



THE COURT OF APPEAL

Record No: 129/2022

**Edwards J.
McCarthy J.
Kennedy J.**

Between/

**THE PEOPLE (AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS)**

Respondent

v.

FERI ANGHEL

Appellant

JUDGMENT of the Court delivered by Mr. Justice Edwards on the 19th of April 2024.

Introduction

1. On the 14th of April 2022 Mr. Feri Anghel (i.e. “the appellant”) was convicted, following a thirty-one-day jury trial in the Central Criminal Court, of the murder of Mr. Ioan Artene Bob (i.e., “the deceased” or “Mr. Bob”), contrary to common law and contrary to s. 4 of the Criminal Justice Act 1964.

2. The thrust of the prosecution case at trial was that the appellant had accompanied Mr. Bob to the Seán Walsh Memorial Park in Tallaght the early hours of the 13th of April 2018 and there he assaulted Mr. Bob, who was discovered some time later that morning by passers-by and was brought to Tallaght Hospital where he later succumbed to his injuries. The various strands of evidence upon which the appellant was ultimately unanimously convicted by a jury in the Central Criminal Court all shared a singular characteristic – that each was circumstantial. This is essentially the core complaint advanced by counsel for the appellant on appeal, that the prosecution did not adduce direct evidence of an assault by the appellant on the deceased. It is said that the most the prosecution evidence at trial could have achieved was to place the appellant in the company of the deceased on the night of the assault, and in the vicinity of the Seán Walsh Memorial Park some hours before Mr. Bob was found.

3. On the 13th of July 2023 this Court heard submissions on appeal from this conviction. Six grounds were initially advanced in the appellant’s Notice of Appeal (bearing a Court of Appeal Office stamp dated the 24th of June 2022), although at the hearing of the appeal it was

preliminarily indicated to the Court by counsel for the appellant that the second ground contained in that Notice, regarding the admissibility of phone record evidence, was no longer being pursued. Thus, the remaining grounds that fell for consideration on appeal comprised the following:

- I. That the trial judge erred in failing to accede to the defence's application for a directed acquittal, in accordance with the principles set forth by Lane L.C.J. in *R. v. Galbraith* [1981] 1 W.L.R. 1039;
- II. [No longer pursued];
- III. That the trial judge erred in admitting as evidence CCTV footage gathered in the course of the Garda investigation;
- IV. That the trial judge erred in failing to exclude from that CCTV evidence certain excerpts from that footage wherein the appellant was not identifiable, and further it is said that the trial judge erred in permitting those said excerpts to be joined with other parts of the CCTV evidence wherein the appellant was identifiable;
- V. That the trial judge erred in failing to redirect the jury on the issue of circumstantial evidence subsequent to a requisition by defence counsel on that issue;
- VI. That the trial judge erred in failing to give a direction to the jury on regarding missing evidence.

4. The evidence adduced at trial was multifaceted and considerable. Before embarking on a discussion of the various issues which arise for consideration on appeal, it is first necessary, in the following sections, to attempt to summarise the various strands of circumstantial evidence upon which the jury ultimately convicted the appellant of the murder of Mr. Bob.

Overview of the Prosecution's Case

Introduction

5. The deceased in this case, a Romanian national who had been living in Ireland for some years, was assaulted at some time, believed to be in the early hours of the morning, on the morning of 13th of April 2018 in the Sean Walsh Memorial Park in Tallaght, before being found later in a state of distress, but still alive, by a woman who was walking her dog. He was removed to hospital but ultimately died later that day of his injuries. Following his death, a Garda investigation was commenced which focused in the first instance on gathering CCTV evidence to establish, insofar as possible, the movements and associations of the deceased in the 24 hours prior to his being found injured in the Sean Walsh Memorial Park. This was focused on the Tallaght area in the first instance, but evidence gathered in that regard rapidly suggested that the deceased had arrived in Tallaght by Luas tram in the company of another man. Further CCTV was harvested from various cameras owned and/or operated on behalf of the tram, suggesting that the deceased and the man in question had boarded the Luas tram on Abbey Street in Dublin city centre at eight minutes past midnight on the 13th of April 2018.

The deceased man, Mr. Ioan Artene Bob

6. The identity of the deceased was established at a relatively early stage by his brother-in-law who turned up at Tallaght hospital looking for him, and this enabled gardaí to establish the identity of persons who were his friends, family members and associates in the Romanian community, and speak to them. Further, it was established in the course of the investigation that

the deceased had owned a mobile phone with the number 089 230 7496 and cell site analysis was used to track the movements of that phone in the day or so leading up to the fatal incident. Based on all of this material, and further CCTV harvested from premises in Dublin 1 and Dublin 7, gardaí were able to build a picture of the deceased's movements and activities in the days leading up to, and particularly during the day immediately preceding, the attack on him.

7. In terms of what came to be known about Mr. Bob, gardaí established that he had come to Ireland from Romania to find work and was casually employed on construction sites around Dublin city, obtaining work through Crewit Recruitment Agency. He had left his family behind in Romania and was sending money back to them from time to time. It was established that he had a bank account with AIB, with an associated debit card. For a time after his arrival in Ireland Mr. Bob had slept in his car, but this ended up being confiscated by gardaí, following which he was homeless and was sleeping rough or occasionally lodging in hostels in Dublin city centre.

8. In the course of Garda enquiries in the aftermath of Mr. Bob's death, a picture emerged concerning certain events in Mr. Bob's life from the 9th of April 2018 until he was assaulted in the Sean Walsh Memorial Park in the early hours of the 13th of April 2018. It was established that on the 9th of April 2018, Mr. Bob, having found a €2 coin in the street, went to the Emerald Casino on Eden Quay, Dublin 1 and had invested it in a game of chance. It proved to be his lucky day as he won a substantial jackpot, namely €2,700.

9. The Emerald Casino did not have a big enough float to satisfy the payout all in one go and so just €1,700 was paid out to Mr. Bob on the night, and he was told to return the following Thursday, the 12th of April 2018 to collect the balance, but according to a Mr. Danilo Zambrano who worked at Emerald Casino he in fact visited it again a day early and collected the balance of his winnings on Wednesday the 11th of April 2018.

10. In the intervening period Mr. Bob told at least two people about his good fortune, i.e., his friends Mr. Marian Dumitrou and Ms. Vioricha Ciorcirila, respectively, both of whom gave evidence at the trial. He had met Marian Dumitrou through work, with Mr. Dumitrou also using Crewit Recruitment Agency to get casual construction work. After telling Mr. Dumitrou about his good fortune, Mr. Bob had, on the night of Wednesday, the 11th of April 2018, stayed in a caravan situate behind Dorset Street flats, owned by a Mr. Ionut Budea who was a friend of Mr. Dumitrou, and in which Mr. Dumitrou and Mr. Budea were living at the time. Earlier that evening Mr. Dumitrou and Mr. Budea had gone to the Emerald Casino looking for Mr. Bob, knowing that Mr. Bob had been intending to call there. However, Mr. Dumitrou testified that he did not see Mr. Bob there when they called and said that, having spoken to a security man, they left again and went up to the Spar shop on O'Connell Street. Mr. Bob came up to the Spar after 20 or 25 minutes and joined them there.

11. Ms. Ciorcirila was from Mr. Bob's home place in Romania, and he had known her since childhood. She was intending to return to Romania for a holiday on the 13th of April 2018, and following his windfall, and knowing of her plans, Mr. Bob had entrusted her with the sum of €2,600 to bring back to his family in Romania. He had handed over the money to her at the back entrance to her home, which was close to the ILAC centre, Dublin 1, on the evening of the 11th of April 2018, and she told the jury that after he had given her the €2,600 he still had €400 in his wallet. She duly flew to Romania on the 13th of April 2018, arriving there early on the 14th of April 2018.

12. On the 12th of April, having made his arrangements with Ms. Ciorcirila the previous evening, Mr. Bob was understood to have celebrated his good fortune drinking in various establishments in Dublin city centre. Mr. Bob was encountered twice by Mr Dmitrou that day, Mr Dmitrou having made an arrangement to meet up with him in the city centre so that he could repay him a sum of €50 which he, i.e., Mr. Bob, had earlier loaned to him at work. Mr Dmitrou testified that the first encounter was outside the Mint Casino near the Spar shop on O'Connell Street, at which time Mr. Bob was observed to be in a group of five or six unidentified people and to be engaged in loud conversation with two of them. According to Mr Dmitrou some in the group were trying to persuade Mr. Bob to buy a car, but that Mr. Bob did not wish to purchase the car. Mr Dmitrou told the jury that at one point he had asked Mr. Bob who were the men he was talking to outside The Mint Casino, and that Mr. Bob had said to him that they were from his city (in Romania) and that they were his friends.

13. The second encounter was somewhat later that day outside Shop India, an Indian restaurant/Asian food shop, on Moore Street when Mr. Dmitrou observed Mr. Bob to be in the company of four Romanian people, one of whom Mr. Dmitrou would testify was known to him and that he had later told the police that this person was known to him and that he could find him. Mr Dmitrou would tell the jury that Mr. Bob "*smelled of booze*" at the time of this encounter. Mr Dmitrou stated that he had proceeded into the Indian restaurant on his own, and was joined shortly afterwards by Mr. Bob. However, Mr. Bob had then intimated that he did not wish to eat a meal and so they left again and parted ways, but before they did so Mr. Bob met up again with the four men he had earlier been with outside Shop India. According to Mr. Dmitrou, Mr. Bob was drunk and one of the four men was aggressive, telling him, i.e. Mr Dmitrou, to "*fuck off*". The prosecution were not in a position to adduce specific evidence as to what the persons, apart from Mr. Dmitrou, who were with Mr. Bob during the described encounters, and who were never specifically identified, may have known about Mr. Bob's recent windfall.

14. Using cell site analysis, and ascertaining the locations of mobile phone masts with which Mr. Bob's phone had interacted, and also the locations of retail premises and ATM machines in which Mr. Bob's bank card had been used, and some CCTV observations, gardaí developed a picture of Mr. Bob's movements on the evening of the 12th of April, which were primarily in areas of Parnell Street, Moore Street, Henry Street, North Earl Street, Talbot Street, Gardiner Street and Abbey Street in Dublin 1. The gardaí became satisfied in the course of their investigations that at some point on the evening of the 12th of April Mr. Bob then met up with a man, later established to be Mr. Feri Anghel, the appellant herein, and that the two had travelled to Tallaght as companions.

15. Detective Garda Mark Shortt gave evidence concerning the CCTV footage harvested in the course of the Garda investigation. He told the jury that CCTV footage from a Centra convenience store on Parnell Street, recorded at 21:52 on the 12th April 2018 showed a male entering that shop (believed by gardaí to be Mr. Bob), and walking to the till and buying what appeared to be a packet of cigarettes. He is to be seen tapping his bank card to pay for the purchases. His clothes are identifiable, and he is carrying a bag on his back. After leaving the shop he is recorded at 21:53 on another CCTV camera from a nearby Tesco shop, also located on Parnell Street, and almost directly across the road from the Centra. He meets up with a group of people. Included in

this group is another male person wearing a black jacket, black jeans and a beanie hat (believed by gardaí to be the appellant). Adjacent to the Tesco is the Kingfisher pub and at 21:56 a CCTV camera on that premises captured the same group of people, including Mr. Bob walking towards the camera. Located directly across the road from the Kingfisher pub was a hotel premises i.e., Jury's Inn hotel on Parnell Street. At 23:05 on the 12th of April 2018 a camera belonging to Jury's Inn hotel captured two men walking into camera shot. One is the man believed to be Mr. Bob and he is linked arm in arm with another male, the man previously described as wearing the black bubble jacket. At 23:06 the pair are captured by cameras on the premises of Boyle Sports which is on the same side of the road as Jury's Inn hotel and a short distance away. In this footage the man believed to be Mr. Bob has a green bag on his back and the man with the bubble jacket has a grey bag on his back. They take a left turn onto Moore Street and go out of camera shot. At 23:25 the same two men picked up on a CCTV camera attached to Ann's Bakery on N. Earl St. It can be seen in this footage that the bag on the back of the man that the bubble jacket has a Nike symbol on it. The pair continue in the direction of Talbot Street where they are captured on a camera belonging to The Wooden Whisk neighbouring the Dublin Central Inn on Talbot Street at 23:31. Again they are seen linking arms together, the man on the right being the man believed to be Mr. Bob and the man on the left, believed to be the appellant, is to be seen with a Nike back pack on his back. Out of camera view they turn onto Gardiner Street where at 23:37 they are again captured by a camera affixed to the Townhouse Hotel premises on Gardiner Street. They walk into camera shot from left to right. The man believed to be Mr. Bob has a dark jacket, light-coloured bottoms and a green camouflage bag on his back. The other man, believed to be the appellant, is wearing a dark coloured jacket, dark bottoms and has a Nike backpack on his back. They stand talking in the street close to the Townhouse Hotel for approximately five minutes. Then a female can be seen crossing the street towards them and joining them. She converses with the two men for approximately another five minutes before then returning in the direction from whence she came, crossing to the far side of Gardiner Street. The two men are then seen to proceed in the direction of the Customs House. They are next picked up at short time later on Abbey Street, around the corner from Gardiner Street, at 12:07 on the 13th of April 2018 by cameras at the Abbey Street Luas stop.

Discovery of Mr. Bob in Seán Walsh Memorial Park

16. On the 13th of April 2018, at some time before 8:00am (approximately 7:40am or 7:45am), a Ms. Marzana Jurzak was walking her dog through the Seán Walsh Memorial Park near Tallaght when, behind the end of some trees, she discovered a man lying down on the ground. This man was described as wearing a red coat, blue jeans and black shoes, and it was said that he looked "*like a beaten up man*". Ms. Jurzak in her testimony at trial on the 9th of March 2022 described bruises on the man's face, and that there was dry blood which appeared to have come from his nose. The man was alive and appeared to be conscious to some degree. Ms. Jurzak asked the man if somebody had attacked him, to which question the man responded by showing Ms. Jurzak "*four fingers*". It should be stated that the man in question, who remained unidentified at this remove in time, was Mr. Ioan Bob.

17. A passing couple, comprising a Mr. Brendan Ryan and his fiancée Ms. Shereen O'Connor, who were cutting through the park while taking their young son to school, came to render

assistance in response to calls for help from Ms. Jurzak. Mr. Ryan recalled in evidence (given at trial on the 10th of March 2022) how he believed Mr. Bob to be drunk, and that when he rolled Mr. Bob over, he was taken aback and was "*in shock*" at "*how bad the man's face was*", that there was blood on his face and on the top of his head, and that there were cuts on the top of Mr. Bob's head from which Mr. Ryan observed blood to be coming. Mr. Ryan described Mr. Bob's speech as "*slurred*" and that he was asking Mr. Ryan for water. Both Ms. Jurzak and Mr. Ryan observed that the man had in his possession a "*zip bag*" within which clothing was contained. Ms. O'Connor called for an ambulance, and Mr. Ryan assisted in showing the paramedics where Mr. Bob was, Ms. Jurzak remaining by the injured party's side until they arrived.

Evidence of the Paramedics

18. Paramedics, Ms. Paula Lawless and Mr. Tony Donnelly, attended at the Seán Walsh Memorial Park in response to a request from the 999 service who informed them that there was a man lying down, conscious and breathing, with cuts to his face. Ms. Lawless described in evidence, given at trial on the 10th of March 2022, how Mr. Bob was lying on his side, that he had "*raccoon eyes*" i.e. severe bruising to both of his eyes, and that his lips were bleeding and swollen, Ms. Lawless noting that there was wet blood (which was later clarified in cross-examination as possibly being the result of bleeding of the mouth or due to saliva), and that his face was "*very swollen*". Mr. Donnelly described how Mr. Bob was lying by bushes in the park, face down with his feet towards the sky, and that he was responsive. Mr. Donnelly would go on to describe in his testimony, given on the 10th of March 2022, how Mr. Bob's face was "*puffed*", very wet, badly bruised, and that there was no noticeable smell of alcohol. With respect to the last observation, it should be noted that in Mr. Donnelly's statement to gardaí, the paramedic observed that there were "*a good few empty bottles and cans around the area we picked him up from*". Ms. Lawless and Mr. Donnelly assisted Mr. Bob in standing up and they walked with him to the ambulance. Both paramedics recalled Mr. Bob as being conscious but that he said nothing apart from asking for water from them. Mr. Bob's oxygen and cardiac levels, and his temperature, were checked, and his heart rate was regarded as normal.

19. The paramedics brought Mr. Bob to Tallaght Hospital by ambulance, the trip going without incident, and they arrived at approximately 8:32am. Ms. Lawless described how upon arrival at the Emergency Department, Mr. Bob went into respiratory arrest. Mr. Donnelly recalled that Ms. Lawless had observed, as they were transferring Mr. Bob out of the ambulance, that he had lost consciousness for a few seconds and that his heart rate had slowed according to the heart-rate monitor. Ms. Lawless recalled that she started ventilation, which procedure involved the use of an oropharyngeal airway and bag valve and mask to get Mr. Bob's airway working, and she told Mr. Donnelly to inform the Emergency Department, who subsequently took over Mr. Bob's care. Ms. Lawless and Mr. Donnelly both stated that when they were moving Mr. Bob from the ambulance trolley onto the hospital trolley, he went into cardiac arrest.

Evidence of events at Tallaght Hospital

20. Four medical personnel based at Tallaght Hospital gave statements which were read into evidence at trial on the 10th of March 2022. A Ms. Molly Whelan, student nurse on placement at the hospital, described how she had attended at the Emergency Department at around 9am on the 13th of April 2018 where she was asked by the clinical nurse manager to look inside a patient's

holdall bag. The patient in question was the man recovered by ambulance crew from the Seán Walsh Memorial Park. Inside the bag, Ms. Whelan discovered the man's wallet in which an identification card was found. It was a Romanian I.D. card stating the man's identity to be Mr. Ioan Bob. It was observed that the wallet had no bank cards and that there was "a Tesco card" that had a phone SIM broken out of it.

21. A Ms. Margaret Donegan, the clinical nurse manager, also gave a statement. She described how on the 13th of April 2018, she was working in the Emergency Department when, at approximately 8:45am, ambulance crew brought a male person into "resus 2", a resuscitation or trauma bay of the Emergency Department at Tallaght Hospital. Ms. Donegan described how she was alerted that the man, who she believed to be called Ioan Bob, had gone into respiratory arrest. Ms. Donegan contacted Tallaght Garda station subsequent to the man experiencing a cardiac arrest. Her call to gardaí was motivated by her regarding Mr. Bob's injuries as "suspicious". These injuries were described by Ms. Donegan as comprising black eyes and blood on his face and chest injuries.

22. Dr Ronan Murphy, Emergency Medicine Registrar at the Emergency Department at Tallaght Hospital, was on duty the morning of the 13th of April 2018. In his statement, he recalled how at about 8:40am, paramedics brought an unconscious patient into the department on a stretcher and that they were assisting with his breathing. Dr Murphy recalled how he had spoken to the ambulance crew when Mr. Bob arrived at the hospital. He was informed that a lady had discovered Mr. Bob in the Seán Walsh Memorial Park while out walking (which lady presumably was Ms. Jurzak). Dr Murphy stated that ambulance crew had described Mr. Bob as being "agitated", as being "slightly combative with them", and that he had continuously asked for water. Dr Murphy averred that he learned that the identity of the patient was Ioan Bob, and he described how Mr. Bob's pulse was checked but that he went into cardiac arrest when he was placed in the resus bay. CPR was administered and it was observed that the patient had "numerous abrasions to his face and that his face was very swollen". Dr Murphy recounted how when he and the trauma team were ventilating Mr. Bob, they noticed that his chest was not moving very effectively and that there was evidence of a subcutaneous emphysema over both sides of his chest diffusely. As Dr Murphy described, "[t]hat effectively mean[t] that his skin was like bubble wrap and that the lungs were likely burst". Dr Murphy's team put in two chest drains, and the team observed that there was no evidence of marks on his skin on his chest, and that all the air that had escaped from his lungs had moved through this skin upwards and downwards throughout the body. A CAT scan confirmed the medical team's suspicion of burst lungs on both sides, and further identified multiple displaced rib fractures. It was also observed that the patient had sustained a number of facial bone injuries and a fractured jaw.

23. Mr. Bob was transferred to the intensive care unit ("ICU") and was the subject of continued resuscitation there. It should be stated that while Mr. Bob was in the ICU, his brother-in-law, a Mr. Petre Rotari, who would go on to give evidence at trial on the 15th of March 2022, identified Mr. Bob to the gardaí. A Ms. Mara Almahi, aesthetic registrar assigned to the ICU at Tallaght Hospital on the 13th of April 2018, also gave a statement. She described how she started work at approximately 16:00pm on the 13th of April 2018, whereupon she was made aware that Mr. Bob was a patient in the ICU. She recalled Mr. Bob's condition as "unstable", and that CPR was

being administered to him. Ms. Almahi described Mr. Bob as “*unresponsive*”, and that CPR was discontinued. At 16:37pm she certified Mr. Bob’s death after he had succumbed to his injuries.

The Pathologist’s Evidence

24. On the 15th of March 2022 Dr Margaret Bolster, assistant state pathologist, gave evidence at the trial of the appellant. Dr Bolster was asked and detailed to carry out the post-mortem of the deceased, who was approximately 49 years of age at the time of his death and who was stated to have been of no fixed abode. The autopsy of the deceased was conducted on the 14th of April 2018, the day after his death. Dr Bolster’s evidence, as reproduced in the transcript provided to this Court, is lengthy, and it details a considerable litany of injuries sustained by the deceased. We do not, for the purposes of the present judgment, intend to reproduce this account in full, but we shall attempt to now provide a summary of salient observations made by Dr Bolster.

25. It should be noted at the outset that Dr Bolster averred that the medical intervention evidenced on the body of the deceased was consistent with efforts to preserve life. While injuries were sustained by the deceased in the course of resuscitation attempts by medical personnel, these did not appear to have had any bearing on the cause of death; indeed, the injuries in question were said to have been consistent with injuries quite often sustained when CPR is administered to a person still alive or suffering from rib fractures.

Facial and head injuries

26. The deceased had sustained numerous injuries to his face, head, and neck regions. There was extensive bruising with swelling across various regions, and there was also evidence of abrasions, grazes and lacerations. Dr Bolster expounded that the considerable bruising observed on parts of the deceased’s head (twenty-four observations to be exact) was in connection with what she described as “*blunt force trauma*”. Dr Bolster elucidated:

“Bruising is extravasation of blood. It happens when there’s crushing, everybody has seen bruising, so it happens when there’s blunt force trauma, a blow, a fall, anything like that, and that causes crushing of the vessels and allows blood to escape into the soft tissues.”

27. The pathologist would go on to clarify later in the course of her testimony that all references to bruising or bruises in her evidence specifically referred to “*recent*” injuries i.e. injuries sustained at a time proximate to Mr. Bob’s death.

Injuries to the deceased’s limbs and torso

28. Further incidents of blunt force trauma were described on other parts of the deceased’s body. Bruising was observed at various points on both arms, and scratches were seen on both hands. Dr Bolster further averred that bruising was seen at various points on both the deceased’s legs. Extensive bruising with swelling was observed on both sides and across the deceased’s torso. Repeating earlier observations made by medical personnel in their statements, Dr Bolster noted that there was evidence of extensive soft tissue emphysema arising from rib fractures and the escaping of air into the soft tissue. Dr Bolster observed that there was a flattening of the centre and left side of the thorax of the deceased’s chest, which she later attributed to implied fracturing of the underlying ribs, and bruising extending laterally across the right side from the deceased’s collarbone to the midline. A thick layer of extensive bruising was noted on the right side of the deceased’s back, and it was further observed that there was bruising over the lateral or outer aspect of the right scapular or shoulder blade.

Internal injuries

29. As regards the internal examination of the deceased's body, Dr Bolster stated *inter alia* that both lungs had suffered almost total collapse, and that there was extensive bruising on the outer wall of the heart over the right and left sides around the aortic valve and that there was haemorrhage or bruising around the coronary arteries. Most of the deceased's ribs close to his backbone were fractured with wide separation, profoundly damaged such that the underlying organs were exposed. The pleura, i.e. the membrane lining the inner aspect of the chest and assisting in protecting the lungs, was perforated. Further rib fractures were described. There were no skull fractures observed, nor was there any bleeding to the brain. Bruising and haemorrhages were observed in other internal areas.

30. No drugs were detected in analysis of the deceased's blood, however a reading of blood alcohol of 166 milligrams per cent was returned. Dr Bolster would later state that this reading roughly equated to approximately four or five pints of beer, and that it would have caused at least some degree of psychomotor impairment in the deceased's coordination and judgment, depending on his individual level of tolerance and pattern of drinking. It would later be noted by Dr Bolster in cross-examination, that the reading of blood alcohol level was relative to the blood as it was extracted from the deceased when he arrived at Tallaght Hospital. It was remarked that the reading may have been higher had blood been extracted at an earlier remove.

Dr Bolster's conclusions

31. Dr Bolster concluded that before the injuries were sustained the deceased was generally a healthy man, and she further stated that there was no evidence of disease. Mr. Bob's cause of death was determined to have been blunt force trauma to the head, neck, trunk and body with extensive soft tissue haemorrhage or bleeding; multiple fractures of ribs, mandible, and larynx; bilateral pneumothoraces (i.e. the collapse of both lungs); pulmonary haemorrhage or bleeding into the lungs, and; cardiac contusions or the bruising of the heart.

32. It was said that the posterior rib fractures and some of the anterior fractures were due to antemortem trauma and that this gave rise to a "*depressed flailed segment*" in the back. Dr Bolster expounded that a "*flail chest*" occurs as a result of trauma and is associated with kicking and stamping type injuries. It was further observed that injuries to the face and neck and multiple areas of bruising were also in keeping with kicking and stamping to the face and neck.

33. The scratch marks noted on the face and hands were said to have been in keeping with a fall into vegetation in the park. The injuries to the jaw and face would have compromised the upper airway, resulting in bleeding into the windpipe, and the swelling of the mouth and rib fractures would have impaired the deceased's breathing. Internal bruising and haemorrhages were consistent with blunt force trauma.

34. Under cross-examination, Dr Bolster stated that whoever assailed the deceased would clearly have had to have applied force on multiple occasions, however she could not definitively state that the injuries sustained by the deceased were consistent with only one person carrying out an assault nor could she state that they were consistent with an attack carried out by multiple assailants. Dr Bolster did not rule out the possibility that some of the injuries, particularly those to the face and mouth, could also, or alternatively, have been caused by a fist. However, she maintained that the injuries associated with widespread fractures "*must be*" attributable to kicking

or stamping. Dr Bolster confirmed that any assailant, if using his or her fist, may have potentially suffered injuries to his or her hands if they had struck his or her victim hard enough to strike bone.

CCTV Evidence - continued

Journey to Tallaght – midnight to early hours of the 13th of April 2018

35. At 00:07am on the 13th of April 2018, the two men previously referenced are seen on the platform at the Abbey Street Luas stop. Luas 3015 (heading westbound along the red line, i.e. in the direction of Tallaght) is seen pulling up to the platform. Mr. Bob and the accompanying male (identified in D/Garda McCormack's evidence as Mr. Anghel, the appellant), depicted wearing the same clothing and carrying the same bags, board Luas 3015, and are seen inside the tram. A Mr. Peter Burke, a building contractor who had employed Mr. Bob through an agency, and for whom Mr. Bob had also done some casual gardening work, gave evidence on the 15th of April 2022, identifying the deceased from this footage. At 00:44:57am, Luas 3015 arrives in Southwest Dublin at the Cookstown Luas stop. CCTV footage taken from the platform depicts the two men disembarking the front of Luas 3015. The tram pulls away from the platform, and the two men are seen walking in the direction of the Tallaght Hospital Luas stop. One male appears to have the hood of his jacket up and a bag on his back. Footage taken from a camera facing rearward on Luas 3004 depicts the two men running towards the Tallaght Hospital Luas stop at 00:59:16am. The tram passes them as they approach the platform. One of the males is seen wearing a dark jacket. The next clip of CCTV footage is taken from the interior of Luas 3004. Both males can be seen embarking the tram, the man the prosecution say is Mr. Bob is seen accompanied by another male person wearing a bubble jacket and a beanie hat on his head. They are later seen by the same camera disembarking the tram.

36. It is appropriate at this point to say that at the trial evidence was adduced before the jury from Mr Bob's his brother in law, a Mr Petre Rotari, to whom gardaí had shown CCTV footage recorded during the relevant Luas journey between Abbey Street and Tallaght, and that he identified Mr Bob as being one of the two men of interest who were travelling on the Luas at the time. Further, D/Garda McCormack, and two work colleagues of the appellant, a Ms. Garofita Selin and a Mr. Pavel Stegerescu, respectively, having all viewed the same footage from the Luas, positively identified the other man, i.e., Mr Bob's companion on the journey, as being the appellant.

37. At 1:01:07am, Luas 3004 is seen by cameras at the Tallaght (The Square) stop, the terminus of the red line, pulling into the stop. Two people disembark the tram from the end door of the last carriage, and they are then seen crossing the road and walking towards Belgard Square West. Both persons are depicted carrying bags on their backs. This particular excerpt of CCTV evidence, referred to by counsel for the defence as "*clip 14*", was in part the source of the defence's complaint in their application to the trial judge regarding the admission of a compilation of CCTV evidence, exhibit JW7, in some segments of which identification was possible and in other segments of which it was not possible. In regard to *clip 14*, it was submitted by the defence that the positioning of the camera was such that it was trained on the Luas station and that while one could see people disembarking the tram, they were not identifiable.

38. At 1:02:45am, CCTV evidence taken from The Square shopping centre (referred to as "*clip 15*", part of exhibit SD7) shows two persons walking around the perimeter of the premises along Belgard Square West towards Belgard Square South, approaching a small roundabout. This particular clip of CCTV footage, *clip 15*, was also the subject of concern for the defence inasmuch as direct identification of the individuals in the footage was again not possible. In particular, defence counsel suggested in submissions to the trial judge that it was of no probative value to suggest that the two unidentifiable people shown in that clip must be the same two unidentifiable people who were observed disembarking a Luas approximately a minute and a half earlier. Moreover, it was pointed out by defence counsel that amongst the people who were recorded alighting from the Luas *in clip 14* were two other men who were heading in the same direction as the two men of interest, but the footage ends there, and it is not known where they then went. It was argued that this effectively introduced an element of speculation to the jury's work.

39. At any rate, CCTV footage garnered from Brian McElroy Funeral Directors on Belgard Square South shows two people walking from the roundabout along the street at 1:04am. They cross the road and are caught on CCTV from The Square once again, walking near the southern perimeter of the shopping centre at 1:07:27am. This excerpt of footage was referred to as "*clip 16*", and again the complaint on the part of counsel for the defence is that all that this footage shows is two unidentifiable males.

40. The prosecution's counter-contention, however, was and is that there was sufficient evidence before the jury from the totality of CCTV evidence adduced, and from third party identifications of the two persons of interest shown on earlier clips in the compilation (i.e., before *clip 14 et seq.*), to allow them to infer that the movements of the same two persons of interest had been reliably tracked throughout the entirety of the compilation and that these men were Mr. Bob and the appellant.

Seán Walsh Memorial Park

41. At this remove, and to provide some geographical placing for the reader, it should be stated that The Square and the Seán Walsh Memorial Park effectively sit opposite one another on either side of the N81 dual carriageway or bypass. The two sites are effectively joined by a pedestrian bridge that spans the width of the N81 bypass called the Whitestown Blue Footbridge but locally known as "*the blue bridge*". It was clarified in evidence by D/Garda Shortt that both the blue bridge and the Seán Walsh Memorial Park are not camera locations; that next camera location is the Old Bawn Community School which borders the southwestern flank of the Seán Walsh Memorial Park. Thus, the focus of CCTV evidence then turns to what footage was obtained from cameras at this site, specifically a camera located at the north-eastern edge of the school premises near to the bottom of the blue bridge where it connects to the Seán Walsh Memorial Park. At 1:11:53am, two figures can be seen (in unclear footage) moving right to left along a treeline and the fringes of the park by the rear boundary of the school premises.

42. Finally, at 2:58:28am, a lone figure can be seen walking along the top of the treeline heading from left to right towards the blue bridge.

43. Counsel for the defence in their application on the 28th of February 2022 seeking to have the proposed CCTV compilation ruled inadmissible also criticised this footage. It was said that it was very difficult to make out anything; to make out whether the images captured were of people;

if so, whether those people were male or female; and it was suggested that “*anything about them is not automatically decipherable*”.

Journey back through Tallaght

44. At 3:00:05am, the camera described previously at the southern perimeter of The Square shopping centre captures footage of a lone figure walking away from the blue bridge, heading westward parallel to the N81 bypass in the direction of the funeral directors referred to previously. At 3:06:25am, CCTV footage from a different location at The Square centre, depicted a male wearing a dark-coloured jacket, dark jeans, a distinctive hat, and carrying a backpack walking towards a pay station for the carpark and towards an ATM. A camera at the AIB branch in The Square captures footage of the man wearing a distinctive hat, a black bubble jacket, and carrying a grey backpack on his back. He takes out a card and inserts it into the ATM. He proceeds to then take out a mobile phone from his left jacket pocket which he looks at.

45. At 3:06:40am the man retrieves the card discharged from the ATM, and he is then seen re-inserting it into the machine, opening his mobile phone (which was observed to have a green rim or border) and is then depicted entering information into the keypad of the ATM. He retrieves the card once again and walks away from the ATM, his bag visible on his back as he does so, and as another figure approaches the machine.

46. At 3:08:57am, a hooded figure wearing a bubble jacket and carrying a Nike backpack is seen walking away from the ATM. At 3:09:14am, a male wearing a dark bubble jacket with a backpack on his back returns to the ATM with which he interacts. A mobile phone screen is observed as coming live, and while operating the keypad of the ATM the man is observed pressing keys on the mobile phone. He retrieves the card and walks away.

47. At 3:12:15am, cameras at The Square captured footage of a person in dark clothes walking down some steps from the shopping centre towards the Tallaght Square Luas terminus. At 3:15:15am, CCTV at the Luas terminus captured footage of a hooded person in dark clothing and carrying a bag walking across the Luas tracks from the direction of The Square shopping centre before walking parallel to the tracks behind a pay machine. The focus of the evidence turns to the man’s progress through a mixed commercial and residential complex in the direction of the Tallaght Hospital Luas stop. At approximately 3:20am, he is captured by CCTV cameras at Cookstown Way. He is seen walking away from the camera wearing a black bubble jacket, its hood up, and is carrying a Nike backpack on his back. He takes a right onto Belgard Square North and is seen by CCTV walking away from the Luas stop in the direction of Tallaght Hospital towards a roundabout. He is depicted interacting with his mobile phone, his Nike backpack visible on his back.

48. An eye-witness, a Mr Shane Buggle, testified at the trial that he was a security man on patrol and that he came upon a man matching the description of the appellant resting but not asleep on the ground in a loading bay at Belgard Square in Tallaght at approximately 06.30 on the 13th of April 2018. The man’s hands and boots were observed to be dirty, the latter being “*mucky as though he had been walking through a field*”. The witness said he asked the man if he was alright, and he received a reply in the affirmative. He said the man in question appeared to him to be hungover. The witness said he then moved him on, and the man was seen walking away in the direction of the Luas at Cookstown.

Return to Dublin City Centre

49. At 6:41:30am on the 13th of April 2018, a CCTV camera from a mixed commercial/residential complex neighbouring Tallaght Hospital captured footage of a man wearing dark clothing and carrying a bag walking across the road towards the Tallaght Hospital Luas, where he stayed until a tram arrives. An inbound Luas (Luas 3025) arrived, and the man embarked. At 6:42:23 an interior camera on Luas 3025 depicted the man sitting down inside the tram, he was wearing a black bubble jacket, his hood was up, there was Nike backpack on his back, and he was observed to have a beard. The man remained in his seat until Luas 3025 arrived at the Jervis Luas stop, at which stop he disembarked.

50. At 7:27:42am, CCTV footage from cameras situated to the rear of MCR Capel Buildings on Strand Street Little showed a male walk into camera shot with a backpack on his back, wearing a black bubble jacket and a beanie hat on his head. He is seen conversing with a group of people. MCR, which operates out of this premises, provides cleaning services for companies. The male is seen removing his hat and rubbing his beard. He is observed speaking with a woman, subsequently identified as a Ms. Garofina Selin (who later gave evidence at trial).

51. At 7:47am, CCTV at a Topaz petrol station in Glasnevin captured footage of a MCR vehicle pulling onto the forecourt and showed a male in a bubble jacket and beanie hat walking towards the petrol station's shop along with another male identified as a Mr. Pavel Stegerescu (who later gave evidence at trial). Inside the shop, camera footage shows the male in the bubble jacket approach the till where he places items on the counter. He produced an AIB bank card with his left hand. Having purchased the goods, he subsequently left the shop.

CCTV Footage taken from locations around Slane

52. D/Garda Shortt's evidence concluded with a number of items of CCTV footage taken from locations in or around Slane in County Meath. At 12:15:45pm on the 13th of April 2018, CCTV evidence taken from cameras inside a Gala store/post office shows Ms. Selin and a male enter the shop both wearing high-visibility vests. The male had on his head a distinctive beanie hat. They are seen queuing up to pay at the tills. At 12:24pm, the camera covering the till shows the male tapping a bank card to pay for the items he purchased. It would appear from the transcript, that he returned to purchase something else, and reference is made once more to the use of a bank link card.

53. At 12:39:18pm, footage from CCTV at the Conyngham Arms Hotel (just up the road on Main Street from the Gala store in Slane) showed a male wearing a high visibility jacket and a beanie hat and a female walking away from the camera.

Evidence of Mr. Pavel Stegerescu

54. Mr. Pavel Stegerescu of MCR Cleaning Services gave evidence at the trial of the appellant on the 15th of March 2022. He described how his role was supervisory and included driving cleaning personnel to sites for the purpose of fulfilling cleaning contracts. Mr. Stegerescu recalled how on the 12th of April 2018 he had collected the appellant and a third party at approximately 7:20am. Mr. Stegerescu was familiar with the appellant on account of the latter man's employment with MCR. Mr. Stegerescu averred that he had collected the appellant to drive him to a place in Slane. The appellant was said to have been wearing a black jacket, black jeans, and a hat. Mr. Stegerescu further commented that the appellant was equipped with safety shoes and

that he had a bag with him also. Mr. Stegerescu recalled the appellant as having a heavy but well-kept beard. At approximately 8:20am, Mr. Stegerescu brought the appellant and the aforementioned third-party to Slane Castle where MCR had a cleaning contract. At about 16:20pm, Mr. Stegerescu returned to collect the two men, and he subsequently brought the pair to Finglas. On the journey back to Dublin, the appellant raised a certain matter regarding his payslip and emergency taxation. Mr. Stegerescu recalled the appellant being "*a little bit angry about the money*" situation.

55. The following day, the 13th of April 2018, Mr. Stegerescu again collected MCR cleaning personnel from the company's premises, specifically the appellant and Ms. Selin. He recalled how the appellant was wearing the same clothes as he had been wearing on the previous day. In cross-examination, Mr. Stegerescu stated that while the appellant was wearing the same clothes, they were not dirtier than they were the day before, and he did not notice anything unusual about the appellant's face, his hands, or his feet; that he recalled no blood on his hands, bruises, or scratches. Mr. Stegerescu noted that the appellant's demeanour "*was okay*" but that he was "*unwell*". Mr. Stegerescu averred that the appellant had said that he was unwell on account of having met a friend or some person from Romania and that the pair had been drinking some kind of homemade spirit (in cross-examination this spirit was confirmed to have been a bottle of Palinka, a traditional fruit spirit or brandy ubiquitous to parts of Eastern Europe). Mr. Stegerescu spoke of how they had stopped at a Topaz petrol station in Glasnevin where the appellant got a coffee, water, cigarettes and some paracetamol. The appellant was described as quiet for the remainder of the journey, but Mr. Stegerescu remarked that the appellant was "*quiet every day*".

56. In May 2018, Mr. Stegerescu met with a Garda Darren Rooney at Tallaght Garda station where he was shown CCTV footage from a Luas tram (specifically from the occasion shortly after midnight on the 13th of April 2018 when two men, one of whom was the deceased, boarded Luas 3015 at the Abbey Street stop). Mr. Stegerescu made an identification of the man accompanying the deceased in the footage, and he stated in evidence that the man in question was Mr. Feri Anghel, the appellant. Mr. Stegerescu was further shown stills of CCTV footage taken on board Luas 3015, and he identified the appellant as the figure depicted therein accompanying the deceased. He also identified Mr. Anghel in CCTV footage from the Topaz petrol station.

Evidence of Ms. Garofita Selin

57. Ms. Selin, an employee of the cleaning company for which the appellant worked in April 2018, gave evidence on the 21st of March 2022, 22nd of March 2022 and 24th of March 2022. At trial, she recalled how on the 13th of April 2018 she had travelled by way of company-provided transport to Slane for the purpose of fulfilling a cleaning job at a local distillery there. However, on the morning of the job she had arrived at the company's base to discover that her name was not rostered. Having decided to head home, she was intercepted and dissuaded from doing so by a person who called her by her name from a position situated some 300 to 400 metres away from where she was. That person, she recalled, was Mr. Feri Anghel, the appellant, whom she described as having been dressed "*in black*". Initially, she was not inclined to agree to work, but she relented at the persistence of the driver, a man called "*Marcel*", and because the company was short-staffed on that date. Accordingly she got into the provided transport and travelled with the rostered crew, including the appellant, to Slane.

58. Ms Selin averred that enroute to Slane, the party stopped at a petrol station as the appellant was complaining of a headache, and he wished to get himself a coffee and some medication. Ms. Selin stated that the appellant explained that his headache was caused by him having drunk the night before, but that while the appellant said that he was drinking with another male, he did not provide a name.

59. While carrying the cleaning work in Slane, Ms. Selin and the appellant started talking, and in the course of this conversation Ms. Selin learned that he had been drinking Palinka with a friend. She observed that "*the upper hand*" (which the interpreter clarified meant the back of the appellant's right hand) was slightly inflamed. Ms. Selin further noticed that there was a slight tear in the appellant's jacket, and that there were some "*dots of blood*" on his boots, the largest of which, seen on the left boot, was said to have been comparable in size to a €2 coin. She could not recall exactly how many of these such dots there were on the appellant's boots, which boots were later described by Ms. Selin as being "*greenish*" or "*dark green*" in colour. Ms. Selin would go on to describe the other dots of blood as approximating in size to "*finger nails, rounded*". Ms. Selin averred that the appellant had explained that he had drunk with a friend of his the night before, and that he could not remember what had happened, whether he had struck his friend, or how strong or powerful the blow he may have delivered was. Ms. Selin would later explain, still in evidence-in-chief, that Mr. Anghel had told her that his friend had said "*something that he did not like*" spurring the appellant to hit his friend, and that he was complaining of his hands. The two co-workers then went for lunch together in a nearby shop. Ms. Selin recalled that the appellant had bought a number of items, including a €5 sim card, with an AIB bank card. The pair were later collected that day by "*Pavel*" (implicitly Mr. Pavel Stegerescu, who also gave evidence at trial) and were driven back to Dublin where they then went their separate ways.

60. The prosecution showed Ms. Selin part of D/Garda McCormack's compilation of CCTV footage, previously shown to the jury, for the purpose of identification. She made a positive identification of the appellant in respect of Luas footage showing a bearded person. She further made a positive identification of the appellant taken at the moment when the appellant embarked a Luas tram with the deceased at Abbey Street just after midnight on the 13th of April 2018. Ms. Selin was also shown footage taken from Luas 3025 and identified the appellant as the man embarking the tram. Also shown to the witness was footage taken from inside the Gala store in Slane. She identified both the appellant, and herself, as the individuals shown in that footage, and she recalled the appellant making a second visit to the store counter as described in the evidence of D/Garda Short and seen in the CCTV compilation of D/Garda McCormack.

61. In the footage shown to Ms. Selin, in particular in an excerpt wherein the appellant is seen embarking Luas 3025 at 6:42:23 on the 13th of April 2018, the appellant is depicted wearing a Nike-branded backpack and black jacket. Ms. Selin's attention is brought to the jacket, and she commented that she recognised the tear on the jacket as the same one which she had observed on the 13th of April 2018 and to which she had previously referred in the course of her testimony.

62. When asked by counsel for the prosecution whether she had noticed anything else on the appellant's person, Ms. Selin replied that she had observed dry blood around the appellant's nails and that "*[t]he arms, the hands themselves, they were again kind of inflated*", though she could

not recall on which side the swelling was more prominent. She averred that the appellant was not missing fingernails when she saw him on the 13th of April 2018.

63. On the 18th of April 2018, Ms. Selin made a statement to gardaí, five days after Mr. Bob's death. At trial, Ms. Selin in cross-examination averred that during the currency of this five-day lapse, she had continued to work for the cleaning company, which employment frequently involved working alongside fellow Romanian nationals. She stated that she did not speak about the death of Mr. Bob with her then partner during this period, that news or rumours of Mr. Bob, a Romanian national, having died was not overheard at work, and that the first mention of such news arose when she was approached by gardaí at her home. She stated that when she saw the appellant on the 13th of April 2018, she was not labouring under a belief that he had killed anybody, rather on the contrary she had sought to calm him down and reassure him that he had not. She averred that she had not been told of the circumstances under which she had been asked to give a statement at Mountjoy Garda station. Investigating gardaí had asked Ms. Selin if she was working with the appellant, to which she had replied in the affirmative. She enquired as to why such a question was being asked, and it was only at this point did she learn of the nature of the then allegation against the appellant. She had hitherto merely believed, based on what the appellant had told her on the 13th of April 2018, that the appellant had been involved in *"just a fight when two people were drunk"*.

64. At trial, a video recording of a portion of the Garda interview with Ms. Selin was played. This portion captured a phone call which Ms. Selin had taken from her brother-in-law. The phone call, conducted in Romanian, was the subject of differing accounts. Ms. Selin averred that she had merely told her brother-in-law, in response to him asking why she was at the Garda station, that a colleague of hers had committed murder. Counsel for the defence suggested, on the basis of a translation, that what she had actually told her brother-in-law was *"a colleague I worked with on Friday killed another one"*. Counsel pressed the witness on how she had come to this view. Ms. Selin replied, *"I didn't really think about this. Just from what I've been told, that from drinking together, they had a fight but I didn't say that he -- I didn't say that he committed a crime"*. Counsel asked Ms. Selin whether she had been informed that the appellant had killed somebody, and the witness replied that she had after she had asked. On this basis, counsel for the defence suggested to the witness that she was prejudiced and biased when she made her statement to gardaí. Ms. Selin stressed that she had *"no idea"* about what the appellant had done, that she *"wasn't thinking"*, and that she had made the remarks to her brother-in-law after she had arrived at the Garda station and had received an answer as to why she was there. She stated that she had learned of the nature of the allegation from one of the two gardaí who had arrived at her house, but that this revelation was only made at the Garda station. Counsel for the defence also suggested that the witness was prejudiced on account of what the appellant was wearing, noting that she had said in her statement, in relation to events resulting in working with the appellant on the 13th of April 2018,

"[...] and then Anghel called me back and asked me did I want to go to work [...] And I thought about it for a little bit and I saw the way Anghel was dressed and I said no. [...] But Pavel insisted that he had nobody else and he said the person who was meant to go there didn't show up. [...] Yes, I went then."

65. Ms. Selin stressed that she *"did not have any bad thoughts or did not think of anything bad"*, however counsel drew her attention to comments she had made on the previous day of trial during examination-in-chief in which she had alluded to a certain reluctance to travel with the appellant for work on account of how he was dressed, which comments bore consistency with the content of her statement to gardaí. Ms. Selin replied that she made her comments regarding the appellant's attire because *"it was dirty"*. Counsel remarked that this marked the first occasion on which she had used such a descriptor for the appellant's clothing and put to the witness that in her statement her criticism of the appellant's clothing was limited to it being black in colour and that she did not like *"that type of outfit"*. It would be later suggested by counsel that in a subsequent statement to gardaí made in Romania on the 10th of July 2019 that no reference to *"dirty clothes"* was made by Ms. Selin. Nevertheless, the witness insisted at trial that she had *"nothing against dark clothes"*. Counsel persisted, suggesting to Ms. Selin that was trying to *"blacken"* the appellant in her statement, with which suggestion the witness did not agree. Ms. Selin later would confirm that she was provided with the opportunity to amend her statements by gardaí, and that she was not rushed in making the statements. Counsel put it to the witness that the reason why reference to dirty clothes did not feature in either of her statements was because it was not a feature of the appellant that registered with her when she worked with him on the 13th of April 2018. Counsel further remarked that Ms. Selin's evidence that she had told the appellant *"Don't worry about it, it's not like you killed someone"* was also not a feature of her statements to gardaí. Ms. Selin insisted that she did state as much, though counsel commented that this would appear to suggest that what she had said was not properly recorded by gardaí notwithstanding that her video recorded interviews did not include this recollection. Counsel put to Ms. Selin that she had a period of approximately a year between statements to reflect upon what she had witnessed and that this did not lead to any correction or amendment of her account. He suggested to her that her memory was *"completely false and inaccurate"*.

66. Counsel for the defence sought to raise further matters going to whether Ms. Selin was or was not a good historian. Counsel for the defence put to the witness that her memory was *"faulty in a serious way"* as it conflicted with the previous evidence of Mr. Stegerescu who had stated that it was he who had brought the appellant and Ms. Selin to Slane on the 13th of April 2018 and had brought them home, and not *"Marcel"*, as Ms. Selin had averred. Ms. Selin said that this was *"possible"*, though she would later go on to repeat her previous recollection that it was Marcel who had brought her and the appellant to Slane, and not Mr. Stegerescu.

67. Defence counsel, having shown the witness footage taken from outside the MCR building on the 13th of April 2018, further put to the witness that, contrary to what she had stated, she was not approached by the appellant or Mr. Stegerescu from 300 to 400 metres away, as she had not walked such a distance away from the building. The witness replied that she was still waiting for confirmation whether she had work. Counsel showed the witness further footage from the MCR building depicting employees gathered who had been furnished with a piece of paper, which it was suggested was the work roster. Ms. Selin and the appellant did not appear to be talking at this point. The appellant is seen freely moving his hands which were visible, and which he used to manipulated his hat. The appellant is seen taking a mobile phone out of his pocket and showing it to Ms. Selin. Counsel put it to Ms Selin that at this remove she and the appellant were *"virtually*

shoulder to shoulder". Moreover, the appellant was holding his hands quite freely and quite publicly in front of Ms. Selin and other people gathered there. Ms. Selin did not dispute that she had had an interaction with Mr. Anghel outside MCR but asserted "*I was still waiting for confirmation if I should go to work or not*". Pressed that another man (who she identified as being named "*Ándre*" and as being Polish) had joined her and Mr. Anghel at that point, and that she had followed him, she disagreed with a suggestion that this had been because the work van had arrived, stating, "*At that time I was on the way home*".

68. Defence counsel drew the witness's attention to comments she had made in her statement to gardaí regarding the appellant's use of an AIB bank card and queried:

"So, are you telling the jury that on the 18th of April you are able to remember the type of card that another person used to buy some coffee in a normal working day? Are you saying that your memory is that good?"

In response, Ms. Selin averred that her memory of the bank card being an AIB card was informed in the first place from the appellant having showed her his online banking application on his mobile phone, which application was an AIB app, and that the appellant was showing her how "*he didn't receive his money*". She further stated that she had saw him pay with an AIB card. Ms. Selin could not comment on why the particular bank that had issued the card used by the appellant had registered in her mind such that she could recall it five days later when she gave her statement to gardaí, but she insisted that she was not assisted by gardaí with this particular memory.

Evidence from the Crime Scene

Establishment of crime scene and creation of crime scene log

69. At approximately 9:30am on the 13th of April 2018, a Garda Luke Beatty, member attached to Tallaght Garda station, attended at Tallaght Hospital with a colleague, Garda Michael Curtin, in response to a call from the hospital that a man had been admitted following a suspicious set of circumstances. Garda Beatty learned that the man, identified as Mr. Bob, had been found in the Seán Walsh Memorial Park and that paramedics had been involved.

70. Garda Beatty, in his testimony on the 10th of March 2022, recalled that the paramedics had showed the two gardaí the relevant location where the deceased had been found, which was described in evidence as "*a small opening to woodland between what's colloquially or locally known as the blue bridge and metal railings*" backing onto the Old Bawn Community School. Garda Beatty noted the presence of bottles and containers around this area, and a piece of blue clothing on the branch of a nearby tree. The area was subsequently cordoned or "*taped*" off as a crime scene at 10:10am on the 13th of April 2018. In evidence, Garda Beatty described the purpose of taping off a crime scene as "*to preserve any potential evidence that may be located there [...] [a]nd to prohibit people from entering the area*". In cross-examination, it was expounded that this was to prevent contamination of the crime scene by the dropping or shedding of DNA or fibres or by general interference with Garda investigative work. The area of the crime scene was described as "*extensive*", extending some 50 to 100 metres in diameter. A crime scene log was started, a document wherein record of the movement of any persons in or out of the crime scene was kept. Garda Beatty averred that between 10:10am and 17:00pm on the 13th of April 2018, nobody other than members of the gardaí entered the crime scene.

PULSE records pertaining to the Sean Walsh Memorial Park

71. In due course, we shall return to the issue of forensic evidence (or the lack thereof) arising from the crime scene, but for now it should be observed that in cross-examination of Garda Beatty it was noted that this area was known to have been frequented by other people in the past, that there were some old sleeping bags, some evidence about a tent, and that there were old bottles and cans, pieces of paper, and other debris all around. A Detective Garda Dara Kelly (otherwise "D/Garda Kelly") testified at the trial of the appellant that PULSE records, cataloguing crimes committed, as well as other incidents reported/complaints made, in the vicinity of the Seán Walsh Memorial Park, detailed a considerable litany of offences and other incidents occurring in this area (twenty-one incidents to be exact) between April 2017 and April 2019. These ranged from a sexual assault and an act of gross indecency to firearm offences, to an assault on a minor, to a robbery and various other thefts. D/Garda Kelly noted that PULSE records showed that the bulk of these offences (fifteen out of the twenty-one incidents recorded) occurred between 16:00 and midnight, and that two incidents had occurred between the hours of midnight and 8:00am.

Other items retrieved from crime scene

72. A full scene of crime examination was conducted, about which the jury heard evidence, including evidence concerning the finding of a number of cigarette butts and two pairs of spectacles proximate to the scene, as well as the items previously mentioned. Gardaí also retrieved from Tallaght hospital and took possession of the deceased's clothing and such personal effects as were on his person when he arrived there. Neither a wallet, nor any money, bank card, or mobile phone was present amongst his clothing or personal effects, nor were any such found at the scene in Sean Walsh Memorial Park.

Fingerprint evidence

73. On the 16th of March 2022, evidence was given at trial regarding forensic evidence found at the crime scene, specifically fingerprint evidence, by a Detective Garda James Cunningham (otherwise "D/Garda Cunningham") who was, at the time of the Garda investigation, attached to the Fingerprint Section of the Garda Technical Bureau. D/Garda Cunningham was involved in the Garda investigation into the death of Mr. Bob, and he had attended the deceased's post-mortem where he took finger and palm prints of the deceased. D/Garda Cunningham was further provided by a colleague then assigned to the Fingerprint Section, a D/Garda Trasa Kelly, with various effects belonging to the deceased for the purpose of examining and treating them in order to develop finger and palm marks. Finger lift cards were provided by a Garda David Morris, and the fingerprints of the appellant were obtained. D/Garda Cunningham was provided with four empty cider cans, an empty lime-green plastic bottle, another separate cider can, and six empty 500 millilitre beer bottles by a D/Garda Curry in the Garda Technical Bureau, all found at the crime scene. Initial examination by D/Garda Cunningham observed that the items were all in various states of damage, some were crushed or partly dented, and they were all dirty. Analysis of fingerprints on these items yielded no positive match with either the deceased or the appellant. Comparison of fingerprints lifted from these objects against fingerprints recorded on the Automated Fingerprint Identification System database (i.e. "AFIS") also did not result in identification.

Evidence of Dr Yvonne O'Dowd

74. Dr Yvonne O'Dowd, from Forensic Science Ireland, gave expert testimony before the jury on the 1st of April 2022 concerning, *inter alia*, her examination of various forensic samples recovered in the course of the investigation. Amongst these were the clothing of the deceased, a DNA reference sample taken from the deceased's body, items of clothing and footwear being worn by the appellant at the time of his arrest, a DNA reference sample provided by the appellant, and items recovered from the scene at the Sean Walsh Memorial Park including the previously mentioned cigarette butts and eyeglasses. She found no blood on any of the appellant's clothing or footwear. DNA material was recovered from the various items of the deceased's clothing and from the zipper of his backpack and was found to be from more than one contributor. With all of Mr. Bob's DNA elements present. The other contributors were at a very low level and were unidentified. It was concluded that the observed profile was in excess of 1,000 million times more likely to have come from the deceased and unknown contributors than if it had come from unknown contributors. There was heavy blood staining on the deceased's jeans, and further blood staining on the deceased's jumper, from the deceased's own blood. Other items of clothing exhibited damage consistent with medical interventions.

75. DNA profiles were obtained from two of the cigarette butts recovered but these matched neither the deceased nor the appellant's DNA profiles, nor was it possible to identify them from DNA databases. In the case of one of the cigarette butts Dr O'Dowd opined that it had been discarded "*relatively recently*" as it was "*in quite good shape*". As regards the spectacles, DNA material, but no blood, was found on one of them, namely the spectacles comprising TOR1. The DNA material came from a number of contributors, a major contributor to which matched the profile of the deceased. There was one other major contributor and two trace level contributors, none of which it was possible to identify.

76. Profiles were generated from various other items recovered at the scene but none of them were interpretable.

77. Under cross-examination Dr O'Dowd accepted that DNA material was also recovered from the other pair of spectacles, TOR7, which exhibited a mixed profile originating from two major contributors and two additional contributors at trace level. All of the deceased's DNA elements were present and he could not be excluded as a major contributor. It was concluded that the observed profile was in excess of 1,000 million times more likely to have come from the deceased and an unknown person than if it had come from four unknown persons. Unidentified males 1 and 2 whose profiles were recovered from the cigarette butts, and Mr. Feri Anghel, were excluded as a possible contributors. She confirmed that none of the interpretable profiles found in the case, with the exception of profiles found on the deceased's mobile phone, could be attributable to the appellant.

Phone Record Evidence

78. Prosecution evidence adduced before the jury suggested that the deceased had had a mobile phone with the number 089 230 7496. Call data records placed this phone in Dublin City Centre on the evening of the 12th of April 2018. The final record placing the phone in the city that night came from a cell site at Rosie Hackett Bridge at 00:07 on the 13th of April 2018. The CCTV

compilation showed the deceased in the City Centre with the appellant before the pair boarded a Luas tram bound for Tallaght at Abbey Street at 00:08.

79. The next activity on the deceased's mobile phone was recorded by the Whitestown ESB cell site near The Square, Tallaght. At 03:20 three SMS messages were received within an eleven second period. This was said to be consistent with the device being turned back on after a period of inactivity. It was also consistent with CCTV footage from Tallaght of the appellant, now by himself, using a mobile phone at this time.

80. Gardaí were able to establish that the deceased's bank card was used to purchase credit for the deceased's phone in a Gala store in Slane, Co. Meath at 12.25 pm on the 13th of April 2018. The appellant was captured making this transaction on CCTV.

81. No further call data was recorded in respect of the deceased's phone until 17:39 on 13 April 2018 when the device received six SMS messages within 27 seconds via a cell site on King Street in Dublin City Centre. Again, this flurry of incoming SMS messages, it was submitted, was consistent with the device being turned back on. The prosecution submitted that an inference that the deceased's phone returned to the City Centre in the possession of the appellant may be drawn from the aforementioned footage of him using the deceased's mobile phone combined with the footage of the appellant returning to the City Centre from Tallaght on the Luas that morning.

82. At 08:59-09:00 on the 14th of April 2018, there was another such spate of activity on the deceased's phone via the Hill 16 pub cell mast in the north City Centre.

83. With respect to the latter two spates of activity, call data records also placed the appellant's phone as being in the immediate vicinity at similar times. The appellant had a phone number of 089 973 7158.

84. Call data related to the appellant's phone was recorded at 07:23 on 13th of April at Mary's Abbey cell site in the City Centre. The use of this mast is consistent with the CCTV footage showing the appellant taking the Luas back into the city from Tallaght.

85. The next call data record for the appellant's mobile phone that discloses the cell tower used shows it interacting with a mast at Slane, Co. Meath. This aligns with the civilian witness testimony that the appellant spent much of the 13th of April 2018 performing cleaning work in Slane Distillery, and also aligns with the Slane Gala shop CCTV footage which showed him purchasing a SIM card.

86. Subsequent call data records showed the appellant travelling back to Dublin from Slane later that afternoon and later on again moving through north Dublin City Centre.

87. Of particular note was the previously mentioned call data which placed the appellant's phone in the same area of the North Dublin City Centre as that of the deceased at relevant times.

Inferences

88. The appellant having been arrested in the aftermath of the deceased's death, following his identification as a suspect, was interviewed while in Garda detention both in the ordinary way, and following the invocation of the "*inference*" provisions in the Criminal Justice Act 1984 as amended by Part 4 of the Criminal Justice Act 2007. In the course of being interviewed in the ordinary way, the deceased gave entirely exculpatory responses to questions asked of him. Asked, "*what do you know about Tallaght?*", he responded that he had a relative living there. However, he claimed that he did not know when he was last there. The inference provisions having been invoked, the

appellant then told what the prosecution maintained were demonstrable lies in as much as he maintained that he had never been given anything by the deceased, and that he had never gone off with the deceased. The prosecution's position was that objective evidence demonstrated that both of these contentions could not be true. There was evidence on which the jury could be satisfied that the appellant had been in position of both the deceased's ATM bank card (which he had used for tap transactions, and with which he had attempted to get cash from ATM machines, notwithstanding that he did not have the deceased's PIN) and the deceased's mobile phone. No explanations were put forward by the appellant to explain how he came to be in possession of these items. Further, in the prosecution's contention, CCTV evidence, and third-party witness identification evidence, showed him in the company of the deceased in Dublin City Centre on the evening of the 12th of April and travelling by Luas in the company of the deceased to Tallaght early on the morning of the 13th of April. The jury were invited, if they were satisfied that lies had indeed been told, to draw adverse inferences supportive of the guilt of the appellant in those circumstances.

Parties' Submissions on Appeal

Ground No. I – The Galbraith Application

89. The trial judge had refused a *Galbraith* type application for a direction made by the defence at the close of the prosecution's case. The application was advanced on two bases. Relying on the first limb of Lord Lane's statements of principle in *R v Galbraith* [1981] 1 WLR 1039, it was contended that, even taking the prosecution's case at its height, there was insufficient evidence to prove the guilt of the appellant, and that accordingly the case should be withdrawn from the jury. Relying on the second limb of of Lord Lane's statements of principle in *Galbraith*, it was contended that, even taking the prosecution's case at its height, such evidence as had been adduced was so infirm, vague and unreliable that no jury could safely convict upon it, and that the case should also be withdrawn from the jury on that account.

90. By way of putting flesh on the bones of those submissions, counsel for the appellant made the following points:

- (i) There was no direct evidence of assault by the appellant and no evidence from which the court could infer the *actus reus* of murder.
- (ii) There was no evidence of motive; the CCTV footage showed the appellant and the deceased on friendly terms with one another during the course of the evening before the deceased's death.
- (iii) The evidence at trial, taken at its height, could only place the appellant close to the Seán Walsh Memorial Park.
- (iv) There was a dearth of forensic evidence connecting the appellant to the crime scene, notwithstanding there been a violent attack on the deceased. Items retrieved from inside the crime scene and, in particular, DNA evidence extracted therefrom, indicated the presence of other persons around the crime scene sufficiently proximate in time to leave DNA from which a profile could be extracted.
- (v) There was evidence that the park was a dangerous place at night and evidence of antisocial and criminal behaviour in the area generally.

- (vi) CCTV footage from Old Bawn Community School showed over 20 persons passing the area of the park covered by the camera during the early hours of the morning. It could not be ruled out that other persons entered and/or exited the park by other entrances.
- (vii) While there was evidence that the appellant used the bank card of the deceased on numerous occasions on the 13th of April 2018, there was no evidence that the card had been stolen or that the appellant had used same knowing that it was the card of the deceased.
- (viii) The interaction of the deceased's phone number (when it was no longer in his possession) with cell sites in Dublin city centre on the 13th and 14th of April 2018, alongside the phone number of the appellant's interaction with cell sites was not of any significance as this was a densely populated area and if a third-party had taken the deceased's phone, they may well have brought it into the city centre area.
- (ix) The deceased had been able to walk to the ambulance and was bleeding from the nose, indicating that the assault took place closer to the time he was found rather than much earlier in the morning of the 13th of April 2018 (when the appellant was seen leaving the area).
- (x) A witness who came across the deceased gave evidence that when asked if he had been attacked, the deceased held up four fingers; the witness's first impression was that he was indicating that he had been attacked by four persons.
- (xi) The evidence of Ms. Selin as to alleged admission against interest made by the appellant could not be relied upon. Her evidence was infirm, weak, and inconsistent. She did not say that the appellant told her the identity of the person whom he had allegedly been in an altercation with. Her descriptions of the appellant's appearance were inconsistent and uncorroborated.
- (xii) The prosecution's case contained significant inconsistencies insofar as Ms. Selin claims to have seen blood on the hands, knees, and boots of the appellant, while a shop assistant and security guard who interacted with the appellant on the 13th of April 2018, did not notice any injuries to the hands.

91. It was contended on behalf of the appellant before the trial judge, and again before this Court, that as there was no direct evidence of the appellant assaulting the deceased and therefore, the *actus reus* could not be proved by direct evidence. There were no witnesses to the alleged attack and no CCTV footage of same. Instead, in the course of seeking to prove *actus reus*, the respondent sought to rely on CCTV evidence which merely placed the appellant *near* the scene of the crime, taking the prosecution evidence at its highest. In fact, counsel submitted, the evidence only established that the appellant was in the company of the deceased at a Luas stop near Tallaght. However, in an effort to place the appellant closer to the Seán Walsh Memorial Park and the scene of the crime, the respondent included in a CCTV compilation footage of unidentified/unidentifiable persons to suggest that the persons were in fact the appellant and the deceased, even though this was not capable of confirmation. Notwithstanding the respondent's successful attempt to convince the trial judge that the jury was entitled to draw the inference that

the unidentified figures were the appellant and the deceased, these inferences could only arise as a result of the prejudicial presentation of the CCTV evidence in the form of a compilation. Were the prosecution to show the footage in an impartial and detached context, which did not assume (or cause the jury to assume) that the unidentifiable figures in question were the appellant and the deceased, the jury would have been engaging in mere speculation as to the identities of the persons appearing in the CCTV footage. It is submitted that this frailty in the prosecution's evidence was sufficient to render the case unsafe and at risk of resulting in a wrongful conviction. Therefore, it was incumbent on the trial judge to direct the acquittal of the appellant, and he erred in failing to do so.

92. It was further contended that the prosecution's theory of events within the Seán Walsh Memorial Park was unsupported by forensic evidence, which failed to put the appellant at the scene and, instead, placed other individuals close to the scene in both temporal and geographic proximity. The presence of other persons at the scene of the attack was corroborated by the evidence of Ms. Marzana Jurzac who testified that when she came upon the then injured man and asked him whether someone had attacked him, he had held up four fingers, giving her the impression that he had been attacked by four people.

93. It was submitted that only evidence proffered by the prosecution in relation to the *actus reus* of the offence of murder in this case was a supposed admission by the appellant to Ms. Garofita Selin, who was called as a witness for the prosecution. During the course of examination-in-chief, Ms. Selin indicated that the appellant had told her, on Friday, the 13th of April 2018, that he had been drinking with a friend, "*the Thursday night*", and that "*he doesn't remember what he did, if he struck the -- struck him, hit him, how strong or how powerful*". She further stated: "*he was drinking with his friend, that his friend said something that he did not like, that was not convenient for him and he hit him. How badly he struck him he doesn't know but he was complaining of his hands*". During the course of cross-examination, Ms. Selin stated: "*From what Feri Anghel told me I believed from what he had told me was just a fight when two people were drunk*".

94. Counsel for the appellant submitted that there were a number of significant discrepancies between various statements made by Ms. Selin to gardaí which were explored in detail at the trial on the 24th of March 2022.

95. It was submitted that these statements could not be interpreted as speaking to the *actus reus* of the offence. The evidence given by Ms. Selin was that some form of fight occurred involving the appellant, but no names or descriptions of other parties were mentioned. The appellant made no admissions as to the extent of the fight or as to his state of mind. Further, the appellant had merely made reference in this supposed admission to being in a fight on "*the Thursday night*". While perhaps merely a small discrepancy, it remains an inconsistency in the prosecution's evidence nonetheless, as the deceased was attacked in the early hours of the Friday morning. Finally, as regards Ms. Selin's evidence as to any supposed injuries or marks on the hands of the appellant on Friday the 13th of April 2018, there was no admission as to the cause of these marks or injuries, nor was there any corroboration as to their existence. In fact, counsel submitted, it was notable that other witnesses who interacted with the appellant on the 13th of April 2018 did not notice any marks or injuries to his hands or elsewhere. It was not safe for the

trial judge to allow the matter to go to the jury in circumstances where concerns would have to remain “*unallayed and unresolved*” by virtue of the inconsistencies and gaps in the prosecution’s case.

96. It was further submitted that even taking the evidence of Ms. Selin at its height, and giving the prosecution the benefit of the most favourable view of the circumstantial evidence placing the appellant *near* the scene of the crime, there was no means by which the necessary *mens rea* could have been found by a jury. This largely arises out of a similar lack of direct evidence but also a lack of circumstantial evidence. In fact, it was submitted, the CCTV evidence pointed to the appellant and the deceased being in jovial spirits with one another. It was urged that the testimony of Ms. Selin could not speak in any sense to the state of mind of the appellant as it is not clear from her evidence with whom the appellant had fought, when he had been fighting, where he had been fighting, the cause of any such fight, the extent of any such fight, the respective roles of the participants in terms of attacker / self-defender, or indeed anything else related to the *mens rea* of the appellant.

97. Further, counsel submitted, in circumstances where these supposed admissions to Ms Selin were the only evidence which purported to speak to the *actus reus* of the appellant, they were so vague and uncertain in their nature that they could not have been considered to give rise to the rebuttable presumption in s. 4 of the Criminal Justice Act 1964 relating to the appellant being presumed to have intended the natural and probable consequences of his conduct. In reality, there was no evidence given in relation to the conduct of the appellant; therefore, no presumption of intention (and thus, *mens rea*) could be taken to arise.

98. It was also submitted that while the appellant was capable of benefitting from circumstantial DNA evidence which was *beneficial* to his case, inferences favourable to his cause were required to be drawn by the trial judge who, in the light of the inherent frailties in the prosecution case, would then have been obliged to direct the acquittal of the accused. In other words, counsel submitted, the favourable DNA evidence should have served to bring the appellant’s case well above the threshold for a directed acquittal.

99. We were referred to the case of *People (DPP) v. Cummins and Davy* [2021] IECA 198 as illustrating circumstances in which this Court has considered that the trial judge erred in not exceeding to an application for a directed acquittal in circumstances where essential elements of the offence (i.e., the existence of the agreement for the purposes of joint enterprise and the necessary intention to kill or inflict serious harm) were not proven by the prosecution, and where circumstantial evidence could not allow the jury to infer the existence of those essential elements.

100. Responding to the application for a direction, counsel for the respondent referenced the decision of this Court in *People (DPP) v. M* [2015] IECA 65, at paras 47-49, wherein we stated:

“At the outset the Court wishes to address a misconception that it occasionally encounters, that the second limb of Lord Lane's celebrated statements of principle in R v Galbraith represents authority for the proposition that a case must be withdrawn from the jury if the prosecution's evidence contains inherent weaknesses, or is vague, or contains significant inconsistencies. This Court wishes to emphasise that it is not authority for that proposition.

On the contrary, the emphasis in Galbraith is on the primacy of the jury in the criminal trial process as the sole arbiter of issues of fact. What Lord Lane was in fact saying in Galbraith was that even if the prosecution's evidence contains inherent weaknesses, or is vague, or contains significant inconsistencies, it is for the jury to assess that evidence and make of it what they will, unless the state of the evidence is so infirm that no jury, properly directed, could convict upon it. Accordingly, what Galbraith is in fact concerned with is fairness.

Moreover, implicit in the Galbraith principles enunciated by Lord Lane, is that withdrawal of a case from a jury should be an exceptional measure, to which resort should only be had for the purpose of avoiding a manifest risk of wrongful conviction".

101. Counsel for the respondent submitted that there were very significant differences between *People (DPP) v. Cummins and Davy* and the instant case, and that the findings in *Cummins and Davy* were specific to that case. The respondent's argument in that case had been that all three accused were intrinsically involved in a common design and bore the same degree of culpability, having the necessary intention for murder, namely the intention to kill or cause serious injury. On the facts, the Court found that it is essential to the doctrine of joint enterprise that there be evidence of agreement and, absent such evidence, found in favour of the two appellants. Counsel for the respondent emphasises that the present case is not concerned with joint enterprise or evidence of prior agreement.

102. We were further referred by counsel for the respondent to the case of *People (DPP) v. Cumberton* [2020] IECA 136 which provides a recent reiteration of the law on circumstantial evidence. At para. 126 thereof, this Court stated:

"Circumstantial evidence is in no way inferior to direct evidence. Both may serve to prove the existence of a fact in issue. However, in terms of the ultimate issue in a criminal case, while no one piece of circumstantial evidence may be sufficient on its own to justify an inference that the accused is guilty of the crime with which s/he has been charged, the cumulative effect of several pieces of circumstantial evidence may, in an appropriate case, justify such a conclusion. It is often said with respect to circumstantial evidence that "many strands may make a rope"."

103. Counsel for the respondent submitted that the effort on behalf of the appellant to isolate the separate strands of the prosecution case is not the correct approach to take. It is clear from *Cumberton* that evidence must not be approached in a modular or compartmentalised fashion. In this case, there were many strands of evidence which were significant, including:

- (i) Timings and locations of the movements of the appellant and deceased as evidenced by CCTV footage, telephone analysis and banking records;
- (ii) The evidence of Ms. Selin who worked with the appellant early the following morning, in particular the injuries and blood which she noticed on him, and his references to hitting a friend he had been drinking with the night before, and his own complaints about sore hands and a headache;
- (iii) The evidence of the witness Mr. Buggle who came upon a man matching the appellant in Tallaght at approximately 6.30am;

- (iv) Evidence of money missing from the deceased's wallet;
- (v) The appellant's connection to Tallaght articulated by him at interview;
- (vi) The several attempts to use the deceased's card at the ATM machine and the use of the card the following day by "tapping";
- (vii) The injuries sustained by the deceased and the evidence of Dr Bolster in the light of Ms. Selin's evidence;
- (viii) The lies which the appellant told at interview.

104. Counsel for the respondent submitted that taken together, the evidence in this case amounted to a corpus of evidence which was properly left to the jury for consideration. It was a matter for the jury whether to accept the evidence beyond reasonable doubt or to reject it. The jury were the sole arbiter of facts, and they did not need to be satisfied on each individual strand of evidence but on the cumulative weight.

105. He further submitted that even if the evidence contained inherent weaknesses or was vague or contained significant inconsistencies, it was for the jury to assess it. The withdrawal of the case from the jury was an exceptional measure to which resort could only be had for the purpose of avoiding a manifest risk of a wrongful conviction.

106. In the present case the state of the evidence was not such that there was no evidence, or that the evidence was so infirm that a jury properly directed could not convict upon it. In the DPP's submission it was open to the jury to reach the inferences contended for by the prosecution, and it was submitted that the trial judge had been correct to refuse to accede to the application for a directed acquittal.

Ground Nos. III and IV – CCTV Evidence

107. Counsel for the appellant sought to mount a two-pronged attack on the CCTV evidence.

108. In the first place he submitted that the CCTV footage utilised by the prosecution breached his constitutional right to privacy, alternatively represented a breach of Article 8 of the European Convention on Human Rights (i.e., "ECHR"), on the basis that it was a form of generalised mass surveillance. He contended that in a democratic society, the state was not entitled to carry out such surveillance on the population, without appropriate safeguards and there were none. In support of these arguments we were referred to *People (DPP) v. Dillon* [2002] 4 I.R. 501; *Maximilian Schrems v. Data Protection Commissioner* [2014] 3 I.R. 75, at paras. 49 and 50; *Szabó and Vissy v. Hungary*, Application No. 37138/14 (12th of January 2016), at paras. 64, 68, and 78 to 81; *Peck v. United Kingdom*, Application No. 44647/98 (28th of January 2003), at paras. 57 to 63; and *López Ribalda and others v. Spain*, Application Nos. 1874/13 and 8567/13 (17th of October 2019), at paras. 89 and 91.

109. Secondly, the appellant submitted that the probative value of the evidence was outweighed by its prejudicial effect, as the jury would simply assume that the unidentified figures in clips 14, 15, 16 *et seq.* forming part of the compilation were the deceased and the appellant, which was entirely speculative.

110. In support of this facet of the appellant's complaints in respect of the CCTV evidence, his counsel referenced comments of McKechnie J. at pp. 216 to 217 in *People (DPP) v Mekonnen* [2012] 1 I.R. 210, and of O'Malley J. in *People (DPP) v Gruchacz* [2020] 2 I.R. 213, at para. 99.

111. It was suggested that in circumstances where the prosecution had no evidence placing the appellant at or near the scene of the crime in the Seán Walsh Memorial Park, the CCTV footage of unidentified/unidentifiable persons heading in the direction of the park presented in a manner so as to lead to the suggestion that the figures were the appellant and the deceased had a highly prejudicial effect. Counsel submitted that given that the persons were not identified, the probative nature of the evidence was, at best, questionable. While the movements of the appellant and the deceased on the 12th and 13th of April 2018 was highly relevant, as emphasised by the trial judge, this could have been fairly established based on the identified CCTV footage alone. It was the creation of a documentary-style compilation in the manner conducted by the prosecution that the appellant took serious issue with, on account of the prejudice caused to him. On this basis, it was contended that the trial judge ought not to have allowed the CCTV footage to be presented in compilation form to the jury.

112. Responding to these arguments, counsel for the respondent made the point that with the exception of a solitary camera at Tallaght Garda station, all of the footage in the compilation came from the CCTV systems operated by private parties and was handed over at the request of investigating gardaí. It was in no sense either mass surveillance or surveillance targeted at the appellant. To the extent that the appellant's image and movements may have been captured on the various recordings, these had been when the appellant was in a public space in respect of which he could have had no legitimate expectation of privacy. Moreover, even if, which was not accepted, the appellant's right to privacy was interfered with, any such interference was a *de minimis* one, the material recorded was utterly mundane (as indeed the trial judge found in refusing the application to exclude the CCTV evidence on breach of privacy grounds), and the harvesting of it by gardaí in the context of a murder investigation was both proportionate having regard to the legitimate aim being pursued, and justified in the circumstances in which it occurred. The right to privacy was not an absolute right. Rather it was one that could be interfered with in a proportionate way where the objective was the prevention and/or investigation of crime.

113. We were asked by counsel for the respondent to note that the very limited application of the right to privacy to criminal activities was stressed by Charleton J. in *EMI Records (Ireland) Ltd. & Ors v. UPC Communications Ireland Ltd.* [2010] IEHC 377. At para. 68 thereof, Charleton J. had said:

"I find it impossible to recognise as a matter of constitutional law, that the protection of the entitlement to be left in the sphere of private communications could ever extend to conversations, emails, letters, phone calls or any other communication designed to further a criminal enterprise. Criminals leave the private sphere when they infringe the rights of other, or conspire in that respect. Legislative intervention may mean detection involves a statutory infringement: leaving the admission of evidence to be decided on the balance of respect for the law and the seriousness of what is involved".

114. Counsel for the respondent sought to distinguish the circumstances in both *Peck v. United Kingdom*, and *López Ribalda and others v. Spain*, from those in the present case. While he accepted that both cases established that Article 8 ECHR may be engaged when a person is captured in CCTV footage recorded in a public place, he submitted that having regard to the widely differing circumstances of those cases from the circumstances in the present case this

jurisprudence was of very limited assistance to the appellant's case. In the *Peck* case CCTV footage which captured the applicant in that case, who had been suffering from depression, holding a knife while he was believed to be contemplating suicide, was disseminated in local and national media; while in the *López Ribalda* case supermarket employees who were suspected of dishonest activities were covertly surveilled in a targeted manner. Neither situation was analogous to the present case where legitimate efforts were being made by gardaí acting in the course of their duty to track and gather evidence concerning the movements of a murder suspect through public spaces, and on public facilities, that had been serendipitously captured in a non-targeted manner on privately owned CCTV equipment.

115. It was submitted that had no effort been made to either gather the CCTV footage or have it adduced as evidence, a 'Catch-22' situation would likely have ensued wherein a potent argument could have been advanced by the defence that the State had failed to seek out and preserve video evidence likely to have a significant bearing on the question of the Appellant's guilt or innocence (cf. *Braddish v. DPP & Anor* [2001] 3 IR 127).

116. Apropos the complaint that the prejudicial effect of the compilation of CCTV footage outweighed its probative value, and that it amounted to an invitation to the jury to speculate, this was emphatically rejected by counsel for the respondent. He submitted that the trial judge had dealt comprehensively and correctly with this issue.

117. In his ruling on the 7th of March 2022 the trial judge said this:

"As regards the submission that the jury will simply assume that it is indeed the accused and/or the deceased, I see no basis for such a finding. The prosecution contend the jury can be satisfied of the identity of such figures seen on the footage by reference to other evidence, such as early and later footage where persons are identifiable and/or the highly unlikely coincidence of it being someone else. The individual clips of footage are clearly identified, both in terms of location and timing. Where persons are not identified from a particular clip, it is a matter for the jury to determine whether the prosecution have satisfied them beyond reasonable doubt that it is the persons whom the prosecution contend it is. There is no reason to believe that the jury will not approach the evidence and deal with same in an appropriate manner. It should be borne in mind that it is open to the accused to engage with the CCTV footage, point out its shortcomings with regard to identification or any other matter to the jury".

118. It was submitted by counsel for the respondent that the trial judge's ruling aligns with McKechnie J.'s summation of the general law governing the employment of CCTV set out in *People (DPP) v. A. McD.* [2016] 3 I.R. 123 at para. 63:

"As with any piece of admissible evidence, its weight, value and credibility are matters for the jury".

119. We were asked to note that this aspect of the *A. McD.* decision was acknowledged by O'Malley J. in *People (DPP) v. Gruchacz* [2020] 2 I.R. 213 at para. 101:

"I can see nothing wrong in principle with the jury making its own assessment of the content of the material. This court clarified the status of CCTV footage in The People (Director of Public Prosecutions) v. A. McD, [2016] 3 I.R. 123. The judgment of McKechnie J. refers to the frequency with which such footage is used in modern criminal trials, and

observes at para. 61, p. 148, that it is difficult to argue with the perception that it is the "best evidence". Subject to being properly proved, and to any ruling on such objections as may be raised, it is real evidence and is available for consideration by the jury in the same fashion as any other piece of real evidence. I agree with the view taken in Reg. v. Dodson [1984] 1 W.L.R. 971 to the effect that the jury are not asked in such circumstances to take on the task of an expert, and are not properly to be regarded as witnesses. They are simply assessing the evidence put before them, in accordance with the guidance given by the trial judge".

120. In conclusion on this issue, counsel for the respondent submitted that questions of what CCTV footage does and does not show and the weight to be afforded to same lie squarely within the realm of the jury as the trier of fact, and that the trial judge followed a body of well-settled law in allowing the CCTV compilation to be admitted into evidence. In all of the circumstances, counsel submitted, the trial judge did not err in his admission to evidence of the CCTV footage either in the format presented by the prosecution or at all.

Ground No. V – Circumstantial Evidence

121. In charging the jury in relation to circumstantial evidence, the trial judge instructed them: *"Now, what is circumstantial evidence? Circumstantial evidence is strands of evidence which come together and which taken together allow you to form those necessary inferences. So all of the evidence is taken together and a holistic approach is required by you in relation to all of that evidence. It's been likened to the strands of a rope, so it's been described as follows; one strand of the cord might be insufficient to sustain the weight, but three stranded together might be of sufficient strength, thus it may be circumstantial evidence, there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion, but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of. So, the strands are viewed in their totality and it's the combined effect of all of the evidence in the case that you're looking at and that's of importance".*

122. He returned to the issue later in his charge, adding: *"Now, you've heard reference to circumstantial evidence, now I want to start my words to you concerning circumstantial evidence by telling you that there's nothing wrong with relying upon circumstantial evidence. Most cases involve circumstantial evidence to a lesser or greater extent. In this case there's a greater reliance on circumstantial evidence. Circumstantial evidence has been defined as evidence from which the jury may infer the existence of a fact in the issue. It is to be contrasted with direct evidence which involves proof of a relevant fact by means of positive witness testimony concerning something which the witness saw or heard or a piece of real evidence, such as a video recording of the accused actually committing the offence or evidence of an admission by the accused. An inference is to be differentiated from speculation and I've already explained that to you.*

An inference from circumstantial evidence is the drawing of a common sense conclusion from the existence of known or proven facts or evidence. It arises where two or more facts or pieces of evidence considered in conjunction suggest a common sense conclusion. In

those circumstances the conclusion or inference follows or is to be inferred from the facts or evidence that were considered. Speculation in contrast involves conjecture or guesswork and yields a conclusion that is unsupported or not fully supported by the known facts or evidence. In some cases the same facts or evidence may possibly support more than one inference or alternative inferences and, again, you'll recollect and bear in mind what I've already told you about the drawing of inferences and the benefit of the doubt, as it's sometimes described.

Circumstantial evidence is in no way inferior to direct evidence. Both may serve to prove the existence of a fact and issue. While no one piece of circumstantial evidence may be sufficient on its own to justify an inference that the accused is guilty of the crime with he or she has been charged, the cumulative effect of several pieces of circumstantial evidence may in an appropriate case justify such a conclusion. Because crimes are very often committed where witnesses are not present circumstantial evidence is often relied upon in a prosecution and the simile that's often given to juries is that circumstantial evidence is like a rope. You know yourselves from ropes, members of the jury, they're combined of many, many strands of material. If you have a single strand you can hold it up and it will blow around in a draft in the room. If you tied anything on to it would break. It's of no significance or strength in itself. But a rope is made up of a combination of such strands and they're all woven tightly together. And if you have a rope you can tie a heavy boat to the side of the quay and hold it there in a storm, so the combination can be incredibly strong.

Proof by circumstantial evidence has been described as a combination of circumstances, no one of which could ground a conviction beyond reasonable doubt but the combination of circumstances taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit to. You should consider the weight that is to be given to the united or combined force of all the proven circumstances put together. It is the united force which gives strength to the circumstantial evidence. Each piece of evidence does not require to point individually towards guilt. In fact, each piece taken individually may go nowhere near that; they don't prove anything in themselves. But you are required to consider them collectively and when you do so they may point in the direction of guilt or they may not; that is a matter for you, the jury, to determine.

Now, circumstantial evidence can be very compelling and requires to be approached with care. You must look carefully at it for the very good reason that you're being asked to draw a very significant conclusion here, that the accused is guilty of murder from several distinct pieces of evidence, rather than any piece of direct evidence and none of those pieces of evidence would be sufficient in themselves to ground a valid conviction. You must keep to the forefront of your mind the following matters, firstly, you must consider all the evidence. Secondly, you must guard against distorting the facts or the significance of the facts to fit the prosecution proposition. Thirdly, you must be satisfied that no explanation,

other than guilt, is reasonably compatible with the circumstances. And, fourthly, remember that any fact proven that is inconsistent with the conclusion of guilt is more important than all the other facts put together. You may convict in this case which relies extensively on circumstantial evidence.

If you're satisfied that not only are the circumstances consistent with the accused having committed the crime alleged but also that they are inconsistent with any other rational conclusion. Consider whether the prosecution have proved beyond reasonable doubt that the matters relied upon exclude coincidence or are you left with a reasonable possibility that these events are simply coincidental and consistent with non-involvement in the criminality suggested? You must be satisfied beyond reasonable doubt that there's no other logical or rational explanation for matters, save what the prosecution say. You must be sure that when you apply your minds to all the facts, all the facts which you have accepted as true, that you can come to the conclusion that to treat the matters as pure coincidence is an affront to common sense. But keep in mind all the time that there is the presumption of innocence, which is only displaced when you're satisfied beyond reasonable doubt that the accused is guilty".

123. After the trial judge had concluded his charge defence counsel raised a requisition in respect of it. Counsel said he had no difficulty with regard to what the judge had said with regard to the nature of circumstantial evidence, but complained that the trial judge had failed to contextualise that aspect of his charge with specific reference to the DNA evidence found on the cigarette butts, and in particular the one that Dr O'Dowd had suggested was likely recently discarded and from which DNA trace material was obtained exhibiting the DNA profile of an unknown person. It was urged upon the trial judge that the jury should have been instructed to consider whether that evidence was potentially relevant, on the basis that, notwithstanding that the identity of the person concerned was unknown, the evidence might suggest the presence of a person other than the defendant in the area in or around the material time. It was suggested that the jury should have instructed to ask themselves whether that evidence, evidence of the possible presence of an unknown person at the crime scene in or around the material time, called for an explanation.

124. Counsel for the prosecution opposed the requisition, submitting to the trial judge that he had adequately charged the jury with respect to how to approach circumstantial evidence, and that to some extent, in the exchange between defence counsel and the judge in regard to the requisition, "*matters that weren't canvassed with Dr O'Dowd are now being, I suppose, debated by way of submission and reply by yourself*".

125. The trial judge ruled:

"[...] in terms of the requisition concerning circumstantial evidence, I feel that I've given the jury an adequate direction in relation to how they are to treat circumstantial evidence. And I think that evidence in relation to DNA present or not present, etc, and what levels of it have all been dealt with in the evidence. I don't think it's necessary for me to highlight that particular part of evidence in the manner in which you've submitted, so I'm not going with that requisition".

126. In submissions to this Court counsel for the appellant submitted that the trial judge erred in his ruling for the following reason. While it is true that DNA evidence adduced for circumstantial evidence is no different to other categories of circumstantial evidence (see *Cumberton*, at para. 143), the specific nature of the DNA evidence in this case warranted its own contextualised direction from the trial judge. In *Cumberton*, the case of *People (DPP) v. O'Callaghan* [2013] IECCA 46 was interpreted as follows: "*What it did do, however, was to implicitly commend, by offering example, that tribunals of fact should subject any suggested basis for inferences, or invited inferences, based on the circumstantial evidence of a DNA match, to rigorous analysis and scrutiny*". While *O'Callaghan* dealt with a DNA match, the case at hand concerned a lack thereof. If a DNA match is required to be subject to "*rigorous analysis and scrutiny*", the lack of such a match, where favourable to an accused person must equally be subject to "*rigorous analysis and scrutiny*". It was submitted that what that scrutiny entails is, at minimum, a specific direction from a trial judge to a jury in relation to same.

127. It was further submitted that DNA evidence proffered as circumstantial evidence may require its own contextualised direction, such as that requested in the case at hand. It was suggested as being vital to the question of guilt or innocence of the appellant in this case. Counsel for the appellant contends that the trial judge in failing to direct the jury in the clear terms requested by defence counsel risked leaving the jury confused about circumstantial evidence in the context of DNA. In particular, the trial judge's charge failed to explain that circumstantial evidence, such as the non-identification of third-party DNA at the crime scene, could operate in an *exculpatory* fashion. In these circumstances, the trial judge erred in refusing the appellant's requisition.

128. Counsel went on to submit that DNA evidence is ubiquitous in modern trials and its position often central to the prosecution of individuals. As *Cumberton* demonstrates, it is often the case that DNA is proffered for inculpatory purposes. However, in the case at hand, the DNA evidence arguably served to exculpate the appellant by demonstrating that there was no proof that he was ever present at the scene of the assault of the deceased and that at least one other person was. In those circumstances, it was incumbent on the trial judge to highlight how exactly how the jury ought to have approached that evidence, all the while highlighting that the benefit of the doubt *must* be afforded to the appellant.

129. Counsel for the appellant concluded his submission in regard to this point by suggesting that in those circumstances, given the vast amount of evidence proffered at trial, and the relatively unique and potentially exculpatory nature of the circumstantial DNA evidence in this case, it was vital that the trial judge should have directed the jury in clear terms which explained how it should treat this potentially favourable circumstantial evidence. He having failed to do so, it was respectfully submitted that the trial judge had fallen into error.

130. In response to those submissions counsel for the respondent continues to maintain that the trial judge dealt adequately with the issue. Our attention was drawn to how the trial judge dealt with the DNA evidence in his charge. Referring to the testimony of Dr O'Dowd, he told the jury that:

"One of the cigarette butts was examined by her and a DNA profile from an unknown male source was obtained from that. That was cigarette butt KK9. She was asked how long the

cigarette butt had been in the park. She said: "It's not possible to say how long. It's not possible to time the deposition of DNA" but given that she was able to get a profile from it, and it wasn't wet, she said some of the cigarette butts she got were in different states. Some of them were wet and they had a very low expectation of getting a profile, but this one was in quite good shape, so she'd say it was relatively recent and the attribution of the DNA profile was to Unidentified Male 1. It didn't match either Mr Bob or Mr Feri Anghel.

Similarly, in relation to KK11, another cigarette butt, a DNA profile from an unknown male source was obtained, and that was called Unidentified Male 2. Again, it did not match either the profile of Mr Bob or Mr Anghel. Those had been compared with databases in this jurisdiction and there was no match. She said they also had access to systems in 10 other countries and they were checked there but they got no match".

131. Counsel the respondent also pointed out that the trial judge had summarised the closing comments of both prosecution and defence counsel in regard to this evidence. On the one hand, prosecuting counsel had commented:

"As regards the evidence of DNA and cigarette butts, the prosecution say that this was a public park and that the area was not cleaned regularly. It would be visited and traversed by many people in the normal course of events".

On the other hand, defence counsel had said:

"The defence point to items retrieved from inside the crime scene and in particular DNA profiles extracted therefrom which they say indicates the presence of other persons within the crime scene sufficiently proximate in time to leave DNA from which a profile could be extracted as regards the cigarette butts".

It was contended that this was a fair and even-handed summation which left the jury in no doubt as to what each side was saying was the significance, or otherwise, of this stand of circumstantial evidence.

132. Further, it was emphasised by counsel for the respondent that the trial judge had provided the necessary warnings in relation to circumstantial evidence, and he quoted from the relevant portion of the trial judge's charge (reproduced earlier in this judgment at paras. 121 and 122 above). He maintained that the trial judge thus identified the way in which circumstantial evidence ought to be approached and the greater significance of an inconsistent piece of circumstantial evidence. He submitted that the trial judge's summary of the evidence and his charge in that regard was sufficient and that there was no need to contextualise matters further.

133. It was further submitted that the case of *People (DPP) v O'Callaghan* [2013] IECCA 46, on which counsel for the appellant had placed some reliance, could be distinguished from the present case. In *O'Callaghan*, an eyewitness saw one of the suspects of a Post Office robbery remove and discard a balaclava immediately after the commission of the offence. The accused's DNA was found on the balaclava but, crucially, so too was the DNA of two other unidentified persons. The forensic evidence therefore went no further than establishing that the wearer of the balaclava could have been (i) the accused, (ii) a person with the same DNA profile, or (iii) any of the two or more other persons. In setting aside the verdict, the Court was satisfied that there was not a sufficient

evidential basis upon which the jury could conclude beyond reasonable doubt that the accused, rather than any of the other, unnamed, persons who had been in contact with the balaclava material, committed the offence.

134. It was submitted that the crucial difference between *O'Callaghan* and the present case is that the item with the unidentified DNA profiles in *O'Callaghan* was an item which was directly relevant to the commission of the offence. It was a balaclava worn by one of the raiders of the Post Office. In the instant case, the appellant was seeking to attach significance to unidentified DNA profiles on cigarette butts found in a public park. However, there was no evidence that the cigarette butts were in any way connected to the offence in question. The crime scene is an amenity used by the public and it is only to be expected that there may be cigarette butts with unidentified DNA profiles in the vicinity. It was submitted that no special direction was required from the trial judge in this regard.

Ground No. VI – Missing Evidence

135. In this ground of appeal it is complained that the trial judge erred in failing to give a direction to the jury on regarding missing evidence.

136. It is conceded by counsel for the appellant that no requisition was raised in regard to this. However, it is said that this should not operate as a part of the appellant raising this issue on appeal because substantial legal argument in relation to missing evidence was made at the close of the prosecution case in the context of an application to have the case withdrawn from the jury.

137. Defence counsel had complained that the following items of evidence were missing from the prosecution case:

- i. Identification by Ms. Selin of supposed injuries to the appellant's hands in CCTV footage from AIB, Topaz Garage, and Gala. This process never occurred when An Garda Síochána went to Romania to interview Ms. Selin.
- ii. Potential witnesses referred to in the evidence of Mr. Dmitrou: namely, a group of people inside the Emerald Casino, some of whom may have been aggressive towards the deceased in relation to the buying of a car.
- iii. Testimony from potential witnesses present outside the Indian restaurant who engaged with the appellant and the deceased, referenced in the evidence of Mr. Dmitrou.
- iv. Potential witnesses outside the Mint Casino on O'Connell Street who engaged with the appellant and the deceased, seen in CCTV footage.
- v. Testimony from the woman who spoke to the appellant and the deceased on Gardiner Street.

138. In regard to this list, and items ii and iv in particular, we should observe that Mr. Dmitrou in fact made no mention in his evidence of seeing a group of people inside the Emerald Casino interacting with Mr. Bob. Mr. Bob was not there when he and Mr. Budea called to that premises looking for Mr. Bob and the only person they interacted with there was a security man. It was in a subsequent encounter with Mr. Bob outside the Mint Casino, a different premises to the Emerald Casino, that he saw a group of people in "loud" conversation with Mr. Bob, and he said that they

were trying to persuade Mr. Bob to buy a car, which he was unwilling to do. It therefore appears that both items ii and iv relate to the same encounter.

139. At any rate, it was submitted that these particular items of evidence could have been critical to the case and, in particular, to establishing the appellant's innocence. At trial it had been the appellant's contention (although he did not go into evidence) that other persons were involved in the vicious attack on the deceased. It was submitted that:

- (i) The CCTV from the aforementioned premises was vital in relation to corroborating or undermining the uncorroborated evidence of Ms. Selin pertaining to supposed injuries to or marks on the appellant's hands on the 13th of April 2023.
- (ii) The potential witnesses at Emerald Casino (again, we believe that this should be a reference to the Mint Casino), the India Shop, and on O'Connell Street were likely relevant to the state of mind of the appellant, and the demeanour of the appellant and the deceased as a pair on the night in question.
- (iii) The woman who spoke to the appellant and deceased on Gardiner Street was relevant as to the state of mind of the pair and any discussions pertaining to a trip to Tallaght.

140. The complaint is that, notwithstanding that these deficiencies were referenced by defence counsel in his closing, these matters were neither alluded to by the trial judge during the course of this charge the jury, nor was any reference made by the trial judge to missing evidence as a whole. It was submitted that even though a missing evidence challenge was rejected by the trial judge this did not relieve the trial judge of his duty to address this matter in his charge to the jury.

141. In replying submissions, counsel for the respondent references the ruling of the trial judge in response to the application made by the defence at trial to have the case withdrawn from the jury on the basis of deficiencies in the Garda investigation. The trial judge had ruled:

"An Garda Síochána must be given a reasonable margin as to how manpower and resources are committed to a particular investigation. There is always likely to be one or more lines of inquiry or jobs which could have been carried out, but gardaí cannot be expected to engage in a disproportionate exhaustive search for every conceivable kind of evidence. I am not satisfied that any deficiency or significance has been established as regards the investigation carried out by the gardaí. I must ask myself whether there's a real risk of an unfair trial in light of the gardaí investigation. I am satisfied that no such risk arises in this matter. I refuse the application to direct an acquittal or to otherwise halt this prosecution".

142. Counsel for the respondent submitted that the trial judge had been correct. He argued that the appellant had not engaged with the "missing evidence" in the sense of showing (a) that there was actual relevant evidence that was missing, as opposed to mere speculation as to the possible existence of such evidence; and (b) its potential significance having regard to the overall evidence adduced at trial. Moreover, he had not demonstrated that he was prejudiced by the failure of the gardaí to pursue these lines of inquiry, if in fact there was such failure.

143. In elaboration on his position, counsel for the respondent commends for our consideration a number of further points. First, in relation to the injuries and markings on the appellant's hands, that the jury received the evidence of Ms. Selin who had observed the appellant in person, and

close up, throughout the day on 13th April 2018. She was able to describe firsthand what she had seen of injuries and markings on the appellant with her own eyes in a personal encounter which was the best evidence, and there was no need for gardaí to show her secondary evidence in the form of CCTV footage. The fact that the gardaí failed to ask Ms. Selin to identify injuries on the appellant's hands from the CCTV footage does not give rise to any significant prejudice to the appellant. The defence had the CCTV footage in question and Ms. Selin was available to be cross-examined by them and was cross-examined. It remains the position that there was ample evidence from Ms. Selin to allow the jury to be satisfied beyond a reasonable doubt that the appellant's hands were injured and marked with blood following the night he spent with the deceased.

144. Secondly, in relation to the "*potential witnesses*" referred to by the appellant, it was submitted that they are seen on CCTV footage earlier in the night and a significant time before the appellant and deceased are seen embarking on the Luas together in Tallaght. The "*potential witnesses*" do not feature on the lengthy CCTV recordings of the pair making their way on foot through the north city centre and onto the Luas, nor do they feature on any of the extensive footage harvested from close to the crime scene in Tallaght. In the circumstances, it is entirely speculative to suggest that they would have had anything relevant to say.

145. Thirdly, evidence was given at the trial that gardaí identified Romanian individuals who had been at the Emerald Casino. However, again, there was nothing to indicate that they had interacted with Mr. Bob or would otherwise have had anything relevant to say.

146. Fourthly, Detective Chief Superintendent Colm O'Malley gave evidence of the efforts that had been made to locate the woman seen on CCTV footage talking to the appellant and deceased on Gardiner Street. He said that she was identified but not spoken to as she left the country on 19th April 2019, and she had not returned since.

147. Counsel for the respondent further submitted that the issue for consideration is whether the absence of a direction on missing evidence in the instant case gives rise to an injustice. It was submitted that there was no requirement in law for a jury to be directed on "*missing evidence*". At best, the giving of such a direction might be considered desirable in a given case. It was submitted that it was not necessary in the instant case given the highly tenuous and speculative basis for suggesting that the witnesses not interviewed would have had anything of relevance to say, and the inability of the appellant to show how he was prejudiced in any meaningful way.

The Court's Analysis and Decisions

Ground of Appeal No. I –

The Refusal to Grant a Direction on Galbraith Grounds

148. In a lengthy ruling on the direction application the trial judge, having reviewed the evidence in detail, commented as follows:

"This case is heavily dependent upon circumstantial evidence. This in itself is not a weakness in the prosecution case. Circumstantial evidence is in no way inferior to direct evidence. Both may serve to prove the existence of a fact in issue. While no one piece of circumstantial evidence may be sufficient on its own to justify an inference that the accused is guilty of the crime with which he or she has been charged, the cumulative effect of several pieces of circumstantial evidence may, in an appropriate case, justify such a

conclusion. The jury should consider the weight which is to be given to the united or the combined force of all the proven circumstances put together. It is the united force which gives strength to circumstantial evidence. Each piece of evidence does not require to point individually towards guilt. In fact, each taken individually may go nowhere near that, but the jury is required to consider them collectively and when it does so they may point in the direction of guilt. That is a matter for the jury to determine. The jury must look at the circumstantial evidence carefully. It must consider all of the evidence and guard against distorting the facts or the significance of the facts to fit the prosecution proposition. It must be satisfied that no explanation other than guilt is reasonably compatible with the circumstances and it must remember that any fact proved that is inconsistent with the conclusion of the guilt is more important than all the other facts put together.

The issue here is whether it would be open to a properly charged jury to convict the accused of the offence charged on the basis of the evidence adduced. I am satisfied that it would be so open to the jury. Would leaving the matter to the jury run a manifest risk of a wrongful conviction so that it would be unfair to allow it to go to the jury? I am satisfied there is no such risk. All the evidence must be considered but the following highlights some of the more salient evidence. The accused and deceased are seen in each other's company on the evening of 12th of April 2018. They travel together late at night out to Tallaght. Shortly after they get off the Luas two men are seen heading towards the entrance to Sean Walsh Memorial Park via the blue bridge. That was at 1:11:13. At 2:58:28 one person is seen to head away from the park and towards the blue bridge. Within a very short period of time a person is seen moving in a direction away from the blue bridge and towards The Square shopping centre. Shortly thereafter, at 3:06:40, the accused is caught on CCTV footage using the deceased's bankcard at an ATM machine in The Square in an effort to withdraw money from the account. He also appears to be in possession of a phone with a distinctive green lining. He does not know the PIN number. A person matching the description of the accused is found resting in an alcove of a loading bay at Tallaght shopping centre around 6.30 am. His hands and boots are dirty. A person matching the description of the accused is seen to take a Luas journey from Tallaght at approximately 6.42 into the city centre. At approximately 7.27 am the accused is seen on CCTV footage in the MCR premises at the back of the Capel Building. The accused was brought Slade in County Meath when he works alongside one other employee of MCR, Ms Selin. She gave evidence of noticing blood on the hands, fingernails and boots of the accused. She also gave evidence that the accused told her of having been drinking with a friend the previous night and of having been involved in an altercation with a friend and striking the friend.

The phone number of the deceased interacts with telephone cell site in Tallaght at around 3 am at the same time as the accused was seen on the CCTV footage at the ATM looking down at a phone. The accused's telephone number interacts with mobile telephone cell sites in the city centre on the evening of the 13th of April 2018 and then around 17:39

on the 13th the mobile telephone number of the accused interacts with mobile telephone cell site at a location close to a site where the phone number of the accused has interacted. At 8.59 on the morning of the 14th of April 2018, the mobile telephone number of the accused interacts with mobile telephone cell sites at a similar location to the last site with which the accused's phone number interacted at approximately 21:35 on the evening of the 13th. In the course of the interview with An Garda Síochána the accused denied being given anything by the deceased and denied every going off with the deceased. He also made other comments which could be regarded as untruthful or evasive.

Bearing in mind all - and I emphasise all - the evidence of which the foregoing is only a selection, would it be open to a jury properly charged to be satisfied beyond reasonable doubt of the following: (a) That the accused killed the deceased; (b) that the killing was unlawful; (c) that at the time of carrying out the acts causing death the accused intended to kill or cause serious injury? It appears to me that bearing in mind any inconsistencies or contradictions in the evidence, the relevant instructions which have to be given to the jury concerning reliance upon lies as evidence of guilt and the proper manner in which to approach circumstantial evidence, it nevertheless would be open to a jury to be satisfied beyond reasonable doubt on all the evidence adduced as to each of the aforesaid ingredients of the offence of murder as alleged against the accused. Such contradictions or inconsistencies in the evidence are for the jury to resolve. I do not regard the state of the evidence to be so unfirm that a properly directed could not convict upon it.

Counsel for the accused referred to this application as being finely balanced and submitted that in the absence of the evidence of Ms Selin no prosecution would have been brought. That may or may not be the case but the fact is that Ms Selin has given her evidence. From my consideration of her as a witness, I would not accept defence counsel's disparaging description of her testimony, but that is a matter for the jury to determine. Suffice at this stage to say that I am satisfied that it is open to the jury to accept her evidence of the accused's references as to what he had done the night before and her evidence as to the accused's appearance. Equally it is open to the jury to reject it, but it should be properly left to the jury. As regards to the defence submission that the case should be halted due to alleged deficiencies in the garda investigation, I find little or no merit in the submission. I accept what the prosecution submit in respect thereof. An Garda Síochána must be given a reasonable margin as to how manpower and resources are committed to a particular investigation. There is always likely to be one or more lines of inquiry or jobs which could have been carried out, but gardaí cannot be expected to engage in a disproportionate exhaustive search for every conceivable kind of evidence. I am not satisfied that any deficiency or significance has been established as regards the investigation carried out by the gardaí. I must ask myself whether there's a real risk of an unfair trial in light of the gardaí investigation. I am satisfied that no such risk arises in this matter. I refuse the application to direct an acquittal or to otherwise halt this prosecution".

149. We find the approach of the trial judge on this issue to have been impeccable. In our assessment, while this was a circumstantial evidence case, there was an abundance of such circumstantial evidence, and it was a strong circumstantial evidence case. The issues pointed to by counsel for the appellant were all matters for resolution by the jury. The evidence was not so infirm, as the trial judge pointed out, as to deny the jury the opportunity of considering it and resolving issues arising from it, either for the accused or against the accused, always bearing in mind his presumption of innocence and that the burden of proof rested at all stages of the prosecution. The trial judge was best placed, having heard the evidence first hand, to form a view as to whether it was so infirm that no jury, properly directed, could convict upon it. The trial judge was firmly of the view that that was not the case, and based upon the transcript record we entirely agree with him.

150. As regards the contention that, viewing the prosecution's case at its height, there was an evidential deficit such that no jury properly charged could convict the accused, we consider that there was a lack of reality to this submission. In our assessment, the totality of the circumstantial evidence, viewed at its height, would certainly have enabled a jury properly charged to convict. The trial judge was clearly at the same view and we think he was correct.

151. In the circumstances we have no hesitation in rejecting Ground of Appeal No. I.

Ground of Appeal Nos. III and IV – CCTV Evidence

152. We have no hesitation in rejecting the ground of appeal complaining about the admission of the CCTV evidence for breach of the appellant's right to privacy. The arguments advanced by the respondent are in our view unassailable. We would hold that view even if there had been no developments in the law in this area since the hearing of this appeal. However, since this appeal was heard there have been two decisions of this Court which we consider to be directly in point. We allude to this Court's decisions in *The People (DPP) v Dunbar* [2024] IECA 85, and in *The People (DPP) v Thompson* [2024] IECA 22. In both of these cases legitimate efforts were made by gardaí acting in the course of their duty to track and gather evidence concerning the movements of a murder suspect through public spaces, that had been captured in a non-targeted manner on privately owned CCTV equipment.

153. In the *Dunbar* case, we said with respect to such evidence (at paras 146 - 148):

“146. *As this case demonstrates, many business premises and private dwellings are now equipped with CCTV cameras. That this is the situation is universally known. It would be impossible to frequent public areas without becoming aware of it. Over and above that, many vehicles are equipped with dash-cameras, and a high proportion of people are equipped with devices that allow them to take photographs or to record matters of interest. The comment that there can be no general expectation of privacy in a public place is not an unqualified one. While individuals may have no realistic expectation that their presence in a public place will not become public, they may well have an expectation that, in general, private, intimate, or sensitive conversations would not be recorded, certainly absent special circumstances or an appropriate authority.*

147. *That one's presence in a public place may be recorded works to the advantage and disadvantage of individuals. If the individual recorded as being at a particular location is someone who is or has been or is about to become involved in criminal activity, that may*

be to the disadvantage of that individual, in one sense. In other cases, it may advantage an individual. In this case, there was a witness, AB, who, as the trial judge pointed out, was pleased that footage existed. The material available included footage showing him going in and out of his own home. On the part of the appellant, there was a suggestion that AB was involved in the killing or was present at the killing, but the availability of CCTV footage provided this witness with valuable cover.

148. *In this case, the CCTV footage that was entered in evidence at trial was accessed as a result of requests to householders and businesses by gardaí, but it must be noted that there is nothing to suggest that the appellant was identified by any of the householders who provided the CCTV footage, or that any of those who made footage available might have identified the appellant as a data subject”.*

154. There were also objections to other CCTV evidence in the *Dunbar* case which are not pertinent to the present case. However, in concluding the section of its judgment dealing cumulatively with the various challenges to the CCTV evidence in that case, we further remarked:

“153. *Overall, we are of the view that the challenge to the admissibility of the CCTV footage was not made out. It is, quite simply, misconceived. There was evidence there capable of being accessed which was highly relevant. In a particular case, it could advance the investigation, identify a suspect, and thereafter, provide relevant evidence at trial. In another case, the evidence might exonerate a suspect; indeed, in the present case, it has assisted a witness in rebutting unfounded allegations made against him. Consider what the situation would be if gardaí did not access evidence which had the potential to advance an investigation and contribute significantly to proving the guilt of a perpetrator, but which also had the capacity to exonerate a suspect who was innocent; how would the actions of the gardaí be regarded; could failure to access the material be regarded as anything other than a grave dereliction of duty?*

154. *We have no hesitation in dismissing this ground of appeal, and we would hope that in the future valuable court time would not be taken up with such unmeritorious arguments”.*

155. In the *Thompson* case, we said:

*“We are inclined to agree with the trial court that there was no breach of the appellant’s right to privacy at all, and that individuals walking down a public street, driving a car on the public road, or even eating a meal in a restaurant open to the public do not, in this day and age, have a reasonable expectation that their movements will be immune from CCTV observation, certainly in a situation where no individual is being targeted for the purpose of gathering information and where the camera is simply gathering random information about persons or vehicles in the location. That being so, it was not necessary for the trial court to consider the principles applicable to the exclusionary rule (as discussed J.C., and more recently in *Quirke*).*

90. *If such an exercise had been required, significant factors in the balance would undoubtedly be that the degree of any privacy intrusion was minimal, that it arose from the conduct of private individuals (failing to register their systems with the Data Protection Commission) and not from any conduct on the part of the State or its agents, and that the*

evidence was collected by the Garda Síochána in the context of a specific murder investigation. As the Director submitted, the situation is akin to that in People (DPP) v. Gold where the Court upheld the decision of the trial court to admit evidence where the voice recording in question was created without any State involvement and where there was no suggestion that the State was complicit in unconstitutional actions taken by a private party to introduce evidence. However, in view of our agreement with the trial court that the appellant's constitutional right to privacy was not violated by the CCTV recordings of him in public places, it is not necessary to consider the 'balancing' exercise in this case. 91. Accordingly, this ground of appeal is refused".

156. In the present case there was nothing about the appellant's presence in Dublin city centre, or on the Luas, or in Tallaght, or in any of the other places in which he was captured on CCTV, to suggest that he could have had a reasonable expectation, by virtue of being engaged in something private, intimate or sensitive in a public place, that he would not be recorded, on a non-targeted basis, while, for example, just walking down the street, standing on a station or travelling on a tram. We are completely satisfied that he had no expectation of privacy in the circumstances of this case, and that once he became a person of interest in connection with the investigation into the death of Mr. Bob it was both appropriate and justified that An Garda Síochána should seek to track and gather evidence with respect to his movements to the extent that they may have been serendipitously captured on CCTV systems which were not specifically targeting him. We have no hesitation in dismissing this aspect of the challenge to the admissibility of the CCTV evidence.

157. Turning then to the complaint that the prejudicial effect of the compilation video outweighed its probative value, the trial judge did not agree. He considered it was a matter for the jury to determine whether the prosecution had satisfied them beyond reasonable doubt that persons depicted were who the prosecution contended they were, and that there was no reason to believe that the jury would not approach the evidence and deal with it in an appropriate manner. He also made the valid point that it was open to the accused to engage with the CCTV footage, and to point out its shortcomings with regard to identification or any other matter to the jury.

158. We find no basis for criticism in how the trial judge approached the matter. We are satisfied that the compilation CCTV evidence was properly admitted and that it did not represent an unfairness. It was a matter for a properly instructed jury to assess the significance of it. It was certainly open to them, on the totality of the evidence, and without resorting to speculation, to draw the inferences they were invited to draw by the prosecution, namely that the unidentifiable persons in clips 14, 15, 16 *et seq.* were the same persons as the two persons of interest who were identifiable in the earlier clips, and who were in fact identified by various witnesses as being the appellant and the deceased.

159. Further, we are satisfied from the transcript of the trial judge's charge that the jury in this case were properly and appropriately instructed as to the difference between inferences and speculation and were warned not to speculate.

160. In the circumstances, we reject Grounds of Appeal Nos. III and IV.

Ground of Appeal No. V – Circumstantial Evidence

161. We also reject Ground of Appeal No. V in which it is complained that the trial judge erred in failing to redirect the jury on the issue of circumstantial evidence subsequent to a requisition by

defence counsel on that issue. We have carefully considered the trial judge's instructions to the jury on circumstantial evidence, and we are in no doubt that they were sufficient in the circumstances of the case and quite comprehensive. The trial judge carefully reviewed the DNA evidence for the jury. He fairly and even-handedly outlined what both sides the case were saying was the potential significance, or lack thereof, insofar as that evidence was concerned. He also gave the jury appropriate warnings and instructions concerning how to approach DNA evidence as circumstantial evidence. We were not referred to any authority to suggest that there was a specific obligation on the trial judge to further contextualise the DNA component of the circumstantial evidence in this case in the manner suggested. It was not the trial judge's function to make a supplementary speech for the defence. It was, however, his function to give the jury clear instructions concerning how to approach particular evidence. We are in no doubt that the trial judge in this case gave the jury the necessary clear instructions.

162. We should say that we regard it as having been somewhat hyperbolic on defence counsel's part to have characterised the DNA evidence at issue as being "*exculpatory of the appellant*". It is nothing of the sort. The highwater mark of it is that it establishes that some male person, who was a smoker, had been in the Sean Walsh Memorial Park, a public place, in the area in which Mr. Bob was found, that he had discarded the cigarette butt, and that this had occurred relatively recently (in terms of proximity with the scene of crime examination). It does not in any way exclude the possibility that the appellant may have assaulted Mr. Bob as alleged by the prosecution. Counsel for the respondent was correct in his submission that there was no evidence that such an unidentified smoker was in any way connected with the offence. A more correct characterisation of this evidence is that it was not inculpatory of the appellant, but rather was neutral with respect to whether he was or was not involved. We are satisfied that the jury would have been fully alive to its correct potential significance from the trial judge's review of the evidence in question, from his review of what was said in both closing speeches with respect to that evidence, and from his instructions as to the nature of and how to deal with circumstantial evidence. We do not believe that any further instructions to the jury were required.

163. Ground of Appeal No. V is accordingly dismissed.

Ground of Appeal No. VI – Missing Evidence

164. We can deal with this ground of appeal very shortly. We agree with counsel for the respondent that this ground of appeal should be rejected. There was nothing to suggest that any of the witnesses, whom it is complained were not interviewed, with the exception perhaps of the lady who encountered the appellant and the deceased on Gardiner Street, would have had any material evidence to give. In the case of the lady who was encountered on Gardiner Street, she was successfully identified by gardaí but it transpired that she had left the jurisdiction by the time her identity was established and was therefore not available to be interviewed. The appellant has not shown what evidence she was in a position to give, beyond the suggestion that she could have spoken as to the demeanour of the two men and as to what they had talked about. It must be recalled that the appellant was present during this conversation and therefore knows what they had talked about. He has not shown what evidence the lady in question was in a position to give that could in any way have been critical to his defence. The appellant must show more than a

remote, theoretical, or fanciful risk of an unfair trial. He must demonstrate "*a real risk*" in that respect on account of missing evidence before this Court would be justified in interfering.

165. We are completely satisfied that the contention that the appellant could not get a fair trial because of missing evidence, or deficiencies in the Garda investigation, is not made out. On the contrary, this Court's impression is that overall a very thorough and professional Garda investigation was in fact carried out. The gardaí must be afforded a margin of appreciation with respect to whom they adjudge it appropriate to interview in the context of reconstructing the movements of relevant persons in the lead up to a suspected crime. They are of course obliged to seek out and preserve evidence to properly protect, respect, and support the fair trial rights of the accused person, and this duty is not one predicated on the possible usefulness of the evidence not gathered. That having been said, the obligation is circumscribed by what is reasonable and proportionate having regard to what is known, or to be anticipated, at the time. Garda resources are not infinite and appropriate judgments have to be made as to the best deployment of those resources. The obligation unquestionably extends to seeking out and preserving evidence that could have afforded a route to acquittal, but it is for an accused or appellant who contends that there has been a breach of this obligation to show in concrete terms how the "*missing evidence*" could have afforded him a route to acquittal. The appellant in the present case has utterly failed to do so in our assessment. Indeed, the complaint with regard to missing evidence in the present case lacks any reality, and in advancing it there has been no engagement with the evidence in the case as a whole.

166. In the circumstances we have no hesitation in rejecting Ground of Appeal No. VI.

Conclusion

167. In circumstances where we have not been disposed to uphold any of the grounds of appeal advanced by the appellant, the appeal against conviction is dismissed.