She said that her mother became upset and that she and her sister were sent into the sitting room.

32. Ms. Kelly stated that the plaintiff and her mother stayed talking in the kitchen. She thought that the plaintiff then went upstairs to change clothes. The plaintiff stayed in her mother's house that evening. She said that the plaintiff was petrified and had to have the lights on. She was very agitated and fidgety and kept looking out the window. The plaintiff did not return to her own home in Maryville after the incident.

33. Ms. Kelly stated that her mother encouraged the plaintiff to go to the G.P. Her mother cancelled her summer holidays to stay at home to look after the plaintiff. She stated that her mother could not believe that the gardai would do such a thing to her daughter. She brought the plaintiff to the Garda Station to make a complaint.

34. The witness stated that the plaintiff had been very outgoing and independent prior to the search. After it, she had become very frightened and anxious and would not leave the house. She would not go out and socialise with her. Occasionally, the plaintiff would go into town. She did not go to discos or bars, but she would attend family events.

35. In cross examination, the witness stated that she remembered the bruise on her sister's leg clearly. It was a large bruise, which was purple/blue in colour. It was the first thing that she saw when she came into the kitchen. The plaintiff had stated that the men in the house were gardai.

36. The witness remembered the plaintiff going to the Garda Station to make a complaint some days after the incident. Subsequently the plaintiff had visited her ex-boyfriend in prison a number of times, perhaps three to four times per month.

37. Evidence was given by Dr. Catherine O'Reilly, who was the plaintiff's G.P. She stated that the plaintiff first consulted with her on 30th July, 2010 when she described the incident. She stated that at that time the plaintiff was terrified. The plaintiff stated that she thought she was going to be raped or killed. However, by the time she had seen her, she knew the men were gardai.

38. Dr. O'Reilly stated that the plaintiff had a bruise on her inner right thigh, measuring 6cm in diameter. At the time that she saw the bruise, it was yellow in colour and was fading. She said that the plaintiff had stated that the gardaí were very rough and had kicked her. When she saw the plaintiff, she was anxious, tearful, was unable to sleep, had flashbacks to the incident and was very fearful. She could not live on her own. The doctor advised her to have some counselling and prescribed Stilnoct to help her sleep and also advised that she should do breathing exercises. She advised her to return to see her in approximately two weeks. She stated that the plaintiff returned to the practice on 18th August, 2010, when she was informed of her pregnancy. The plaintiff did not return to see her. The plaintiff was seen a number of times in the practice subsequent to that, but in relation to pregnancy and allied matters.

39. The plaintiff returned to the practice on 28th November, 2012, where she was seen by another doctor, who referred her to St. Brigid's Hospital for psychiatric help.

40. It was put to the witness that in her attendance note dated 30th July, 2010 and in a medical report dated 25th January, 2012, she had said that the plaintiff had been shown a search warrant at the time of the search; whereas in her medical report dated 19th May, 2014, she had stated that the men were gardaí, but with no search warrant. In the report, she stated that the note in her record contained a typo, in that it said "with" search warrant. Dr. O'Reilly stated that she realised that this had been a typo on her part, when the plaintiff said there had been no search warrant produced to her.

41. In cross examination, it was put to the witness that in a written complaint made five days after the incident, she stated that the garda had been holding a search warrant. The doctor stated that she did not hear that from the plaintiff. The witness stated that a search by armed gardaí in the middle of the night, would be a very traumatic experience for a young woman of nineteen years of age. Also, the fact that her boyfriend had been involved in subversive activity unknown to her, would also be very traumatic for her.

42. Evidence was given on behalf of the plaintiff by Dr. Fionn Kelly, Consultant Psychiatrist. The plaintiff came under his care in 2015 and she was first examined by him on 2nd March, 2015. At that time, he was of the opinion that the plaintiff had symptoms of P.T.S.D. and also had a depressive component in her symptoms. He most recently saw the plaintiff on 7th November, 2016, at which stage she was very anxious about having to go to court and meet the gardaí again. He was of opinion that P.T.S.D. was still prevalent in her life. However, she was obtaining the necessary treatment, as she was seeing a psychiatrist fortnightly and was having weekly sessions of cognitive behavioural therapy. His overall opinion was that she still had P.T.S.D., together with moderate/severe depressive symptoms.

43. It is not necessary to go into the detail of Dr. Kelly's evidence at this stage. However, it is necessary to refer to some aspects of the cross examination, which have a bearing on the question of liability.

44. In cross examination, it was put to the witness that the plaintiff had told him that after the search, she had contacted her neighbour and she had called her family. In evidence, the plaintiff had stated that she could not contact her neighbour, as she was an elderly person, who suffered from dementia. The plaintiff had stated that after the search, she had been sitting on the floor and her friends arrived. They then took her to her mother's house. Dr. Kelly stated that this confusion in her recollection, was no surprising, as people can get things wrong about a time of great stress.

45. It was put to the witness that the plaintiff had told him that she attended with her G.P. later that morning. He stated that he was not surprised that she should do so. However, it was put to the witness that the plaintiff had not, in fact, gone to her G.P. until approximately three weeks later. The witness stated that people, who had been subjected to such stresses, can act in illogical ways.

46. It was put to the witness that she had told him that she did not know who the men were. The witness agreed, stating that the plaintiff had thought that she might be raped. It was put to the witness that she told her G.P. that the men had a search warrant. Dr. Kelly stated that this surprised him, as she had not told him of any search warrant. It was pointed out that she told G.S.O.C. in her complaint, that the gardaí had a search warrant. It was put to the witness that her account was constantly changing. The witness stated that when people have been subjected to severe stress, their recollection of events can be vague. Their recollection can change. It is possible for them to remember things that they did not recall on a previous occasion.

47. It was put to the witness that the presence of a search warrant was an important factor. The witness accepted that possession of a search warrant would have made the event less threatening. It was put to the witness that the plaintiff's account and her subsequent psychiatric reaction to the event, was predicated on the fact that she did not know who the men were and that she had not been shown any search warrant, but this was not in fact the case. Dr. Kelly stated that it was possible that the plaintiff might not process all of the information, such as a search warrant being produced and that this would add to her terror during the event.

48. In cross examination, Dr. Kelly accepted that the plaintiff's account of what had happened on the night was important. She had told him that a garda had stood on her feet. When told that the plaintiff had withdrawn that in evidence, the witness stated that that surprised him. It was put to the witness that she had told Dr. Hussain that she had been kicked about and put onto the floor, but that this had subsequently been withdrawn by the plaintiff in her evidence. The witness stated that that also surprised him.

### **Liability – the Defendants' Evidence**

49. Detective Sergeant Malone stated that in 2010, he was a member of the Emergency Response Unit [hereinafter; E.R.U.] of An Garda Síochána. On 9th July, 2010, the E.R.U. had assisted the National Surveillance Unit monitoring a number of individuals. At approximately 21:45hrs, the car, which was being driven by the plaintiff's boyfriend, was stopped and searched. Ammunition and explosives were found in the boot of the car. Shots had been fired at gardaí in the course of effecting the arrest. The plaintiff's car was also stopped and a number of individuals, who were in that vehicle, were also arrested. The car, which the plaintiff's boyfriend had been driving, had been stolen some time previously and had been stored in the garage at the plaintiff's property. The plaintiff's boyfriend was arrested on suspicion of membership of an illegal organisation and for possession of ammunition and explosives.

50. Detective Sergeant Malone stated that following the arrests, he was ordered to carry out a search of the plaintiff's house. He was given a search warrant issued by Detective Superintendent O'Sullivan pursuant to s. 29 of the Offences Against the State Acts 1939/1998 (as inserted by s. 5 of the Criminal Law Act 1976). He produced the original warrant to the court. He assembled a team of nine men to carry out the search. He stated that nearly all the men were wearing garda issue raid jackets, which had the garda crest on the front and the word "GARDA" in large letters on the back. They also wore garda baseball caps, which had the garda insignia on the front. He stated that all the members of the search team were armed with either pistols or submachine guns.

51. Detective Sergeant Malone stated that they travelled in four unmarked vehicles and parked at the entrance to the Maryville estate. This was approximately 20/30m from the plaintiff's house. They walked to the house and some men went to the rear of the property. Detective Sergeant Malone stated that he was at the head of a line of gardaí at the front door. He knocked on the door once, but got no reply. He could see that there was a light and a T.V. on in a front room to the side of the front door, so he knocked

on the window. The plaintiff then came to the front door and opened it. He stated that he showed her his I.D. card and showed her the search warrant. He stated that he told the plaintiff that he had been involved in the arrest of her boyfriend and that shots had been fired during the arrest. He told her that vehicles had been seized and that they thought that one of the vehicles had been stored at her property and that the other car was registered in her name. He told the plaintiff that she could not have the search warrant, but could read it if she wanted. She declined this offer. He stated that he was entirely satisfied that the plaintiff knew that they were gardaí. He stated that as well as seeing this on their clothing, the gardaí had filed in passed him through the front door and had said in raised voices "*Armed gardaí*", as they made a quick search of the house to see if there was anyone else present.

52. Detective Sergeant Malone stated that he remained in the hallway while the other men did a quick search of the house. He stated that he then asked the plaintiff to move to a room at the back of the house. He stated that when she walked down the hallway, she was directly in front of him going to the back room. He stated that she was not dragged or pushed down the hallway. He stated that there was no reason to use force, as she was not resisting the search in any way. He denied that there was any force used, nor was there any shouting. The atmosphere at that time was quite calm. He stated that she went into a room to the right, at the end of the hallway. He went to the room with her. Gardaí Cahill and Casey then stayed in the room with her.

53. Detective Sergeant Malone stated that he was very conscious of the plaintiff being a young female. He stated that he had a daughter of a similar age. He stated that if there were no female gardaí on the search team, then two gardaí would have to remain at all times with a female occupant. He stated that during the search, he was going around the house observing the search. When the search was concluded, he asked the plaintiff to come up to the living room. He stated that she walked up the hallway unassisted, in front of him.

54. In the living room, she sat on the couch. He told her that he had concluded the search and showed her a number of items which they were going to remove from the property. These items were a balaclava, two baseball bats, a number of false number plates, a pellet gun and the plaintiff's mobile phone. These items were placed in an evidence bag. He stated that he then asked her had she any complaints in relation to the search and she said that she had none, except for the fact that they were taking her phone. He told her that he would have to take the phone, but that he would contact someone for her either then, or in the morning. She declined this offer.

55. Detective Sergeant Malone stated that the plaintiff was calm at all stages. He said that it was an unremarkable search. The search itself lasted from 02:45hrs until 03:30hrs.

56. Detective Sergeant Malone stated that the plaintiff subsequently made a complaint to G.S.O.C. He made a statement in the course of that investigation. He stated that he and the rest of the search team were cleared of any wrongdoing at the conclusion of that investigation.

57. In cross examination, Detective Sergeant Malone stated that the E.R.U. would be called in where there was a risk or danger in carrying out an arrest, or a search and where there was a possibility that this may be beyond the capability of ordinary unarmed police. Because of the arrests that have been made earlier in the evening and their connection with subversive activity, it was thought necessary to call in his unit to carry out this search and other searches, which were carried out in the wake of the arrests.

58. He stated that he did a risk assessment in relation to the possible dangers in carrying out this search. He was aware that the plaintiff lived at that address. He did not think that it was necessary to use force to gain entry to the property. It was for this reason that he knocked on the front door and then knocked on the window. He stated that they had breaching equipment with them, which could have been used to effect a forcible entry, if needed. However, he did not deem it necessary to use such equipment on that occasion. He stated that the plaintiff opened the door after he had knocked on her bedroom window.

59. It was put to the witness that there should have been a female garda on the search team. He stated that he had put the search team together from the gardaí that were available to him. He stated that there were a number of searches going on at different locations arising out of the arrests, which had been made earlier in the evening. He stated that it was not possible to bring a female uniformed garda, as this was an armed search.

60. The witness accepted that on entering the property, they shouted "*Armed gardaí*". He stated that the men had their arms drawn, but held in the safe position, when entering the property. That was the only time that voices had been raised. He stated that that was standard practice when out of uniform. The reason that they call out that they are armed gardaí, is to let other occupants of the property know that they are gardaí. The witness was asked why he had not stated in his statement to G.S.O.C. that they had shouted "*Armed gardaí*" on entering the property. He stated that this was standard procedure and other than that, he could not explain why it was not in his statement.

61. Detective Sergeant Malone stated that entry to the property was obtained by consent. The plaintiff opened the door and he stepped in and explained the situation to her. He stated that there was no objection from the plaintiff to their entry onto the property. He spoke to her in the hallway, while the other members entered the property.

62. Detective Sergeant Malone accepted that a search at 03:00hrs would be a stressful thing for anyone, but stated that if the plaintiff suffered any injury, it was not as a result of anything done by the gardaí during the search.

63. Detective Sergeant Malone stated that at the time of the search, the gardaí were wearing body armour, which was under their raid jackets. He stated that he showed his identity card to the plaintiff on entering the property. He said that he had no doubt whatsoever that the plaintiff was aware from the outset that they were members of An Garda Síochána.

64. Detective Sergeant Malone denied that their main object was to take the occupants of the property by surprise; if it had been, they would not have knocked on the door and on the window. He stated that, while initially the gardaí were on high alert as they entered the property, the situation was soon deescalated, once it was ascertained that there were no other occupants or firearms on the property. Their initial objective had been to secure the property and this was achieved within a short time of entering the property. Thereafter, their firearms were put away and the search itself was undertaken.

65. It was put to the witness that his description of having effected a "*gentle*" entry onto the property, was simply not credible. The witness stated that they had entered the property in the manner already described and had carried out the search in the manner described by him. The witness accepted that a search of one's house by armed gardaí in the middle of the night, would be stressful for any occupant, such as the plaintiff. However, he did not accept that she had any complaint in relation to the manner in which they carried out the search.

66. Detective Sergeant Malone stated that the plaintiff was not injured during the search. He stated that he could say with one hundred percent certainty that the bruise was not caused by any action taken by him, nor did he see anyone else doing anything to the plaintiff that would cause a bruise.

67. In relation to the items which were removed from the property, the witness stated that he told her in the living room what items had been removed. He did not give her a receipt in respect of these items, however, he showed the items to her. He could not say why he had not given her a receipt, or asked her to sign an inventory of the items in his notebook.

68. When the plaintiff had been removed to the spare room, Detective Sergeant Malone stated that he assigned Gardaí Cahill and Casey to stay with her. Gardaí Coleman and O'Dowd had been with her in the bedroom. She was never left in the care of only one male garda. Detective Sergeant Malone reiterated that he did not touch or manhandle the plaintiff in any way, nor did he see her being treated like that by any other member of the search team. He stated that during the search, the plaintiff was not restrained in any way. Her suggestion that she was assaulted while walking down the corridor was not true, as he had been in the corridor all the time. He further stated that her pyjamas were not torn to his knowledge. She did not make any complaint to him about having torn her pyjamas. At the conclusion of the search she was asked did she have any complaints, to which she replied that she was upset that her mobile phone was being taken.

69. In re-examination, the witness stated that there was no other person between him and the plaintiff, while she was walking down the hallway. It was put to the witness that the plaintiff had said that she was kicked on the inner thigh as she was being dragged into the spare room and the garda who kicked her, had been behind her. Detective Sergeant Malone stated that the plaintiff walked unassisted into the spare room. She was not pushed or dragged in any way. He stated that it would not be possible to kick her on the inner thigh from behind. He reiterated that he did no such thing. He stated that any force which the gardaí use, must be reasonable and necessary in the circumstances, but in this case, no force had been used as the situation did not warrant it.

70. Evidence was given by Detective Garda Colin Coleman. He stated that he had been a member of the search team and had driven one of the vehicles. He gave an account of arriving at the front of the property and Detective Sergeant Malone knocking on the front door and then on the bedroom window. He stated that when the front door was opened, Detective Sergeant Malone was at the head of the line and had a warrant in his hand. He spoke to the plaintiff. He went past Detective Sergeant Malone and the plaintiff and went into the front bedroom. He was wearing body armour, a garda raid jacket and a baseball cap.

71. He scanned the front bedroom and was satisfied that there were no people or weapons there. He and Detective Garda O'Dowd remained in the room and the plaintiff came in and sat on the bed. At that time, he and Detective Garda O'Dowd were just standing there. The plaintiff was not shouting or roaring. He stated that she was definitely in the room for two to three minutes before Detective Sergeant Malone called her out. He and Detective Garda O'Dowd stayed in the room to carry out a detailed search. After that, he searched the garage. He stated that just before they left the property, the plaintiff complained to Detective Sergeant Malone about taking her phone. Detective Sergeant Malone offered to make a phone call for her. She declined this. They then left the property.

72. In cross examination, Detective Garda Coleman stated that doing a quick scan of the room first to look for other people or firearms and then waiting in the room, while the plaintiff was present in the room and then carrying out a detailed search, once she had been removed to a different room, was standard operating procedure on a search.

73. It was put to the witness that he was in the room for the purpose of carrying out a search, not to act as a chaperone for the plaintiff. He stated that he did the first quick search of the room, then did chaperone duty while the plaintiff was in the room and this was followed by a thorough search of the room once she had left. He stated that he was never alone with the plaintiff. Detective Garda O'Dowd was always present with them. He stated that when he first went into the room, he had his side arm drawn. He put his weapon back into his holster after carrying out a quick cursory look around the room. He was satisfied that there was no threat at that stage, so the gun was holstered. He stated that this was done within seconds of entering into the room.

74. In re-examination the witness stated that the atmosphere on the search was fairly calm. He said that there was not a word said by the plaintiff, or the gardaí.

75. Evidence was also given by Detective Garda Patrick Casey. He was one of the last into the house. He was wearing a garda raid jacket and baseball cap. He stated that he proceeded down the hallway towards the kitchen. He had his firearm drawn at this stage and it remained drawn until he commenced searching the kitchen. Whilst he was in the kitchen, Detective Sergeant Malone asked him to go into the spare room where the plaintiff was with Detective Garda Cahill.

76. Detective Garda Casey stated that the atmosphere was a bit awkward in the spare room. He stated that he just stood there. The plaintiff was sitting on a couch and he was standing approximately 6ft away at the door. He remembered petting the dog, which was also in the room. He denied that he stood in front of the plaintiff and obstructed her with his knees, or at all. He stated that he did not see anyone else doing that to the plaintiff.

77. He stated that he was in the room for five to ten minutes. Nobody kicked the plaintiff, or assaulted her in any way. He stated that Detective Sergeant Malone then brought her out of the room and that was the last that he saw of the plaintiff. He stated that the search lasted for 30 – 40 minutes. It was one of the quietest searches that he had ever been on.

78. In cross examination, the witness stated that when Detective Sergeant Malone knocked on the door, it was opened. The witness was carrying his pistol out of its holster and in the safe position. He was not able to hear Detective Sergeant Malone talking to the plaintiff at the front door. He stated that he was one of the last members to enter the property. He went into the property quite quickly, but did not run in. He was alert to any risk in the property.

79. As already stated, while he was in the kitchen, Detective Sergeant Malone just gestured for him to go into the spare room. It was standard practice to have two male gardaí with a female occupant at all times. He accepted that he had not told this to the G.S.O.C. investigation. He was in the room for approximately 5 – 10 minutes. He stated that they would never leave an occupant of the property alone, while a search was being carried out.

80. He stated that he was with Detective Garda Cahill and that the purpose of this was to prevent any allegations being made against the gardaí. He went in as the second garda. He was not expressly told to act as a chaperone, but he understood the role that he had to play. It was put to him that he had not said this to the G.S.O.C. investigator. He replied that that had been a question and answer type interview and he just answered the questions put to him. He just told them what he had done on the search that night.

81. The cross examination of Detective Garda Casey ended at that point. However, after the following witness had been called, an application was made to recall Detective Garda Casey, as the plaintiff had given some further instructions to her counsel, which he wished to put to the witness. The court acceded to the request to have this witness recalled.

82. Counsel for the plaintiff put it to the witness, that the plaintiff had recognised him, when he gave evidence in the witness box, as being the single garda who was with her in the spare room. Detective Garda Casey stated that while he had been in the spare room with the plaintiff, he was never alone with her in that room. It was put to him that he had pushed her onto the sofa. The witness denied this and stated that when he entered the room, the plaintiff was already sitting on the sofa. It was put to him that when the plaintiff had tried to get up from the sofa, he had pushed her down. He denied that that had happened.

83. Detective Garda Casey stated that the plaintiff did not speak to him at all. It was put to him that the plaintiff had a recollection of him saying to her "*Shut the fuck up*". The witness stated that he would not speak to a woman like that and he did not say anything at all to the plaintiff. It was put to him that he leant against the plaintiff to prevent her getting up from the sofa. The witness stated that he did not lean against her, as he was standing 5 – 6ft away from her. It was put to the witness that when Detective Sergeant Malone came into the room with a photograph, he had had to stand back from the plaintiff. The witness stated that he had no recollection of Detective Sergeant Malone coming into the room with a photograph. He stated that as he was not standing near the plaintiff, there would be no need for him to stand back, as alleged.

84. It was put to the witness that when Detective Sergeant Malone then left the room, he had been left on his own with the plaintiff. He stated that that was not true. He was never alone with the plaintiff in the room.

85. Detective Garda Casey stated that he had a recollection of the plaintiff leaving the room with Detective Sergeant Malone. He thought that this was at the end of the search. The witness denied that he brought the plaintiff to her bedroom. He also denied that he pushed her onto the bed. It was put to him that he stood on the bottom of her pyjamas, causing the leg to tear. He stated that that did not happen. It was put to the witness that Detective Sergeant Malone came to the room after approximately 20 minutes and that the witness had been there alone with the plaintiff. The witness stated that he was never alone with the plaintiff. He never saw her after she left the spare room.

86. In re-examination, It was put to the witness that the plaintiff said that she recognised him when giving evidence. The witness stated that he had been around the court for days before the case came on for hearing and during the hearing itself. He stated that the plaintiff and her family had been looking at the garda witnesses, including himself. He was surprised that she only recognised him when he was in the witness box. He reiterated that when he was in the spare room with the plaintiff, there was another garda there at all times.

## Conclusions

87. The burden of proof rests on the plaintiff. She must establish on the balance of probabilities that she was assaulted by the gardaí while they searched her property on 10th July, 2010.

88. The plaintiff was nineteen years of age when her property was searched in the middle of the night by nine armed male gardaí. This was the first time that she learnt that her boyfriend had been involved in subversive activity, in particular, that he had stored a stolen vehicle in the garage of her home and on the night of the incident, had been stopped driving this vehicle, with explosives and ammunition in the boot. In addition, some other men had been stopped driving the plaintiff's car some short distance away. Shots had been fired during the arrests.

89. The plaintiff has alleged that she was assaulted in the course of the search, in particular, that she had been kicked on the legs and thigh, while being dragged or pushed down the hallway. She also alleges that Detective Garda Casey threw her onto a couch in the spare room, told her to "*Shut the fuck up*" and stood with his legs touching hers, so as to prevent her getting off the couch.

90. She further alleges that towards the end of the search, she was brought up the hallway by Detective Garda Casey and brought to her bedroom. It is alleged that he threw her onto her bed and while so doing, he stood on the leg of her pyjamas, causing them to rip. She alleges that he then remained alone in the room with her for a further twenty minutes.

91. The first issue which arises is whether the plaintiff knew that the search was being carried out by the gardaí. In her evidence, she stated that while she was shown a piece of white paper, she did not know that the men were gardaí, until she was shown items in a garda evidence bag, which they were going to take from the property. This was not consistent with earlier accounts which had been given by the plaintiff. In the brief statement made to G.S.O.C. on 15th July, 2010, she said "*There was a plain clothes garda holding a warrant and his badge*". This clearly implied that she knew they were gardaí from the outset of the search.

92. I accept the evidence of the garda witnesses, that most, if not all, of the search party were wearing garda raid jackets, which had the garda crest on the front and the words "*GARDA*" in large letters on the rear and that they were wearing garda baseball caps, which had the garda insignia on the front. I further accept their evidence that on entering the property, they said in loud voices "*Armed gardaí*". I also accept the evidence of Detective Sergeant Malone that he showed the plaintiff the search warrant and his identification badge on entering the property. In these circumstances, it is simply untenable for the plaintiff to argue that she did not know that the men were gardaí, until she was shown items in the evidence bag. I find that the plaintiff was at all times aware that this was a search being conducted by members of An Garda Síochána.

93. In relation to the assaults, the plaintiff's statement to G.S.O.C. was quite vague. It just said that she had been treated roughly, had been thrown onto chairs in the spare room, one garda had "*Stood up*" and would not let her go to the toilet. She ended the statement by saying "*They destroyed the house and my legs are covered in bruises*". She did not say how, or by whom the bruises had been inflicted. However, by the time that she came to visit her G.P. on 30th July, 2010, she said that the gardaí had been very rough and had kicked her and that she had a bruise measuring 6cm on her inner thigh. This gave the impression that a number of gardaí had kicked her, whereas by the time she came to give her evidence, she stated that as she was going down the hallway, a single garda behind her had been kicking her on the legs and that this had caused the bruise on her inner thigh.

94. The plaintiff has not been consistent in relation to her accounts of the assault. In November 2012, she told Dr. Hussain that she was "*Taken into a room and kicked around – says they did not identify themselves. Says they forced her down on the floor and did not let her go to the bathroom*". This allegation was withdrawn when she came to give her evidence.

95. There were a number of inconsistencies in her account of the events as given to Dr. Fionn Kelly. She told him that she went to her neighbour's house after the incident. Whereas in her evidence, she stated that she did not go to any neighbour's house, because she was not acquainted with her neighbours, except for an elderly lady, who suffered from dementia. She told Dr. Kelly that she had

gone to her G.P. on the day after the incident. However, it transpired in evidence that she had gone to her G.P. for the first time on 30th July, 2010.

96. Dr. Kelly stated that the plaintiff had informed him that she had been given anti-anxiety medication by her G.P., when she had first seen her after the incident. However, in her evidence and in the evidence of the G.P., it transpired that she had only been prescribed sleeping pills at the time of her first consultation with the G.P.

97. The plaintiff informed Dr. Kelly that a garda had stood on her feet. In her evidence, she stated that a garda had stood with his legs touching her legs, but had not stood on her feet.

98. The plaintiff told Dr. Kelly that the gardaí did not have a search warrant. Whereas the plaintiff had stated in her statement to G.S.O.C. that the gardaí did have a search warrant. In addition, the G.P. had noted that the plaintiff told her that the gardaí did have a warrant. However, the G.P. stated that this could have been a typographical error in her notes. In her evidence, the plaintiff stated that she was only aware that there was a piece of white paper, but she denied that she knew that it was a search warrant.

99. The plaintiff's account is supported to some extent by the presence of a bruise measuring 6cm on her right inner thigh, when seen by her G.P. on 30th July, 2010. Her account is also supported by the evidence of Ms. Katie Kelly, the plaintiff's younger sister, who stated that on the morning of 10th July, 2010, she had seen the plaintiff in a distressed state in the kitchen in her mother's house and had seen a bruise on the plaintiff's inner thigh. While this evidence could be seen as supportive of the plaintiff's account, I am not satisfied that the bruise was, in fact, caused by the actions of the gardaí during the search. Firstly, if the plaintiff was kicked from behind, as she alleged, it is difficult to see how that could cause a bruise on her inner thigh, unless she was on the ground with her legs apart, but this is not alleged by the plaintiff. Secondly, the plaintiff was charged by a cow in June 2010, which made contact with her abdomen/pelvic area. I think it more likely that the bruise was caused as a result of that incident.

100. There was an inconsistency between the evidence given by the plaintiff and that given by her sister. The plaintiff stated that she had received a number of bruises, when she was kicked by the garda in the hallway. She stated that all but one of them had faded away by the time she saw her G.P. on 30th July, 2010. Ms. Katie Kelly stated that when she went into the kitchen in her mother's house that night, she clearly saw one bruise on the plaintiff's inner thigh. In the circumstances, the court does not feel able to rely on the evidence of Ms. Katie Kelly.

101. The plaintiff's case boils down to an allegation that a garda assaulted her while walking down the corridor for no reason at all. She does not allege that the gardaí were questioning her about the stolen car, or about her boyfriend's activities, or his associates. Sometimes people allege that they are assaulted by gardaí as a means of getting them to give information, or to make a verbal admission to a crime. However, the plaintiff does not allege this. She makes the case that a garda, who was walking behind her in the hallway, simply kicked her a number of times on the legs, for no reason at all. The garda that was walking behind her in the hallway was Detective Sergeant Malone. I have to say that the court was impressed by all the garda witnesses and by Detective Sergeant Malone in particular. They came across as a highly trained unit, who carry out operations in situations that often expose them to considerable risk to their lives. I accept their evidence that this search was not obstructed in any way by the plaintiff and was carried out by them in a professional and efficient manner. The plaintiff has not satisfied me that she was assaulted in the hallway by Detective Sergeant Malone, or by any other garda.

102. The plaintiff's second allegation was that she was left alone in the spare room with Detective Garda Casey, who flung her onto a couch, told her to "*Shut the fuck up*" and stood with his legs pressing against her legs, so as to prevent her getting off the couch.

103. Having heard the evidence of Detective Gardaí Casey and Cahill, I am not satisfied that the plaintiff was left alone in the room with Detective Garda Casey and was assaulted in the manner alleged by the plaintiff. I prefer the accounts given by Detective Gardaí Casey and Cahill as to what transpired in the spare room that morning. Their accounts are more credible, than the version given by the plaintiff. Accordingly, I do not accept that the plaintiff was assaulted by Detective Garda Casey in the spare room.

104. The third allegation was that she was thrown onto the bed, in her bedroom by Detective Garda Casey, and that while so doing, he stood on the leg of her pyjamas, causing it to rip. Detective Garda Casey denied that any of that happened. He stated that the last he saw of the plaintiff, was when she left the spare room in the company of Detective Sargent Malone.

105. His account is supported by the evidence of Detective Sargent Malone, who stated that he brought the plaintiff from the spare room to the living room. He did not see the leg of her pyjamas torn, when he spoke to the plaintiff at the conclusion of the search. Furthermore, she did not make any complaint to him of any such assaults, when they were in the living room.

106. I prefer the evidence of Detective Sargent Malone and Detective Garda Casey on this issue. The plaintiff has not established on the balance of probabilities that she was assaulted by detective Garda Casey in the manner alleged.

107. Finally, the plaintiff in this case was a very young woman when the search of her property took place. It was a search by nine armed members of the E.R.U., which occurred at 02:45hrs. She learnt for the first time, that her boyfriend had been involved in subversive activities. A stolen car had been stored in her garage. Two weeks later, she learnt that she was pregnant with her first child. All of this would have had a traumatic effect on her. It is possible that these events may have given rise to the psychiatric issues, for which she is being treated at present. However, the plaintiff has not established on the balance of probabilities that her injuries, physical or psychiatric, were caused by any wrongdoing of the gardaí in carrying out the search of her property on 10th July, 2010. Accordingly, I dismiss the plaintiff's case against the defendants.