An Chúirt Achomhairc

The Court of Appeal

Charleton J
Edwards J
McCarthy J

Court of Appeal record number: 231, 235, 244/2023
[2024] IECA 205
Circuit Criminal Court bill number: RN 25/2019

Between

The People (at the suit of the Director of Public Prosecutions)
Prosecutor/Respondent

- and -

Patrick Sweeney, Paul Beirne and Martin O'Toole
Accused/Appellants

Judgment of the Court, delivered on Wednesday 31 July 2024

1. The 2018 events in Roscommon leading to this judgment were horrific: the very antithesis of public-spiritedness and empathy to fellow-creatures. Though dressed up as public action in redress of injustice, eight security-men, simply doing their job for modest wages, were targeted by a vicious mob and made submit to the lowest of attacks on their irreducible entitlement to human dignity.

2. Over 37 seconds, a snippet of the attack was captured in very good quality video footage by a body camera that one of the victims turned on and only turned off because of revolting threats of violence accompanied by filthy language. Patrick Sweeney and Martin O'Toole were identified as two of those six assailants, out of an overall mob of perhaps forty, appearing in the footage. They challenge the admissibility of this cogent evidence on this appeal and did so, over several months at trial. This was done on the basis of procedures, that Garda procedures ought to have been better and that by not meeting imaginary standards of perfection, somehow prejudice was caused. As this judgment later addresses, prejudice does not mean a good or a bad investigation. Further, identification is a matter of fact. The trial, which ought to be about whether the prosecution have adduced sufficient evidence to prove the guilt of accused persons beyond a reasonable doubt, was turned into an irrelevant discussion about police procedures, hunting the chimera of unrighteousness where no legal basis enabled this exercise.

3. On behalf of Patrick Sweeney, it is argued that his conviction should be overturned because: the video evidence was somehow inadmissible; the search warrant that led to the uncovering of

evidence supporting his guilt was unlawful due to an inadequate and deceptive sworn information laid before the issuing judge; the information volunteered in interview by him that he had once been made bankrupt, thus having no love of banks; the tacit agreement of the mob of which he was part did not extend to all of the crimes the jury found him guilty of; the jury should have been discharged when one of the victims told the court he had never worked in the security sector again and had suffered psychiatric harm and a brain injury.

4. Those points as to the search warrants are taken up by Paul Beirne and Martin O'Toole, though the warrants and the sworn informations underlying them were different. The video is also relevant to Martin O'Toole, who makes the same point. They also say that they had some kind of right to be tried in Roscommon and that transferring a trial from one part of this Republic to another undermined their rights under Article 38 of the Constitution. Further, while there was a search of their houses, they felt unable to leave and hence their detentions started some hours, about 140 minutes in the case of Paul Beirne, before official commencement through formal arrest, thus ruling out a statement made by Paul Beirne admitting participation. They also take up the scope of the common design point: that they were not participating though in the mob. They also fear prejudice due to the injury revealed by one of the victims. Paul Beirne asserts that his admission to participation in a mob attack that, according to him, "got out of hand" is inadmissible.

5. As regards Martin O'Toole, the evidence objected to was: 1, his identification on the footage; 2, admissions when shown the footage that he was there "at the end"; 3, mobile communications setting up the attack; 4, warrant of search that did not mention mobile phones. As regards Paul Beirne, the evidence objected to was: 1, admissions made; 2, admissions which segued from a statutory requirement to account for evidence whereby otherwise an inference might be drawn by a jury adverse to his innocence; 3, informal detention amounting to arrest; 4, illness and not eating undermining his confession to involvement; 5, mobile communications setting up the attack; 6, the warrant to search his lands (first) and his house (second), both being in different District Court areas; 7, unlawfully transferring him to trial outside Roscommon. Patrick Sweeney objects to: 1, anything found in consequence of searching his home, that includes phones and mobile communications; 2, the bodycam footage (unchallenged in any way as to the fact of him appearing on it) on which he is so prominent; 3, supposedly prejudicial reference made by him, in police interview, to being bankrupt and a reference by a victim to the effect of the attack; 4, the scope of the doctrine of common design; 5, other variants of the points made by him and by the two other accused. All make a point about the continuity of evidence as well, namely the bodycam.

6. The Court has considered all the points made in various forms. But what was proven at the trial, albeit unchallenged save as to legal argument, applications in the absence of the jury and points made seeking yet more explorations of the Garda investigation?

16 December 2018, 05h07 to 05h21

7. These repellent events happened at Falsk in County Roscommon, not far from the National Famine Museum at Strokestown House on 16 December 2018. Throughout the country, reminders of the great famine, 1845 on, in terms of deserted villages and the folk memories that still persist generations later, mean that this pivotal event in the history of the Irish people is not just an aspect of archaeological history but a living wound. No Irish person, indeed no one of any nationality, can read Cecil Woodham-Smith's *The Great Hunger* (London, 1962) without the deepest of upset at how human sympathy was utterly displaced in favour of an insane ideology that led to countless death, forced emigration and a body-blow to our culture. Her searing analysis is of a time when Ireland was under alien and hostile rule. This is part of the inspiration for the purpose of the Constitution, as set out in the Preamble, where the Irish people recall times when only faith

sustained them: "Ar mbeith dúinne, muintir na hÉireann, ag admháil go huiríseal a mhéid atáimid faoi chomaoin ag Íosa Críost, ár dTiarna Dia, a thug comhfhurtacht dár sinsir i ngach cruatan ina rabhadar ar feadh na gcéadta bliain". Our time, from 2008 on in particular, was characterised by the coming home of debts voluntarily undertaken by people who were, perhaps, over optimistic, where the legal system is now ours and where everyone understands that the obligation to repay money arises the instant it is borrowed. Otherwise, non-payment of debt leads to the securing of unpaid monies on whatever property the debtor owns. That is an inevitable consequence of unwise borrowing.

8. Displacement from a family home can be the duty of a judge, the obligation to apply the law contrary to human instinct. Here, the background to these horrific events was of legal proceedings in the High Court for the most usual cause of this kind of order, the borrowing of large amounts of money and the debtor not paying. On 8 August 2018 KBC Bank eventually secured an order from the High Court order authorising the repossession of a family home and adjacent land where, it would seem, three people lived. In December 2018 KBC Bank hired another company to arrange the repossession of the property. In turn this was contracted to GS Agencies, a security company. The occupants ignored the High Court order and did not leave peacefully. Hence, on 11 December 2018 the court order was enforced with people and animals removed from this property by those working for GS Agencies. There was much upset. There was cause for this. Any fair-minded man or woman would attribute that to resistance to a valid order, to the need to enforce the law as declared by the High Court, and to the ultimate but upsetting consequence of borrowing money that is not repaid. Instead, through a mob mentality, it became as if the borrowing was not the decision of the property-owner and the order of the High Court was invalid. A nasty exclusionary attitude also was cultivated whereby those of foreign nationality, in so far as they might be involved in enforcing a court order, were agents of terrorism and a foreign power. The security men occupying the premises were called members of the Ulster Volunteer Force, as if 1971 events which killed 15 and the 1974 Dublin and Monaghan bombings, which killed 34, were the blood on the hands of these innocent wage-earners tasked with enforcing a court order by an Irish court.

9. In summary, the prosecution assert that Paul Beirne drove a cattle truck to a local pub and picked up several other individuals, including Patrick Sweeney and Martin O'Toole. All in all there could be 40 or more who took part in the inhuman degradation that followed. The lorry arrived at the house and a teleporter (a telescopic fork-lift type of vehicle) broke down the gates. This happened at about 05.00 hours. In the house, a security man turned on his bodycam and 37 seconds of horror were recorded. Curiously, on this appeal, counsel submitted that the identification was not challenged. A reading of the entire transcript shows, however, that some questions were asked as to the issue. The video can be considered by a jury as to who was shown engaging in this horrible conduct. These shown were Martin O'Toole, who admitted to gardaí in interview that the images showed him, and Patrick Sweeney who was identified by an officer of An Garda Síochána. The quality of image could not be better. This shows an invasion of the house, with complete viciousness. An active chainsaw was brandished and pickaxe handles, baseball bats and a shotgun. No one viewing the video could doubt the murderous temper of the invading mob. Three security men were taken under threat of death into the front yard and trussed with cable ties. One was hit savagely with the blunt weapons. He later disclosed to the jury that he had suffered a brain injury. That was both admissible evidence and the natural and probable consequence of what he was put through while unable to defend himself. A dog owned by the security men was bludgeoned and left to writhe in agony. The dog was later put down by a veterinarian.

10. One security man was doused in petrol, while helpless. This hideous violation of human rights was not an empty threat as three vehicles attributed to the security men were set alight by the mob.

Another had a sharp blade, presumably a knife, dragged across his chest and throat and face. A security man was forced to eat dog faeces under threat of death.

11. The facts speak unmistakably to the degradation of the assailants. Strokestown fire brigade were alerted at about 05.22 hours and assistance was on the scene from about 05.40 hours with the scene formally preserved from 07.15 hours.

Charges and verdicts

12. The appellants, and a co-defendant who was acquitted, collectively faced 17 counts: 4 of assault causing harm to four security men, contrary to s 3 of the Non-Fatal Offences Against the Person Act 1997; 4 of imprisonment contrary to s 15 of the 1997 Act; 1 count of burglary with aggravation contrary to s 13 of the Criminal Justice (Theft and Fraud Offences) Act 2001; 1 count of damage to the house contrary to s 2(1) of the Criminal Damage Act 1991; 3 counts of arson for Paul Beirne and 4 for Patrick Sweeney and Martin O'Toole in respect of three vans and a personal car contrary to s 2 of the 1991 Act; 1 count of violent disorder contrary to s 15 of the Criminal Justice (Public Order) Act 1994; 1 counts of cruelty to animals contrary to s 12(1) of the Animal Welfare Act 2013; 1 count of robbery of a watch.

13. Great care was obviously applied by the jury in their verdicts. The accused Patrick Sweeney and the accused Paul Beirne were acquitted the arson of the personal car and the robbery of the watch. The trial went on from January to June of 2023 in respect of an incident which, while of a repellently cruel nature, lasted less than 30 minutes. A comment will be made as to the culture which has increasingly enabled this waste of court resources will be made later.

Common design

14. Common design is a way of summarising straightforward principles of law. These were impeccably put by the trial judge in her charge to the jury. What the principle means is that those who engage with each other to commit a crime become the hands of the other participants, so that in robbing a bank, the getaway driver is as much engaged in violently taking money from the tellers and wallets and watches from the customers as are those physically engaged in threatening and theft inside. Similarly, if another is tasked with intercepting and passing on police messages, that person's hands, while set to that task, because it is with the purpose of furthering the robbery, are as much part of the thefts and assaults in the bank as those whose hands are turned to that task. Participation in a crime occurs where a person, aware of the criminal enterprise, gives either encouragement to further the commission of the crime or lends physical aid to enable the crime to happen. Aid can be through various means: lending a weapon, loaning a fast car, loading a gun, accepting a task that will help the commission of the crime (such as listening to police communications), spying on a proposed murder victim. That kind of help may be innocent as well, as where a woman lends a friend her car because she says she wants it to show a foreign visitor Glendalough, but it is lent to another for a bank robbery. What distinguishes the participant in a crime from the innocent is that the assistance is lent as part of a common design, in other words as an element in the putting in place of the events underpinning or assisting the crime. That has to be the purpose of the accused. Encouragement, as for instance of a rape being committed by others in a university residence, is equally participation.

15. It is wrong to imagine all this as negotiated and set out as if in a commercial agreement to legitimately import grains or vegetables. That is not how crime works and juries should be aware of the need to assess circumstances with shrewdness and commonsense. A common enterprise can arise spontaneously or, as in organised crime, individual tasks may be meticulously planned

and parcelled out to the participants. Assistance to a crime may be on the basis of a silent understanding of the general nature of what is planned or it may be specific. Assistance may also be tacit. This concept of acting wordlessly, from the Latin *tacitus*, being silent is illustrated here.

16. Each of the men involved in these events witnessed dousing in petrol, the brandishing of a shotgun, the vicious assaults and cruel purposelessness of what occurred. If a can of petrol is poured over a trussed up man and the others go along with that, it can be inferred that this is part of the explicit or silent plan. If six people enter a room where people are made to cower for their lives by a revving chainsaw, one is wielding that instrument of dismemberment while everyone in support is as much the assailant with the chainsaw as the person in whose hands it is. Were it the case that the chainsaw was not activated until the house was entered, going along with that threat when it is started up by supporting the assault with clubs and other weapons makes the others part of the common design. Similarly, the inhuman whooping and filthy language, even if no weapons were carried by any other than the wielder of the chainsaw, renders those others participants. But, this goes much deeper, as the exchanged virtual messages recovered from mobile phones demonstrates that it is not necessary to resort to this analysis.

17. All this is clearly visible on the video. Liability for a crime of intent requires each participant, as where one of the security men were murdered, to intend death or serious injury. That cannot be legally imposed through participation. Foresight of death or serious injury is an element from which purpose can be, but is not legally required to be, inferred. Where the crime, as here in the assault causing harm, is one of recklessness, then engaging in the conscious risk that harm may be caused is sufficient to render all the participants guilty of the physical actions in respect of which that risk was taken. In both the mental elements of intention and of recklessness, a jury is not required to look into the minds of the accused but is instead tasked with drawing commonsense inference from a shrewd appraisal of the evidence. The burden of proof is on the prosecution to prove participation. This was proven.

18. Withdrawal from a common enterprise is a defence where that withdrawal is timely and is enough to negative, in the sense of reverse, the harm done by participation. What that may involve is a question of fact, but can include contacting the authorities or might require that the entire criminal enterprise be countermanded; see *The People (DPP) v Twomey* [2024] IESC 31. A full analysis of participation, including whereby a person not present but absent from the scene may be liable for a brain injury to his daughter inflicted by his wife through his participation in a series of cruel events is to be found in *The People (DPP) v MB* [2024] IESC 33. Thus, the analysis herein suffices to demonstrate the soundness of the verdicts against all three accused.

Trial in Roscommon

19. The point is made that this trial should have taken place in Roscommon. Why, it is to be wondered? Roscommon, where if there were 30 participants in the cruelty, were likely to have relations or, worse, people remaining silent out of fear of the savagery of those who shunned punishment, would be the worst place to attempt to have a trial. The oath of jurors is to give "a true verdict in accordance with the evidence." Judicial participation by jurors is guaranteed by Article 38 of the Constitution. That fundamental law guarantees that accused persons receive, in all courts, a trial "in due course of law." This implies a right to be heard in defence, to cross-examine, to make submissions on law and an argument by way of a speech to the trier of fact that the prosecution has not met the burden of proving the guilt of the accused beyond reasonable doubt. Apart from trial under military law and cases transferred because of a state of emergency to a special court, "no person shall be tried on any criminal charge without a jury." That is a

fundamental guarantee. A jury in Donegal is as apt for criminal trials as one in Cork, Dublin or in Roscommon. Section 32 of the Courts and Court Officers Act 1995 provides:

> (1) Where a person (in this section referred to as "the accused") has been sent forward for trial to the Circuit Court, sitting other than within the Dublin Circuit, the judge of the Circuit Court before whom the accused is triable may, on the application of the prosecutor or the accused, if satisfied that it would be manifestly unjust not to do so, transfer the trial to the Circuit Court sitting within the Dublin Circuit and the decision to grant or refuse the application shall be final and unappealable.
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> (2) Provision may be made by rules of court for the giving of notice of intention to make an application under subsection (1) of this section and of the grounds on which such application will be based.
>
> (3) Where—
>
> > (a) two or more accused are sent forward for trial to the Circuit Court sitting other than within the Dublin Circuit and it is proposed to try them together, and
> >
> > (b) an application by one or more, but not all, of the accused under subsection (1) of this section is granted,
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> > an application, without notice to the accused, by the prosecutor to the judge who granted the application to have the trial of one or more of the remaining accused transferred to the Circuit Court sitting within the Dublin Circuit shall be granted.

20. This Act is given effect to by Order 63 of the Rules of the Circuit Court:

> (2) An application by the prosecutor or an accused pursuant to section 32(1) of the Act for an order transferring the trial of a person charged with an indictable offence to the Circuit Court sitting within the Dublin Circuit shall, save where the Court otherwise directs or permits, be made by motion on notice to the accused or, as the case may be, the prosecutor.
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> (3) The Notice of Motion shall specify the grounds upon which such application is to be made and any facts relied on in the application shall be verified in an Affidavit sworn by or on behalf of the applicant.
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> (4) An application by the prosecutor pursuant to section 32(3) of the Act may be made ex parte at any time or place approved by the Judge concerned, by arrangement with the County Registrar.
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> (5) An Order made pursuant to section 32(1) of the Act shall specify the following—
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> > (i) the Sitting of the Circuit Court within the Dublin Circuit to which the case has been transferred;
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> > (ii) whether the accused is in custody or on bail;
> >
> > (iii) the name and address of the accused's Solicitor, if the accused is represented by a Solicitor.

21. This is the procedure followed. There is good reason. Jurors become judges, democratically participating in the system of justice. As such, jurors are under the same constraint as judges sitting alone, where all issues of law and of fact are decided by the same person. A judge enters on office only on subscribing to the awesome duty to judge a case objectively. Hence Article 34.6.1º requires each judge to swear:

> In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.

22. The duty of a juror is also to act, because each is a judge of fact, as the Irish text has it "gan eagla gan claonadh, gan bá gan drochaigne chun duine ar bith". Where there is the appearance of a connection that might reasonably give rise to a suspicion that a judge would have difficulty in being objective, as assessed by a person of intelligence with full knowledge of all of the facts of the case and of the potential issue of conflict, a judge will recuse themselves from sitting on a case. Where there is a potential extensive pall of fear cast on an entire community through barbaric action by a mob of some dozens, that objective reason to fulfil the guarantees in the Constitution requires that the fairness of the trial be moved away from where influences of terror or, perhaps, ties of affection exist which may undermine independence. It is also necessary to recall *DeBurca v Attorney General* [1976] IR 38, 111 ILTR 37 where the exclusion, in effect, of women from juries was successfully challenged. There the Supreme Court stated that despite the sidelining of women, no one had served on a jury without the appropriate qualification. Jurors in Dublin, to which this trial was transferred, were and are as qualified to undertake that Constitutionally-mandated task as would be jurors in any other part of this Republic.

Custody of exhibit

23. Fundamentally, objects which come into the possession of the police which may be evidence of a crime should be retained and where a fact may be inferred through forensic examination or by simple display, the object is admissible in evidence. An example of an object where forensic examination assists is a weapon that fits the pathology examination of the cause of death and which is found in a shed belonging to the accused. An example of an object of importance in itself is a machine gun or stash of controlled drugs whereby, through the fact of possession being proven, the guilt of the accused may be established; generally see Powles, Waine and May *May on Criminal Evidence* (6th edn, London, 2015). It is important to label and to take care with such objects. But, there is no mathematical formulation whereby this category of evidence requires any further level of proof beyond, for instance, an object found near a body which has lain undiscovered over many months. That object, perhaps a mobile phone or a cloth with the accused's blood stains on it, will have been in the open air with no one guarding over it.

24. Essentially, the standard of proof is beyond reasonable doubt. A trial judge has no legal capacity to interfere with the production of relevant evidence. Facts are for the jury and as to whether an object is, by reason of labelling or by reason of transmission from Garda A to an international agency for forensic examination and identification by someone familiar with the object or labelling, the same object is a question of fact. That does not admit of a *voir dire*. A trial-within-a-trial is not available as to questions of fact. Security of a trial is maintained by the trial judge having the duty to direct a jury to acquit where there is no evidence establishing a particular charge or where,

because of examination in front of the jury, the evidence has become so contradictory or so tenuous that a jury properly instructed could not properly convict. That is the relevant safeguard.

High Court order

25. Another matter that was contested at trial was the validity of the High Court order granting possession by reason of the non-payment of borrowed monies. This should be disposed of shortly. There is no basis for contesting a High Court order. An attested copy of a court of record speaks as to the facts found and as to the order made. That is the nature of a court of record and no such contest should have been allowed to happen.

Identification

26. Video recordings are real evidence which prove what is recorded as happening at a particular time and place. Such video recordings are matters of fact for a jury. All too often the idea is posited that prejudice may result from such recordings. That is incorrect. The authenticity and provenance of such a recording may be established by simple evidence. Prejudice has nothing to do with a video recording which shows the commission of a crime. Prejudice is a concept whereby evidence may, not must, be excluded where a piece of evidence has the tendency to cause a jury to pre-judge a particular accused. An example might be that on a video a reference is made to a murder committed by the accused, a crime prior to and not the crime at issue at trial. That can be edited out. Editing is done to ensure a trial fair to the accused and to the victims of the crime. This has nothing to do with custody or procedures or the rules that other jurisdictions may see fit to surround particular forms of identification with. A video recording which shows the commission of the crime at trial is not prejudicial. It is relevant and thus admissible. A video may be viewed by a Garda officer and that officer may identify one or more accused as in the act of committing a crime; or perhaps near a crime scene or in transit to or from. That is admissible. As to whether any identifying witness had an expectation of seeing a particular accused on the video is a matter on which counsel for the accused may cross-examine. That is a proper way to approach this question of fact. Without identification by a Garda, or any other person, from the video or from stills, the jury may still be asked to consider: is that the accused shown in the video; *May on Criminal Evidence* 2.31-2.36. A closing speech directed to quality or to expectation is a legitimate part of any trial of fact. This is not a matter for a judge to rule out. The first principle is that under Article 38 of Constitution the trial of issues of fact are for a jury.

27. No more exacting proof than the exclusion of reasonable doubt is needed in establishing the identity of a victim's remains or the samples from a post-mortem examination or an object or the transmission of a video. Is this what was taken from the scene or the scene of search? That can be established in any of a number of ways, including markings on containers or by testimony. There was no basis for ruling out this evidence. Yet, so many days over this 6-month span of the consideration of 30 minutes of criminality were spent with the jury absent and submissions so involved as to defy logic as to why this video clearly showing the assailants should be excluded. One of the issues was a Garda bulletin distributed to garda stations, and viewed in a Donegal garda station and an email to an officer attaching the video. That is an issue of fact. Another was that in the course of transmission, by accident and over 2 seconds, the video camera was switched on and showed windscreen wipers in a Garda car. That can be explored as a matter of fact before a jury and a jury will no doubt approach the matter with ordinary sense.

28. The fundamental proposition that relevant evidence actually showing accused persons committing a crime can be ruled out by reason of procedure, despite its authenticity can be tested. Suppose a person records a gang rape and suppose, as well, that stills from the crime are posted

by way of general email to all gardaí and two come forward saying that they know the assailants. How is it possible that spending weeks in the absence of a jury arguing that the reaction of the gardaí on seeing the video should be itself videoed as to their facial reaction or that still photographs have contaminated their minds capable of overriding the constitutional imperative that juries consider the merit and weight of evidence? It cannot. There was no basis here for any contest, much less a trial-within-a-trial.

Warrants to search

29. Arguments have been advanced on behalf of all three accused that the warrants to search were invalid. For Paul Beirne it is posited that because there were two search warrants, for two different premises, each in different District Court areas, one where relevant small items were found and the other where the lorry used in transporting the mob, on the prosecution case, was stored, failing to tell the judge that the police were seeking or had already, for the second in time, had been granted was a deception. For Martin O'Toole and for Patrick Sweeney, similar points are raised but these are much more directed to the supposed failure of the gardaí in seeking the warrants by way of sworn information to include particular details. Again, this was argued out over weeks and retuned to as jobs books and individual documents were scrutinised during the course of the hearing.

30. A trial-within-a-trial, of necessarily concise form, can enable a dispute on an issue as to the validity of a search warrant to be resolved. But this is the issue: was there sufficient in the information to demonstrate to the judge that the officer applying for the warrant held a suspicion that articles might be found in a dwelling, or other premises, which might provide evidence to further an investigation. Such a trial-within-a-trial cannot be allowed to disintegrate the entire process. That is the focus and that alone. Such an issue can be resolved in a matter of minutes or hours; not the weeks taken here over the Garda files and internal documents. These are not relevant. Reasonable suspicion is the issue. Here are some of the informations sworn to ground the applications for warrants which various District Judges granted. Each, as a matter of law, which is a matter for the judge, demonstrate a suspicion, and one that is reasonably grounded.

31. In the information for search warrant for "Mr PJ Sweeney, Ramelton, Co Donegal" where the warrant is dated 9 January 2019 it is set out that the "basis for the grounds of suspicion is as follows":

> In the early hours of 16 December 2018 at Falsk, Strokestown, Co Roscommon, a large group of men attacked a group of 8 security men with weapons and a firearm, inflicting injuries on three of the security men. Some of the large group of men entered the house in which the security men were and are captured on bodycam footage worn by one of the security men. From enquiries carried out it is believed that one of these men who is seen in the footage brandishing a chain saw and a yellow and black pickaxe handle is a male called PJ Sweeney who resides at [an address]. In addition, a number of vehicles belonging to the security team were burnt out at the scene in Falsk, Strokestown, Co Roscommon. I believe there is evidence to be found at the home or on the lands of PJ Sweeney at [an address], namely a pair of men's size 10 "Donner" boots, 3 Motorola DP1400 walkie talkies, a Chain saw, a security officers log relating to Falsk, an "ITT" torch, one green pouch containing a PocketScope nightlight, a trapper hat, a yellow high-vis jacket, a yellow and black pick axe handle and mobile phone devices used in the organising of the attack on the security men.

> And I hereby apply for the issue of a warrant under section 10(1) of the Criminal Justice (Miscellaneous Provisions) Act 1997 (as substituted by s 6(1)(a) of the Criminal Justice Act 2006) in respect of that place and any persons found at that place."

32. In the most obvious way, that demonstrates that there was a suspicion and that it was reasonable to hold that suspicion. All that might be needed in the absence of the jury is the officer swearing the information and any relevant questions might be put to him.

33. For the information for a search warrant for "Paul Beirne's premises consisting of a slatted shed at Ballroddy, Co Roscommon" where the warrant was dated 18 December 2018, the "basis for grounds of suspicion" was set out thus:

> In the early hours of 16 December 2018 at Falsk, Strokestown, Co Roscommon, a large group of men attacked a group of 8 security men with weapons and a firearm, inflicting injuries on three of the security men. CCTV has been viewed from Elphin on the night in question and a cattle lorry is observed travelling in convoy with other vehicles. I believe this vehicle was being driven by Paul Berine registered no XX who owns a slatted shed at Ballyroddy, Co Roscommon. I believe this vehicle may be parked at these sheds. I believe this vehicle may contain evidence in relation to the commission of the above offences, namely, balaclavas, cable ties, RSA drivers' licence in the name of NAME, mobile phone belonging to NAME, mobile phone belonging to Paul Beirne that I believe may contain evidence of interaction between other persons present at the scene.
>
> And I hereby apply for the issue of a warrant under section 10(1) of the Criminal Justice (Miscellaneous Provisions) Act 1997 (as substituted by s 6(1)(a) of the Criminal Justice Act 2006) in respect of that place and any persons found at that place.

34. As a matter of law that indicates a reasonable suspicion. A challenge is to the effect that no such suspicion was held. That can be dealt with concisely. The information for a search warrant for Paul Beirne's home in Croghan village, Co Roscommon, where the warrant is dated 18 December 2018, similarly shows a reasonable suspicion:

> In the early hours of 16 December 2018 at Falsk, Strokestown, Co Roscommon, a large group of men attacked a group of 8 security men with weapons and a firearm, inflicting injuries on three of the security men. Enquiries have established that a cattle lorry was used to transport a number of the men who were involved in the attack. CCTV has been viewed from Elphin on the night in question, and a cattle lorry was observed travelling in convoy with other vehicles. I am satisfied that this vehicle is registration XX. I believe this vehicle was driven by Paul Beirne on the night of that attack. I also believe that there are items to be found in connect with the attack at the home of Paul Beirne at Croghan, Co Roscommon namely a motor vehicle XX, a firearm, balaclavas, cable ties, RSA licence in the name NAME, mobile phone of NAME, Paul Beirne's mobile phone that I believe may contain evidence of interaction between Paul Beirne and other persons that may have been at the scene.
>
> And I hereby apply for the issue of a warrant under section 10(1) of the Criminal Justice (Miscellaneous Provisions) Act 1997 (as substituted by s 6(1)(a) of the Criminal Justice Act 2006) in respect of that place and any persons found at that place.

35. A fundamental misunderstanding has grown up as to the authority cited in argument whereby something missing undermines, it is claimed, a reasonable suspicion. That authority is being

misinterpreted. In *The People (DPP) v Corcoran* [2023] IESC 15 there was a complete undermining of the judicial assessment through the gardaí not disclosing that the premises to be searched was that of a journalist, a person who had previously asserted journalistic privilege. While there was still a reasonable suspicion, the basis whereby a court could exercise the balance of the authority to invade the private space had been undermined. That is not the same thing as this or that fact being left out. What is required where there is a reasonable suspicion demonstrated is the interposition of something as fundamental as privilege in law that is held back. A mistake here or there or a fact whereby a more perfect application might have been made is not what can properly be explored. There, the Supreme Court affirmed a Court of Appeal decision which ruled in favour of a journalist who had his mobile phone seized by gardaí with a view to obtaining information relating to a serious criminal incident pursuant to s 10 of the Criminal Procedure Act 1997. He had asserted journalistic privilege over his refusal to give the phone to gardaí and reveal his sources. The search warrants there were issued without any evident regard to these facts: fundamentally because the judge should have known but was not told of something which would cause him to radically alter his judicial discretion. The District Court Judge was entitled to be told that Emmett Corcoran was a journalist and that he had asserted journalistic privilege. These were fundamental to the judge but were held back. This is not a counsel of perfection or an enabler whereby the best becomes the only standard. That is not the issue. This was a basic factor which ought to have been, but was not, specifically drawn to the judge's notice by the gardaí involved. That omission was fatal to the validity of the search warrants there. Hogan J stated:

> 102. This means that unless such is plainly contraindicated by another statutory provision or by a common law rule, State bodies (including the Gardaí) must exercise their functions in a manner compatible with the State's ECHR obligations. Using the language of Henchy J in *McMahon*, one might say that the Oireachtas could never have intended that the exercise of the s 10 power was to be mechanical or directionless or that the District Court could not have had regard to the fact that its order will have the effect (or potentially might have the effect) of infringing Article 10 ECHR or (I would add) Article 40.6.1°. Here one might note that the language of s 10 of the 1997 Act underscores all of this in that it provides that the District Judge "may" issue the warrant in question.
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> 103. In this instance the judge's task was accordingly to make an independent assessment of whether or not to grant the warrant based on the evidence contained in the two informations. As cases such as *Damache* (in relation to the dwelling) and *CRH* (in relation to business premises) clearly show, an independent assessment is properly regarded by the Oireachtas as a key safeguard prior to the issue of any s 10 warrant. This judicial discretion cannot, however, be exercised in a meaningful fashion unless the judge called upon to do so stands possessed of all the relevant materials pertinent to the exercise of that discretion where this might breach the State's Article 10 ECHR obligations (or, as may arise in some future case, which might otherwise have an unconstitutional impact on the journalist's right to privilege).

36. There is nothing like that in this case. It is worth reiterating the parameters of the concept. A reasonable suspicion is one founded on some basis in fact which demonstrates that in issuing the warrant the judge may be satisfied that the officers are not skating off on a whim but acting reasonably. This is not about proof or the application of the laws of evidence; that is for the trial. A suspicion based on hearsay evidence may still be reasonable as may, of itself, the discovery of a false alibi, or information offered by an informer who is categorised as reliable. A suspicion communicated to a garda by a superior can be sufficient to constitute a reasonable suspicion; *The People (DPP) v McCaffrey* [1986] ILRM 687. The relevant law has been fully explained by the Supreme Court in *CRH plc v Competition and Consumer Protection Commission* [2017] IESC 34 in general

terms, the decision in that case being specific to competition law enquiries and not of general application, and noting that the particular decision in that case is confined to competition investigations, which was the legislation in question on that appeal. Charleton J summarised the law on reasonable suspicion thus:

> In terms of the ordinary construction of the powers of search, a warrant is issuable by the District Court on reasonable suspicion that "evidence of, or relating to" an offence under the 2002 Act "is to be found in any place"; thereafter the officers of the Commission have a month to "enter and search the place" and to "exercise all or any of the powers conferred on an authorised officer under this section." A reasonable suspicion is one founded on some ground which, if subsequently challenged, will show that the person arresting, issuing the warrant or extending the detention of the accused acted reasonably; see Glanville Williams, "Arrest for Felony at Common Law" [1954] Crim LR 408. A reasonable suspicion can be based on hearsay evidence or the discovery of a false alibi; *Hussein v Chong Fook Kam* [1970] AC 942: or on information offered by an informer who is adjudged reliable; *Lister v Perryman* [1870] LR 4 HL 521, *Isaacs v Brand* (1817) 2 Stark 167, *The People (DPP) v Reddan* [1995] 3 IR 560. A suspicion communicated to a garda by a superior can be sufficient to constitute a reasonable suspicion, as may a suspicion communicated from one official to another, which is enough to leave that other individual in a state of reasonably suspecting; *The People (DPP) v McCaffrey* [1986] ILRM 687. The fact that a suspect is later acquitted does not mean that there was not a reasonable suspicion to ground either an arrest or a search. It is accepted by the European Court of Human Rights that "the existence of a reasonable suspicion is to be assessed at the time of issuing the search warrant"; *Robathin v Austria* [2012] ECHR 30457/06 at para. 46. Having information before a judge of the District Court whereby he or she may reasonably suspect the potential presence of information on a premises founds the warrant. The standard being applied here is such as might be familiar from civil or criminal practice. But issuing a search warrant is not to be confounded with any analogy with the criminal trial process. That is not the task. Facts are not being found: facts are being gathered. It necessarily follows that what is involved is an exercise in the pursuit of what is potential, essentially an exercise which may yield no information or limited information. It is of the nature of a criminal enquiry that a warrant may authorise an intrusion into someone's privacy to little or no effect. This is of the nature of what is required in the course of information gathering and a negative result does not upset the validity of what was done if, after the event, information that may serve towards displacing the presumption of innocence happens not to have been gleaned. The power to issue the search warrant, therefore, does not in this instance inform the nature of the powers that may be exercised pursuant to it.

37. The law has developed. And that development demonstrates the final point to be applied as a matter of principle by trial judges. The judicial mind must be informed of a basis and the judicial mind should not be deceived as to something as fundamental a journalistic privilege being asserted. That is all. In *The People (DPP) v Tallant* [2003] 4 IR 343 the principle has been reached which requires that the basis for holding that the officer did indeed have a reasonable suspicion must be stated and that this must be enough for the judge to conclude that such suspicion is reasonably held. There is nothing more than that required. This is demonstrated by this Court's decision in *The People (DPP) v R and R* [2019] IECA 212 [48] where that standard was all too clearly reiterated:

> There was no systems failure and no evidence to justify a finding that the warrant had been issued in excess of jurisdiction. There was sufficient evidence before the District Judge to enable him to be satisfied of that about which he was required to be satisfied, namely that the informant had formed a suspicion, upon reasonable grounds, that the circumstances

> said to justify the issuing of a warrant existed. He had the informant's sworn testimony that she held the required suspicion, and the grounds upon which she had formed it, namely that she was in receipt of intelligence that she believed to be reliable and, moreover, on the basis of matters observed in the course of her own personally conducted covert surveillance of the subject premises.

38. What is also notable about this information is that it looks forward to the Supreme Court decision in *The People (DPP) v Quirke* [2023] IESC 5 in that it specifies an interest in the digital space by specifying a desire to search within that space. That happened here. Where it did not, as the Court was told, in the case of Martin O'Toole, this was clearly a case where there has been a subsequent legal development and thus no basis for excluding the results of the search.

Discharge of jury

39. On day 19 of the trial an application to the trial judge was made to discharge the jury. Further, it is argued that a reference to Patrick Sweeney as suffering bankruptcy, as offered by him in an interview that was part of the prosecution case, constituted irremediable prejudice. That ground has no validity. The dreadful treatment of the victims in this case, involving threats, stuffing dog faeces in the mouth of one, the imminent risk of immolation by petrol, beating, manhandling, the use of racist language and the exercise of total control over the defenceless made the consequences relevant to the charge. The trial judge took an unnecessarily restrictive view of the evidence and charged the jury thus:

> He [one of the victims] also gave evidence of the formal diagnosis by his psychiatrist in respect of PTSD and that is unlike [victim named], who made reference to a brain injury and ladies and gentlemen, there's no evidence there whatsoever, there's nothing to validate or corroborate the fact of this incident. And so you're going to have to disregard that, all right, because again you have the medical reports from the hospital indicating how he was treated. And I think there was mention of an ambulance man who took a prehistory and there was some injury sustained prior, months prior of something of that nature.

40. This was unnecessary. While psychiatric evidence was not called or evidence of a brain injury, the commonsense reality is that no one knows better than the victim of this kind of brutality what the consequences have been for them.

41. There was a reference in the interview of one accused to problems he had with the banks and how he had been made a bankrupt. This is not prejudicial. The entire country had an economic collapse from 2008 on and from which we still recover in terms of debt. Many people were made bankrupt over the next decade or choose an ordinary place of residence outside Ireland, or asserted as much, to avail of the less burdensome conditions of bankruptcy there. Our bankruptcy code has since been reformed, most pertinently as to the time spent under the control of the Official Assignee. While bankruptcy is difficult, juries consist of right-minded members of the community and no one would make any unkind supposition in consequence.

False imprisonment

42. The point is made on behalf of all of the accused that when the gardaí visited their homes on a search warrant, prior to arresting them formally, they were being falsely imprisoned, since they had no right to leave. Consequently, it is asserted that all periods of detention had to be construed as commencing on the first entry for the purpose of search. That submission is without authority. False imprisonment at common law was abolished by s 28 of the Non-Fatal Offences Against the

Person Act 1997. Prior to that, s 11 of the Criminal Law Act 1976 effectively substituted the common law by making it an offence to kidnap or falsely imprison someone. Kidnapping was the subject of the decision in *AG v Edge* [1943] IR 115, 78 ILTR 125; but here it is not asserted that anyone was taken from their homes, rather confined to quarters. Section 15 of the Non-Fatal Offences Against the Person Act 1997 provides that a "person shall be guilty of false imprisonment who internally or recklessly – (a) takes or detains, or (b) causes to be taken or detained, or (c) otherwise restricts the personal liberty of, another without that other's consent". So, what is detention? Hawkins in *A Treatise of Pleas of the Crown; or, a system of the principal matters relating to that subject, digested under proper heads* (1716, volume 1, chapter 9) describes false imprisonment in these terms: "Every restraint of a man's liberty under the custody of another, either in a goal, house stocks, or in the street, whenever it is done without lawful authority." That definition requires the keeping of a person in a place, colourfully described by Hawkins, not simply that a person cannot go into a particular room in their house. A person is under false imprisonment if they cannot leave, if that is their wish; *Dullaghan v Hillon* [1957] Ir Jur Rep 10. Similarly, keeping someone under surveillance, is not imprisoning them; *Kane v Governor of Mountjoy Prison* [1988] IR 757. This is most pertinent. A person whose home is being searched cannot go where they please, for fear of interference, but that does not at all mean that someone is under imprisonment. What matter is that a person cannot leave.

43. Section 10 of the 1997 Act enables not just search of premises but of all persons found on a premises and such vehicles as are on a premises. Under authority of a search warrant, a person in a premises to be searched may themselves be searched and anything found in the possession of any person present may be seized. Obstruction of a search is an offence. Where a person cooperates, no need arises to exercise power or to decide to arrest anyone. There is no evidence here that there was not such cooperation. Where a person moves around a premises while it is being searched, for instance touching objects or accessing digital devices, the search is undermined. It cannot be undermined because it is granted by law and under judicial authority. The leading authority is *The People (DPP) v Twesigye* [2015] IECA 99, judgment of Edwards J. There, the argument made was that because there was questioning in the premises searched for drugs, but no arrest, that keeping someone away from places to be searched amounted to the beginning of imprisonment; thus making time run for later questioning on arrest. Edwards J rejected that argument:

> 64. It is necessary to comment that it is entirely reasonable for members of the gardaí who are about to conduct a search of a dwelling house to want the householder to be present and available to them, while at the same time to remain in one location within that premises or in the vicinity so as not to impede the search operation. They may wish to ask questions of him in connection with facilitating the ongoing search operation, or to explain items found in the search, or to provide assistance such as locating the key to a locked door, or some locked cupboard door, in the premises. There is nothing wrong with requesting a householder to remain while a search is being conducted. To do so will not, per se, amount to the detention of that person. A householder is not obliged in those circumstances to remain but as it is his home that is being searched it could hardly be regarded as remarkable if, as the evidence suggests occurred in the present case, such a request was readily complied with. It must also be appreciated that there is no obligation on a garda who possibly has grounds to perform an arrest, or who has in mind to perform an arrest, to proceed immediately to effect the arrest. Whether or not a person in whom the gardaí are interested is to be regarded as having been held in de facto detention during a search will

> depend on the circumstances of the particular case. In the present case the trial judge considered that the appellant was not in detention while the search was proceeding and this Court does not consider that the validity of that assessment has been impugned.

44. See also *The People (DPP) v O'Brien* [2017] IECA 193. The Court also has regard to the transcript. If it is to be alleged that someone is in detention, rather than restricted as to where they might go in their home during a search, that point should be put. There was no imprisonment prior to the formal arrest of each accused and their respective periods of detention began at that point. For some, this is of importance because of admissions made towards the end of custody, but there was no unlawful deprivation of liberty since those arrests were authorised by law and commenced thereby the deprivation of liberty.

Continuation

45. The sixth interview of the accused Paul Beirne involved some admissions. A case based on a confession by the accused is not a circumstantial evidence case. As already pointed out, nor is a case where accused are engaged in threatening with deadly weapons. Those interviews were admitted by the trial judge. The accused was given legal advice and his solicitor was present. Section 19A of the Criminal Justice Act, 1984 were explained to this accused in the presence of his Solicitor. Having asked him for an account, the accused volunteered information. It was carefully explained that this was an inference: a chocolate cake is on a table in a room and there is a piece gone and there is a child in that room with chocolate all over his face, hence it becomes possible to infer that the child ate some of the cake. That was right and involved the use of ordinary language. This was video recorded. This accused was asked about not mentioning a defence, where a fact called for an explanation. It was up to the accused to make a decision and he had legal advice on hand. He chose to speak and to deny issues as to phone use, saying he was at home during the attack and did not use or transport anyone in his cattle lorry. He then said "I was there". He said he had driven the lorry there and had made phone calls, some of which were as to organising the attacking mob. He was asked his purpose and said: "To take back the house peacefully". He claimed: "It just went out of hand altogether, out of control." He claimed he did not assault anyone but had driven in the door of the house "with a sledge hammer".

46. Here it must be remembered that when the door was burst in, that the sledge hammer, the pickaxe handles, the baseball bats and the revving chainsaw wielded by men shouting obscenities and threats were part of what this accused enabled. That was a clear common purpose.

Focus

39. This Court has no purpose of criticising any of those involved in a trial process that stretched over January 2023 to June 2023 in relation to a series of the most barbaric violations of human rights that spanned less than half an hour. The Court, however, feels the need to urgently address the culture of delay, vacillation, unnecessary applications and of turning the trial of whether sufficient evidence has been produced to prove guilt into what became here a generalised tribunal of enquiry into matters utterly irrelevant to what the Constitution requires a criminal trial to be. The trial judge, notwithstanding the applications made to her on a continual basis, is to be credited with managing to keep this process in sufficient order to enable a conclusion.

40. Patrick Sweeney or of Martin O'Toole were on the video recording. There they were clearly wielding weapons, a blunt instrument and a revved-up chainsaw and that these weapons were used against innocent men doing a job of work in furtherance of a lawful order of the High Court. They were identified as such. The jury also had the entitlement to identify them from the video. This

was not, consequently, a circumstantial evidence case. Hence there was no possible argument as to a rational scenario based on innocence being founded on these facts. In relation to Paul Beirne, who does not appear on the video footage, that kind of argument was properly capable of being made and was advanced.

41. There is a burden of adducing evidence before a jury in a criminal trial whereby a defence of fact or law may be argued. Instead, the time of the trial judge was taken up with applications in the absence of the jury which did not meet the criteria for a trial-within-a-trial. What was the defence? What point is being made? These are necessary questions which a trial judge is equipped to ask. For a very good reason: the task of a trial judge is to keep a trial focused and running on a reasonable timeframe. Here, the legitimate efforts of the trial judge were instead diverted into discussions as to police procedure. There was a series of facts to be set before the jury. What is relevant is admissible and does not become inadmissible because a better procedure of investigation might be imagined. The facts are for the jury.

42. There is no doubt that a trial judge is equipped to set times for cross-examination and to require counsel to focus on comprehensible issues. Much of this trial was taken up with the diversion of the purpose of a criminal trial away from trial by jury and into questions that could have no bearing either on the guilt or innocence of the accused or any potential defence they might seek to argue.

43. This case should have taken five or six days at trial and not spanned over three months. The kind of approach that it exemplifies is insupportable. Repeated generally, through unstructured examinations and applications concerned with elaborate, but incorrect, constructions whereby clear principles are not applied, this kind of approach is undermining criminal litigation.

44. Thus, it has been necessary to clearly state the legal principles that inform this judgment. It is also required that the Court affirm that trial judges in properly controlling criminal litigation and in ensuring that only such time as is reasonable for the examination of a witness or the exploration of an issue are fulfilling their duty to ensuring a trial is in due course of law. A trial is not in due course of law if it consists in an unnecessary exploration of Garda conduct which, as here in relation to both the videocam footage and the validity of a High Court order, can have no basis in law for excluding evidence. Nor is it right for the principles whereby a warrant is adjudged invalid if no reasonable suspicion is demonstrated in applying on oath to be turned into an exploration over months as to the internal workings of a Garda investigation. A trial judge need hear only so much evidence as impacts on a legal issue. Such legal issues need to be correctly identified on behalf of the accused as having a potential impact in law. Judges are obliged to admit evidence which is probative. It is only where a rule of law requires exclusion that juries are to be deprived of their constitutional mandate to assess issues of fact. Issues of fact are not for a trial-within-a-trial but are expressly within the province of a jury. This is illustrated by the principle, explicit in the Constitution, that even though these accused put forward no defence, it remained within the province of the jury under Article 38 to decide to convict or to acquit. That principle informs the entire of the law of evidence.

45. Furthermore, the law of evidence is not a matter of discretion or the application of vague notions of fairness based on what might otherwise be done. The law of evidence is a series of rules that apply equally to prosecution and defence evidence. Prejudice has a particular meaning in law. It is not that evidence may not assist an accused: it is that there can be occasions where the effect of evidence in terms of the negative emotion of pre-judgment that it causes may outweigh its probative value based on its relevance. But, as has been otherwise pointed out, even where it is necessary, as in *The People (AG) v Kirwan* [1943] IR 279, to mention a prior conviction, that can be done where relevance, here skill at butchery learned in prison and the state of a corpse

dismembered with professional competence, renders evidence admissible though of some prejudicial effect. The point being, as with this video, what is relevant is admissible unless it carries the effect of leading a jury into improper judgment. This evidence was highly relevant. The point also being that nothing in this video was redolent in prejudice. Even if it had been it could and should have been edited to ensure that the jury had all relevant material before them in considering their verdict.

46. This is clearly stated as to principle in *The People (DPP) v McHugh* [2024] IECA 176, to which reference should be made. That is the applicable authority.

47. Counsel have their duty to their client and may advance inventive, and at times incorrect, legal principles and seek to explore matters which are not germane to the resolution of issues in a criminal trial. Counsel may also seek to cross-examine beyond the scope of what is appropriate to the issues. That, however, can and should be controlled by the trial judge through appropriate rulings. By these, the focus of a criminal trial is maintained. A judge sitting in court has the sole and exclusive authority to control and supervise the conduct of proceedings in his/her own court within the limits of the conferred jurisdiction; *Clune v DPP* [1991] ILRM 17, [1981] WJSC HC 120, [1981] 3 JIC 1301. This authority also explicitly provided for by statute in relation to solicitors appearing in court; s 65(2) of The Court Officers Act 1926. This provides "when an officer attached to any court is engaged on duties relating to business of that court which is for the time being required by law to be transacted by or before or under or pursuant to the order of a judge or judges of that court he shall observe and obey all directions given to him by such judge or judges". There is no less obligation on counsel. Section 65(1) states that nothing in the legislation "shall prejudice or affect the control of any judge or justice over the conduct of the business of his [or her] court." In *R v Norwich Crown Court ex parte Belsham* [1992] 1 WLR 54 at [66], the court held that "a Crown Court has an inherent power at common law and independent of [its statutory jurisdiction] to control its processes." Irish courts have no lesser jurisdiction under the Constitution in the administration of justice.

48. Furthermore, there is an imperative on a judge to ensure a trial in due course of law. That is a requirement to administer justice. It is not a basis for any minute examination of a prior investigation. A trial under Article 38.1 of the Constitution is required to be a fair trial. While a perfectly balanced, efficient and objective investigation into a crime is generally beneficial to the entire community, a trial is concerned with presenting evidence in accordance with law to a jury who alone have the constitutional responsibility of deciding on fact if the prosecution have proven the guilt of the accused beyond reasonable doubt. A criminal court is not to be drawn into a tribunal-of-enquiry-like examination of how an investigation was conducted. Most importantly, a criminal court is not to be diverted from the issue of fact, which in non-minor offences a jury decides, of whether the accused are guilty or not guilty. That is what a criminal case decides.

49. Courts are cloaked with sufficient authority to require that a criminal trial be focused on that issue. A trial becomes unfair where diversion into irrelevance and into matters which have no basis in admitting or excluding evidence is allowed to occur. This case exemplifies the need to return to proper control of the criminal process.

Order

50. Hence, the order of the Court is to dismiss the appeal and affirm all the convictions. Any issues as to the sentence appropriate to these offences will be considered when listed in due course.