

UNAPPROVED

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**THE COURT OF APPEAL
CIVIL**

[2021 No. 167]

Birmingham P.

Neutral Citation Number [2022] IECA 85

Edwards J.

Binchy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

SEAN FURLONG

APPLICANT

**JUDGMENT of the President delivered (electronically) on the 4th day of April 2022 by
Birmingham P.**

1. On 22nd May 2017, an incident occurred at the Centra shop on La Touche Road in Bluebell, Dublin. It is alleged by the Director that a group of youths entered the shop with a view to stealing items, and that among that group was the applicant. He was asked to leave and became abusive and aggressive towards a security guard. It is alleged that he threw a glass bottle at the security guard which hit him, but was then deflected and struck a customer, a 69-year old woman, in the face. She suffered significant injuries, including a damaged cornea, as well as extensive general bruising and swelling.

2. In the aftermath of the incident, the applicant was identified as a suspect. He had just turned seventeen years of age at the time that the alleged incident occurred and attained his majority on 17th May 2018.

3. On 22nd August 2018, some fifteen months after the date of the offence, the applicant was charged. The applicant subsequently applied by way of judicial review for, *inter alia*, an injunction restraining his continued prosecution on two charges of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997, on the ground of the delay that had occurred. Leave was granted on 29th April 2019.

4. The matter came on for hearing in the High Court and, on 12th May 2021, the application for judicial review was successful. The High Court was satisfied that there had been culpable prosecutorial delay in the case, and that as a result, the applicant had suffered significant prejudice by not having the matter dealt with when he was a minor. The High Court was further of the view that when a balancing exercise was carried out, the prejudice to the applicant which had been identified outweighed the public interest in the prosecution of the offences charged, notwithstanding that they were serious in nature. Accordingly, the injunctions sought were granted. This decision has now been appealed to this Court by the Director. In circumstances where the applicant in the judicial review proceedings succeeded, and is therefore the respondent to this appeal, I propose to refer to the original applicant for judicial review as “the suspect” or “the accused”, and to the original respondent to the application as “the Director”.

5. The High Court identified – correctly, in my view, and uncontroversially – that the issue for determination was whether there had been culpable or blameworthy prosecutorial delay, and that the appropriate approach was to conduct a balancing exercise between: (a) the public interest in having serious charges investigated and prosecuted; and (b) any prejudice to the applicant that had arisen by way of the delay, if delay was found. If the Court was minded

to refuse the order of prohibition sought, it could then consider whether there was another form of relief available to it which would address any possible prejudice.

6. It is necessary, at this stage, to examine the sequence of events in greater detail. The accused was born on 17th May 2000 and the alleged offences took place on 22nd May 2017 *i.e.*, some five days after he had turned seventeen. On 17th May 2018, the suspect attained his majority. On 22nd August 2018, the suspect was charged with an offence of assault causing harm to the female injured party. He was subsequently charged with a second offence of assault causing harm on 19th December 2018. A book of evidence was served on 13th February 2019. Thereafter, the accused failed to appear before the Circuit Court when on bail and a warrant was issued which was executed on 18th April 2019. Then, on 29th April 2019, the accused sought and obtained leave to bring judicial review proceedings.

The Period Prior to Charge

7. On the date of the offence, 22nd May 2017, Gardaí attended at the scene, spoke to both injured parties and viewed CCTV footage. The Garda who had attended the scene, Garda Karl O'Reilly, having observed a number of youths, gave a description of them to Command and Control. At about 8.10pm, approximately an hour after the alleged offences had been committed, the suspect was arrested by Garda O'Reilly for an offence contrary to s. 6 of the Criminal Justice (Public Order) Act 1994 and was taken to Kilmainham Garda Station.

8. The next significant development occurred on 10th July 2017 when a statement was taken from the first injured party, the woman who had suffered facial injuries. In the course of an affidavit sworn by Garda O'Reilly in the context of these proceedings, he stated that "it was appropriate and indeed normal practice" to wait for a period of time before seeking to take a statement from the injured party in order to allow her to receive medical treatment and to give her some time to process the incident in which she had been involved. It was pointed

out that the statement of the injured party, which appears in the book of evidence, refers to the fact that she was afraid when she went out and that she experienced acute flashbacks and panic attacks after the incident. The High Court judge accepted the explanation given by the Garda for the fact that seven weeks were allowed to pass before a statement was taken from the female injured party. The Court was of the view that the injured party had suffered significant injuries and given that the assault had occurred completely out of the blue, it was understandable that she would have been very traumatised by the event. Having regard to her injuries and to her age (69 years), the Court concluded that it was reasonable for Gardaí to wait as long as they did before taking a statement and that there was no culpable delay in this instance.

9. The next development in the investigation occurred on 3rd October 2017 when Garda O'Reilly spoke with the suspect's mother at her home address where the suspect had been residing. An appointment was made for the suspect and his mother to attend at Kilmainham Garda Station on 6th October 2017 at 1pm where it was intended that he would be arrested by appointment in relation to the investigation. As the suspect was a juvenile, this procedure of an arrest by way of appointment was regarded as the more satisfactory manner in which to progress the investigation from both the perspective of the Gardaí and the suspect himself. However, neither the suspect nor his mother attended for the appointment that had been made and no explanation for the non-attendance has ever been offered. In that context, Garda O'Reilly points out that it is of relevance that the suspect has a history of failing to attend court. The suspect first failed to attend in the District Court on 23rd November 2018, and on 22nd March 2019, a bench warrant was issued for his arrest when he failed to appear in the Circuit Court in respect of this case.

10. There is no recorded activity between 10th July 2017 (when the statement from the female injured party was taken) and 3rd October 2017 (when the appointment to attend at the

Garda station was made). Commenting on this timeframe, the High Court observed that no explanation had been given by Garda O'Reilly for this period of complete inactivity, adding that it was not clear why the Garda had not used that period to obtain a statement from the security guard and from an independent witness. The statement from the independent witness who was present at the shop was not taken until 26th April 2018, and the statement from the second injured party, the security guard, was taken only on 6th May 2018. The High Court observed that no explanation had been offered as to why the statement of the independent witness was not taken until approximately eleven months after the incident, or why there had been a delay of almost twelve months in taking the statement from the second injured party, the security guard.

11. In relation to the security guard, the High Court commented that the delay was particularly hard to understand insofar as it appears that he had taken only three days off sick after the incident, and thus would have been readily accessible to Gardaí. The Court added that having regard to the duty that rests upon prosecution authorities to proceed with reasonable expedition when investigating a crime involving minors, it was difficult to understand why there had been such an inordinate delay in taking a statement from the security guard.

12. The next period of significance relates to the time between 23rd October 2017 and 17th November 2017, when Garda O'Reilly was attending a training course in Templemore Garda College and was not in a position to advance the investigation. On 25th October 2017, the accused was sentenced to eight months detention in respect of a charge of assault causing harm. It is understood that this relates to an incident where a group of males were attempting to steal a pedal cycle, and when the owner intervened, he was struck with a hammer to the back of the head. A violent disorder charge, which the accused had also faced, was taken into consideration. On his return to normal duties, Garda O'Reilly became aware that the suspect

was in custody, and in those circumstances, he took steps to apply for a warrant pursuant to s. 42 of the Criminal Justice Act 1999 with a view to advancing the investigation. He sought to process this through his superiors, *i.e.*, through the sergeant in charge, and through him, to the superintendent. Such an approach is standard procedure. A section 42 warrant is issued by a judge of the District Court who is satisfied on information supplied on oath by a member of An Garda Síochána not below the rank of superintendent that the relevant statutory conditions for the issuing of a warrant have been fulfilled.

13. The accused complained of the delay between the date when Garda O'Reilly first applied for the warrant through the sergeant in charge on 20th November 2017, and the application being moved by the superintendent on 2nd February 2018. The High Court was not of the view that there had been culpable delay during that period. The Court commented that any delay in this instance was “due to the fact that the accused had failed to keep the appointment on 6th October, 2017”; thereafter the investigating Garda had been on a training course, and in the interim, the accused had been sentenced to a period of detention in Oberstown which necessitated the seeking of the s. 42 warrant. As such, the delays that ensued were due largely to the actions of the accused. The Court said it was also mindful of the fact that the delay between 20th November 2017 and 2nd February 2018 involved a period that covered the Christmas period when Gardaí would have been under considerable pressure at work. Accordingly, the Court declined to find any culpable delay during that period.

14. The section 42 warrant was executed on 23rd February 2018. The suspect was interviewed during the course of detention and, in broad terms, he admitted his involvement in the incident, though maintained that the security guard had hit him first. During the course of the detention, CCTV footage was played to the suspect. When he was asked whether he had anything to say, he replied:

“Very sorry for what happened, I didn’t mean to hit the [woman] with the bottle, she didn’t deserve it”.

15. The next stage of the investigation saw the taking of certain additional statements. There has already been reference to the taking of the statement from the civilian independent witness on 26th April 2018 and the taking of a statement from the security guard on 6th May 2018. Details of the two additional Garda statements, one from Garda Elaine Carolan (taken on 25th March 2018) and one from Garda Thomas O’Connor (taken on 29th April 2018), are not set out, and insofar as their statements are not contained in the book of evidence, I think it can reasonably be inferred that they were not statements of major significance.

16. On 17th May 2018, the suspect attained his majority. Then, on 18th May 2018, the file was forwarded by the superintendent in Kilmainham Garda Station to the Garda Youth Diversion Office (“GYDO”). On 30th May 2018, the superintendent in charge of the GYDO sought a suitability report from a Garda Juvenile Liaison Officer. On 26th July 2018, the Director of the GYDO concluded that the suspect was unsuitable for inclusion in the Juvenile Diversion Programme in respect of the first assault, the assault on the female victim. On 15th October 2018, a second decision issued to the effect that the suspect was unsuitable for inclusion in the Juvenile Diversion Programme in respect of the assault on the security guard. It is understood that two referrals had been made because the matter had been recorded as two incidents on the Garda PULSE system.

17. An investigation file was submitted to the Director on 9th October 2018. Certain clarifications were sought by the Director, and following receipt of these clarifications, on 1st November 2018, it was directed that the accused should be tried on indictment. Thereafter, on 13th February 2019, the accused was served with a book of evidence and was returned for trial to the Circuit Court on that date.

18. The High Court was of the view that had the investigation been carried out with reasonable expedition, the investigating Garda would have been in possession of the statements from the civilian witnesses prior to the date on which he questioned the accused, and the remaining Garda statements would have been obtained shortly thereafter. Had that happened, it would have meant that the papers could have been submitted to the GYDO shortly after the interview on 23rd February 2018, and given that the investigation was not a complex one, the High Court was satisfied that there was a “very good chance” that the matter could have been brought before the District Court prior to the accused reaching eighteen years of age. The Court explained that in coming to that conclusion, it had regard to the following facts: (i) that the investigating Garda had spoken to the two injured parties and to the independent witness at the scene; (ii) that CCTV footage had been furnished; (iii) that the investigating Garda was able to identify the accused who was arrested later that evening; and (iv) that the accused’s whereabouts were known to Gardaí at all relevant times. The Court accepted that there was delay caused by the fact that the suspect failed to keep his appointment on 6th October 2017, and by reason of his subsequent incarceration in Oberstown, but found that these were not insuperable barriers to the continuance of the investigation. Even allowing for the delay that ensued, there was still ample time to have the matter properly determined by the GYDO, submitted to the DPP and brought to the District Court prior to the accused turning eighteen, had other statements been obtained at a time when they ought to have been obtained. Accordingly, the High Court was satisfied that there had been culpable delay on the part of the Gardaí.

The Appeal: Submissions & Discussion

19. The Director contends that the approach of the High Court saw the judge fall into error and enter into micromanagement of Garda investigations. It is said that during the

period between 23rd February 2018 and 17th May 2018, the investigation was continuing, and that to find otherwise fails to provide the prosecuting authorities with an appropriate margin of appreciation. The Director draws attention to observations by Kearns P. in *DPP v. Daly* [2015] IEHC 405, where he had commented:

“While the importance of ensuring a speedy trial in the case of juveniles is well established, certain factors may arise in each case which determine how expeditiously this can occur and *there can be no obligation on prosecution authorities to unrealistically prioritise cases involving minors*. In the view of the Court there was no blameworthy prosecutorial delay in this case.”

(Emphasis added)

20. The Director says that this is a case where there have been, at most, “pockets of delay”, but that pockets of delay will not necessarily be sufficient to trigger a balancing exercise, referring in that context to the case of *DPP v. LE* [2020] IECA 101. It is said that the High Court’s view that the referral to the GYDO should have taken place shortly after 23rd February 2018, and that after a refusal, that the necessary submission of a file to the DPP (together with the proffering of charges and the appearance in Court) should all have taken place by 17th May 2018, is simply an unrealistic assessment.

21. As we have seen, the High Court conducted a detailed review of the various stages of the investigation. It identified particular periods of potential concern and commented on them. In some instances, it was critical of the failure to move matters along with greater expedition, but in other instances, it absolved the authorities from blame, such as the decision to delay the taking of a statement from the principal injured party for several weeks, and the period between Garda O’Reilly becoming aware, following his return to ordinary duties, that the suspect was in Oberstown and the execution of a s. 42 warrant. Such an approach has much to recommend it, not least because of the assistance it offers to an appellate court which

is provided with detailed information about the trial court's reasoning process. For my part, I am more inclined to step back and view the situation in the round. I say this because it seems to me that in many cases, there will be a degree of swings and roundabouts, in the sense that if particular tasks are carried out with considerable expedition, this may allow the pace to drop at other stages of an investigation. Conversely, there may be cases where, if it is established that some aspects of the investigation were not conducted with the expedition that would be expected, an obligation arises to pick up the pace and make up for time lost at other stages.

22. What one would like to see, and what seems to me to be absent in this case, is an awareness on the part of the Gardaí that their suspect was a juvenile due to attain majority at a particular stage, and that it was desirable, if practicable, to conclude the investigation before the suspect turned eighteen years of age. In saying that, I recognise and wish to acknowledge that there will be many cases where that will not be practicable. Further investigations may be complex or sensitive. As a force, An Garda Síochána, and no doubt, individual Gardaí, have very significant caseloads and it would be unrealistic and inappropriate to approach matters as if Gardaí were in a position to deal with a particular investigation on an exclusive basis. Other cases being worked on may be of greater importance and will naturally demand higher priority. However, what concerns me in the present case is that I do not observe an awareness on the part of Gardaí that they were dealing with a suspect who was a juvenile, and linked to that awareness, a desire to deal with matters with the level of expedition required so as to make having the matter dealt with before the suspect attained his majority a realistic prospect.

23. In this case, the alleged offence was committed some five days after the suspect turned seventeen. Therefore, Gardaí had just shy of a year available to them before the suspect turned eighteen. The High Court felt that this was not a complex investigation and I think few would find it possible to cavil with that conclusion. There was CCTV footage

available and there were a limited number of potential eyewitnesses, including the two injured parties and the independent civilian witness, all of whom were spoken to on the night of the incident. The accused was firmly nominated as a suspect on the night of the incident; this is apparent from the fact that he was arrested under s. 6 of the Criminal Justice (Public Order) Act 1994. While I can see the merit in allowing the principal injured party some time to recover from her ordeal, I would not have thought it unrealistic to hope that the interviews with the three significant civilian witnesses could have taken place within three to four weeks of the incident, and that arrangements could have been made for the arrest by appointment of the suspect shortly thereafter. If the appointment was not kept, then Gardaí would have been in a position to arrest and detain. In this scenario, such an arrest and detention would have taken place long before the suspect found himself in Oberstown. However, on the assumption that it would have been necessary to apply for a s. 42 warrant, I would be less indulgent than the High Court judge in respect of the period between the initiation of the application for the warrant and the execution of the warrant when obtained. While I recognise that all involved – the Garda, the sergeant in charge and superintendent – were busy people with a great deal on their respective plates, one would hope for some level of consciousness that the clock was ticking in terms of the suspect’s approaching majority.

24. I do not think it is unrealistic to hold the view that the investigative phase could have been concluded by Halloween or shortly afterwards, which would have allowed time for a referral to be made to the GYDO and a decision to issue from that office within the calendar year. On the basis that the GYDO would have concluded that it was not an appropriate case for such a diversion to be made, it would still have left time for the file to be submitted to the Director, for a direction to issue, and for charging and appearance before the courts in the early weeks of 2018, well before the suspect attaining his majority. I realise that there is an element of speculation about the exercise in which I have engaged, that it involves a number

of “what ifs”, and that in some cases in the future, it may emerge that timelines I thought were realistic may be viewed as over-ambitious, even in straightforward, non-complex cases, and would have no relevance whatsoever to more complex and sensitive cases. However, I am in no doubt whatsoever about the fact that the High Court judge was correct in finding that there was blameworthy prosecutorial delay in this case, by which I mean blameworthy Garda delay, and to the extent that I would part company at all with the High Court judge, it is that I would be less forgiving than he was prepared to be. I note that there was no delay whatsoever on the part of the Director in reviewing the file submitted and in issuing directions.

25. However, a conclusion that there has been culpable or blameworthy prosecutorial or Garda delay is not the end of the matter, and it is agreed by all involved that the authorities require that a balancing exercise be conducted between (a) the public interest in having serious charges investigated and prosecuted, and (b) the prejudice to the suspect.

26. In terms of the prejudice that the suspect now faces, it is submitted that because he has attained his majority, he has now “aged out” and has lost the advantages that would otherwise have been available to him pursuant to the provisions of the Children Act 2001, including:

- (i) the right to anonymity pursuant to s. 93 of the 2001 Act (as substituted by s. 139 of the Criminal Justice Act 2006),
- (ii) the stipulation that detention is a last resort pursuant to s. 96 of the 2001 Act,
and
- (iii) the adjournment of proceedings for the purpose of obtaining a probation and welfare report.

27. The two matters that seem to me of real consequence are (i) the fact that the suspect has been deprived of a s. 75 hearing, and (ii) the non-applicability of the anonymity provisions. Section 75 provides as follows:

“75. (1) Subject to subsection (3), the Court may deal summarily with a child charged with any indictable offence, other than an offence which is required to be tried by the Central Criminal Court or manslaughter, unless the Court is of opinion that the offence does not constitute a minor offence fit to be tried summarily or, where the child wishes to plead guilty, to be dealt with summarily.

(2) In deciding whether to try or deal with a child summarily for an indictable offence, the Court shall also take account of—

(a) the age and level of maturity of the child concerned, and

(b) any other facts that it considers relevant.”

28. Much of the focus in the High Court and before this Court was on section 75. The Director correctly points out that s. 75 does not create a right for an accused to have a case dealt with summarily. Rather, it provides a discretion to the judge of the District Court which might result in this course of action being taken.

29. On behalf of the suspect, it has been submitted that it was probable or that there was a good likelihood that the judge of the District Court would have accepted jurisdiction. Before the High Court was an affidavit from the accused’s solicitor who stated that from his experience as a practitioner in the District Court, he thought it was likely that the judge of the District Court would have accepted jurisdiction in this case. Attention was drawn to certain reports which showed that the accused had been diagnosed as suffering from ADHD when he was assessed in January 2012. It was suggested that this was an aspect that would have been influential. The Director says that the reports put before the High Court were incomplete and

amounted to a paltry amount of evidence significantly out of date. For my part, I think there is some substance in this criticism, but I accept that what the reports were intended to do was simply to establish that there were issues to be canvassed and perhaps further explored.

30. It was also pointed out that acceptance of jurisdiction is more likely when a plea of guilty is forthcoming, and in that regard, attention was drawn to the fact that there had been admissions during detention which indicated that a plea would have been a likely outcome. For his part, Garda O'Reilly, in the course of his affidavit, takes issue with the averment by the solicitor for the accused "that there was a good likelihood that jurisdiction would have been accepted by the Children's Court in this case". He says that this is a "speculative averment", and that given the very serious nature of the assaults in question, there was always a strong likelihood that the matter would be sent forward to the Circuit Court for trial.

31. The High Court dealt with the matter by saying that, on balance, it was satisfied that there was a reasonable prospect of the District Court judge accepting jurisdiction, though I would not be prepared to put it any higher than that. The Court was satisfied that the loss of the opportunity to have the matter dealt with in that way represents a serious prejudice to the accused. Had jurisdiction been accepted, it would have meant that the range of penalties available on conviction would have been considerably less than that which could be imposed should a conviction result in the Circuit Court. The Court pointed out that if the accused had been dealt with by the District Court while still a minor, he would have been able to avail of the anonymity provisions provided for under s. 92 of the 2001 Act.

32. The judge also viewed the loss of the anonymity provisions as a considerable prejudice to the accused. He felt that while it was correct to say that the accused would still be able to avail of the provisions which govern the expungement of a conviction after three years pursuant to s. 258 of the 2001 Act, the fact that the accused would have been before the Circuit Court as an adult would mean that he would face publicity during the trial. Thus, any

resulting conviction would probably be recorded in the media and on the internet, and therefore would be available to third parties, including prospective employers, notwithstanding the expunging of the record after three years. That would represent a serious impediment to him in the event that he seeks employment later in life. As such, the judge concluded that the loss of his statutory right to anonymity must be seen as a serious prejudice to the accused.

33. I approach the case on the basis that the judge was correct to conclude that if there had been a s. 75 hearing, there was a reasonable prospect of the judge in the District Court accepting jurisdiction. To the extent that the accused's solicitor and Garda O'Reilly expressed views as to what the likely outcome would have been, I take the position that both were doing so on the basis of their experience from appearing in the Children's Court, even though it was not stated expressly by Garda O'Reilly.

34. In my view, the combined loss of anonymity and a potential s. 75 hearing does amount to a significant disadvantage. However, that conclusion is itself not determinative. In *DPP v. LE* [2020] IECA 101, I commented:

“I do accept that the loss of anonymity is a significant disadvantage. However, it is necessary to put in the balance against that the seriousness of the case...”

35. Indeed, to be weighed in the balance against that is the gravity of the offending in issue. It is unquestionably the situation that these were serious offences, involving an assault on a woman of mature years and a security guard who was simply going about his day's work. It must be said that the full gravity of what occurred does not emerge from the fact that the accused faces two charges contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997. The statements from both injured parties, and particularly from the civilian independent witness (exhibited by the solicitor for the accused in his grounding affidavit in

support of the judicial review application), perhaps give a more complete picture. The following extracts merit quotation.

36. From the second injured party, the security guard:

“A group of young males and females came into the shop and they rob [*sic*] beer from the shop. I stopped them and the guy who was sitting on fridge I told him to go. He went outside the shop, crossed to the green area outside the shop and got a bottle. A glass bottle. He tried to come to me[,] he wanted to smash bottle onto my head. I tried to keep him out of shop. He swung bottle at me outside the shop. I was afraid he would hit and hurt me with the bottle. I came back into the shop, he was outside the door. He threw the bottle hard, hit me on my left ear. It hit old lady in the shop after [it] hit me.”

From the independent witness, a customer in the shop:

“Next thing I seen the young man who was wearing shorts, he threw the bottle, he was aiming to hurt someone, he was taking no prisoners. It was reckless, it’s a big open door[,] he could have hit anyone. He didn’t hold back[,] it was a full arm back and he threw it at his best. It hit Rose with force, it would be like getting hit with a hurl, serious damage. I remember hearing the impact[,] it could have took her eye out or anything.”

From the female injured party:

“Next, an object hit me at speed; I had no idea what it is. I honestly thought it was one of those scooters from outside. The bottle hit me on the right hand side of my face above my right eye and the bridge of my nose. When it hit me I fell into a guy behind me. There was blood everywhere. I didn’t know if it was my eye, my face, my teeth or my nose. [...] The next morning my neighbour came around, she is a retired nurse and she drove me to the Eye & Ear for 8am. I could not drive; in fact I did not drive

for nearly two weeks after what happened. That morning I was unsteady on my feet and I needed the help of my neighbour. Going into the Eye & Ear I was still mesmerised to say the least. They took more X-rays of my face. They ran some eye tests, the doctor told me I had damage or scaring [sic] to the retina of the right eye. They put a patch over my right eye and told me to wear it for 24 hours to the rest [sic] the eye. It was not nice to wear the patch. The who consultant I was dealing with gave me a prescription for an antibiotic cream and eye drops. I had to return the following Friday[,] 26 May 2017 at 8am again. I was suffering with severe headaches, bruising to my face, sore jaw and nose.”

37. It certainly seems by reference to the account of the incident that emerges from the book of evidence before the High Court that it was far from inevitable that a s. 75 hearing would see the case remain in the District Court. Having said that, I do not resile from the view that I expressed that the suspect was denied a s. 75 hearing which might have resulted in a decision that the case should remain in the District Court.

38. It seems to me that a further matter that has to be weighed in the balance is the action of the accused and his mother in not keeping the appointment that had been made for an arrest by appointment on 6th October 2017. The fact that the Gardaí were prepared to proceed by way of arrest by appointment was in ease of the suspect. It is far from being to his credit that the appointment was not kept, and that no explanation was ever forthcoming for that. The failure to keep the appointment was significant in the context of the overall timetable. Later, on 23rd October, the Garda who was dealing with the investigation went on the course in the Garda College in Templemore. Had the appointment been kept, that would have meant that the investigation would have been brought to a very advanced stage some seventeen days before the Garda was due to go on his course. It is possible that the remaining stages would have been completed within that time. Even if that did not happen, there would only have

been a limited number of steps left that needed to be taken before the file could be submitted to the GYDO following the Garda's return from the course. Had the appointment been kept, the fact that the suspect was going to receive a sentence in the District Court and thereafter be detained in Oberstown would have had no relevance. The question of a s. 42 application would simply never have arisen.

39. While one cannot be certain about this, it seems likely that had the appointment been kept on 6th October, the remaining steps could have been taken within a timetable that would have allowed a s. 75 hearing to take place before the suspect attained his majority. I regard this as a very relevant consideration.

Decision

40. Overall, I am of the view that while there was delay on the part of the Gardaí, the chronology which played out was materially contributed to by the suspect. That being so, having regard to the seriousness of the offence and the public interest that there is in having offences of such seriousness prosecuted, I find myself coming to a different view than the judge did in the High Court. I am of the view that the balancing exercise required leads to a conclusion that the interests of justice are served by permitting the prosecution to proceed.

41. Therefore, I would allow the appeal.

Costs

42. The parties are invited to make written submissions on the issue of costs and any related issue within fourteen days of the date of electronic delivery of this judgment.

Edwards J: I have had the opportunity to read the judgment of the President and I agree with the conclusion reached therein.

Binchy J: I have also had an opportunity to read the judgment of the President and I agree with the decision.