

PEOPLE v ECCLES

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THE COURT OF CRIMINAL APPEAL

Hederman J  
Keane J  
Barron J

(Nos 30/31/32 of 1985)

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

.v.

THOMAS ECCLES  
PATRICK McPHILLIPS  
AND BRIAN McSHANE

JUDGMENT OF THE COURT

delivered on the 10th day of February 1986 by HEDERMAN J.

On the 28th March 1985 the Special Criminal Court after a lengthy trial convicted the three Applicants, Thomas Gerard Noel Eccles, Patrick McPhillips, and Brian McShane, of the capital murder of Garda Francis Hand on the 10th day of August 1984 at Drumree Post Office in the County of Meath. The Applicants were also convicted of robbery contrary to section 23 of the Larceny Act 1916 as inserted by section 5 of the Criminal Law (Jurisdiction) Act 1926.

After conviction all three Applicants applied on specific grounds for certificates for leave to appeal. The Court refused the applications.

The Facts of the Commission of the Crimes

On the morning of 10 August 1984 D/Garda Michael Dowd and D/Garda Francis Hand left the Special Detective Unit at Harcourt Square, Dublin, in a Fiat Mirafiori car before 7 a.m. on escort duty in relation to post office deliveries. D/Garda Dowd was the observer and D/Garda Hand the driver. Both were in plain clothes.

Before leaving the Detective Unit Garda Dowd placed a loaded Uzi sub-machine gun in the front seat beside him. He had a spare magazine on the floor. D/Garda Hand was armed with a gun and a walkie-talkie set to maintain radio communications.

At approximately 7.20 a.m. the post office van driven by Joseph Bell with his helper, Donald Brady, left the G.P.O. Dublin with the Garda escort car following it. The post office van made a delivery at Dunboyne at approximately 7.43 a.m. and at Batterstown some few minutes later. At Batterstown D/Garda Hand accompanied the post office official into the post office with the bag to be delivered. The next point of delivery was at Drumree Post Office, also in County Meath. Mr. Bell stopped the post office van outside the post office. As the escort car was pulling in behind the van D/Garda Dowd looked over his left shoulder. He saw two men in blue boiler suits and black balaclava helmets coming through a garden gate beside the post office. The first man had a sub-machine gun and the second man appeared to be armed. The man with the machine gun ran straight for the Garda car window and the second man took up a position directly behind D/Garda Dowd and started firing into the patrol car while the first man pointed the sub-machine gun at the garda. He then moved to the front of the vehicle, took aim and fired a burst of machine gun fire through the front windscreen of the patrol car at both gardai. At that time the second raider was at the passenger door of the garda vehicle. D/Garda Dowd felt a stinging in the left upper portion of his head and was jerked to his right hand side. He put his hands up to his head and the sub-machine gun fell from his hands. As he was getting back up he saw D/Garda Hand backing out of the car with his gun in his left hand. D/Garda Hand had both feet on the ground. At

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that stage D/Garda Dowd was caught by the left upper arm and pulled to the ground. He was told to get down on the ground and not to move. A gun was put to his head and he was told to stretch out on his belly. Within about 10 seconds D/Garda Dowd heard a car coming at a very high speed. It appeared out of control and skidded to a halt. It was an Opel car and as it was stopping one or two shots were fired, followed by a burst of sub-machine gun fire.

Mr. Brady had taken bags from the front of the van and gone to the post office door. As Mr. Brady was about to step into the post office Mr. Bell heard a scuffling sound behind him. He looked in the rear view mirror and saw two men. One had a machine gun and the other a small gun. They were dressed as described by D/Garda Dowd. There were short bursts of gun fire. When the firing stopped one of the raiders told Mr. Bell to turn off his ignition and get out of the van. Mr. Bell was then told to open the back of the van, which he did. He was then told to stand against the wall and put his hands behind his back. He was then told to get down on the ground on his face. Cars then arrived. One the witness recognised as an Opel car by the insignia. The money was transferred from the van to one of the vehicles. A raider then approached Mr. Bell, the keys were kicked from under him, a gun was put to the back of his neck and he was told "If you move, son, you are fucking dead." Meanwhile D/Garda Dowd saw the legs of the raiders at the back of the van, at least eight raiders. A second car arrived and parked in front of the mail van. One of the men moving the bags appeared to have a pistol similar to the one taken from the witness. The moving of the mail bags took between two to three minutes. As the cars drove away the witness observed one of the cars was beige coloured - a Ford Sierra or Opel - and the second

and third letters of the number plate were ZG.

D/Garda Dowd looked around and saw Mr. Bell lying on the ground. Later he looked under the patrol car and saw D/Garda Hand lying face down, with both hands out by his side. When he ran around to D/Garda Hand he saw a large pool of blood under his head. The raiders had pulled the radio out of the Garda car but D/Garda Dowd summoned assistance on the walkie-talkie set. All the Garda weapons had been taken by the raiders. D/Garda Hand had been shot dead.

Mr. Michael Gilsonan who lived in Drumree Post Office got his mother to ring 999 during the raid. When he went upstairs he saw a big red car up above the mail van. Its registration number was TZN 370. It drove off in the direction of Trim. Mr. James Gorman who lives about 50 yards from the post office heard a number of shots at approximately 7.55 a.m. When he went out he saw the bright coloured car parked behind the post office van. He saw two or three of the raiders. One was in front of the car in a crouched position. After ringing 999 and reporting the raid he went out again to get further information and saw a large, dark-red coloured car pulled up beside the mail van. The opel car and red car drove away towards Trim with the raiders and £202,900 in money.

The Case for the Prosecution

The prosecution contended that this particular robbery was well planned in the manner of a military type operation. Prior to the commission of the crimes, all three applicants were at two meetings planning the commission of the offences. To ensure the success of the operation the perpetrators had stolen a red Mercedes and an Opel car, had armed themselves with a variety of lethal weapons, which, with the cars, had been hidden on Mr. Duffy's property. Further, each person involved in the actual raid had a particular role in the execution of the crime. To co-ordinate the overall

plan, the raiders were in constant communication with each other by radio.

The only evidence implicating the three applicants were certain verbal and written admissions alleged to have been made to members of the Garda Siochana while they were in custody in Navan Garda Station.

The first-named applicant was arrested by Sgt. McGee at his home at 9 Grange Drive, Muirhevenamore, Dundalk, Co. Louth, at 6.20 a.m. on 22 August 1984 under section 30 of the Offences Against the State Act 1939 on suspicion of having committed a scheduled offence under the Act, to wit, unlawful possession of firearms at Drumree Post Office on 10 August 1984. He was brought to the Garda Station in Navan where Station Orderly Garda Joseph Keogh booked him in as a prisoner. At 8.30 a.m. D/Sgt. Joseph Shelly and D/Garda James B. Hanley took the applicant to an interview room where he was cautioned by D/Sgt. Shelly in the following terms: "you are not obliged to say anything, but anything you do say will be taken down in writing and may be used in evidence." The applicant remained in Navan Garda Station and an extension order made by Chief Supt. John T. Moore was read over to him in his cell at 12.10 a.m. on the morning of 23 August 1984 by D/Sgt. Michael A. Finnegan. On the night of the 23 August 1984 the applicant was brought to the Special Criminal Court and charged with the offences for which he was convicted.

The following are the statements alleged by the Prosecution to have been made by the applicant in such circumstances as to render them admissible at the trial.

- (a) A written statement alleged to have been made and signed by him in the presence of D/Sgt. Joseph Shelly and D/Garda James Hanley

between 7.15 p.m. and 9.50 p.m. on the 23 August 1984. The following is the alleged statement:

"On a Friday at the end of July this year it was either the 20th or the 27th I went to Newry to collect a Mercedes motor car. I had been asked the day before by a man to collect it. I was given the registered number which as far as I can remember was WCC. I cannot recall the figures but it had a V registration. I was given directions as to where I would find this car, it was to be parked on a road where the Cupid nightclub is. I found this car parked on the side of the road about 100 yards from the Club. It was a wine Mercedes. The keys were in the ignition as I had been told. I drove this car to Pat Duffy's yard in Dundalk. Pat Duffy told me to take it to Annagassa Village and leave it at O'Neill's pub. I drove it there and parked it behind a wall at O'Neill's pub. A fellow driving my own car, a blue Hillman Hunter, registered number BZY 359, picked me up there and brought me back to Dundalk. On Sunday the 5th August, 1984, I was told by a fellow I do not wish to mention any names, that there was a job on on a Friday and he asked me if I would go on it. I said 'Aye'. He said that it was to be a robbery, he didn't tell me where. This man called to my house on the following Thursday and told me that I was to pick a man up and the two of us were to go down to Druree where a Security van was to be robbed. He said to go down and have a look at it and sus it out. This was around dinner time. I picked up this other man in Dundalk and drove to Drumree in my own car. We picked up another man in Navan and he showed us a route to take, after the robbery on the following morning. We drove a couple of

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hundred yards from the Post Office at Drumree and it was pointed out to us where it was. I was then told to drive back the way I came, I travelled along bye-roads and across a main road into other smaller roads until I was shown a field. I was told that this was the place I was to drop the money off the following morning and the fellow we picked up in Navan said he would meet us there. Before I was shown this route I was taken up another lane two or three miles from the Post Office at Drumree, there were sheds at the end of this lane and we were told that we would stay there that night. When we had been shown all these places we travelled along back roads and the man from Navan got out somewhere, then, the man I picked up in Dundalk and I travelled back to Dundalk. I drove to my own house and got my tea. I left my home again at around 8 p.m. I went to collect the wine Mercedes at another place where I knew it was. I drove it to Duffy's yard, after a while a cream coloured Ascona motor car arrived. I do not know the registration number but it was a Free State one. I was in the caravan with Pat Duffy's wife when it arrived. I wish to say that when I went to collect the Mercedes I drove my own car there I also had the man that was in Drumree with me that evening, and when I collected the Mercedes this man drove my car to Duffy's also. When the Ascona arrived a number of people began to load guns into the Ascona, these were in a bag. There were walkie-talkies in a small bag there too and these were put into the Ascona. When this was done we began to move out, the Ascona went in front of me. I was in the Mercedes on my own. There were two in the lane which I had been shown earlier. There were other men at the sheds when we got there. The bag of guns was taken out of the Ascona.

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There were a few rifles and I think only one machine gun and small guns. One man was given a rifle and he acted as a look out. There were eight or nine men there at this stage. Three of these were called aside and there was a discussion amongst them. After a while one of the fellows came to the rest of us and said that there would be two Guards with the van in the morning and that they would be taken care of. He told us to go about 7.55 a.m. to the Post Office at Drumree. I was told that the money and guns would be put in my car. I was given a walkie talkie and I was told to drive towards the Post Office at 7.55 a.m. and I would get the call on my radio to move into the Post Office. I put on a pair of my own overalls and I got into the car and fell asleep. I was awake in the morning about 7 a.m. Two of the other fellows got into the Mercedes with me and we waited until 7.55 a.m., then I moved out and the Ascona followed me. I drove as far as the Post Office at Drumree, as I was passing it I could see the top of a Post Office van outside the Post Office. The Ascona was behind me. I looked in the drive-way at the Post Office and I saw a masked man with a gun. I think it was a rifle pointed towards the ground. I assumed that he had a man lying on the ground. I continued on for about 100 yards and I turned the Merc. in the gate-way on the left hand side. I travelled back to the Post Office. I then saw the Ascona had driven into the first entry towards the Post Office, I continued to the next entry a few yards further on and drove in. The Post Office van was facing me, the two fellows with me jumped out. They had a rifle and a hand-gun. I turned the Mercedes and had the boot next to the front of the van. I got out and



opened the boot and the other men began to load mail bags into it. I saw a man lying on the ground near the Post Office van and a fellow standing over him pointing a gun at him. I helped to stack the bags in the boot. When all the bags were in, they put the guns into the boot of the Merc. too. I closed the boot and got into the driver's seat. Two other fellows got in with me and we drove away. I drove onto the main road and turned right and one of the men in the car gave me the directions to go the field where I had been the evening before. When I arrived at this field a yellow car was waiting there for us. I cannot say what make it was, everything was a blur at this stage. We loaded the mailbags and the guns into the boot of the yellow car. There was one fellow there with the yellow car. He was the man I had picked up in Navan the evening before. One of the fellows got a plastic container and threw petrol over the Mercedes and threw a match into it and the car took fire. The three of us then got into a blue Mark IV Cortina in which there was a driver and we drove away. I didn't notice the yellow car leave at all. We drove off along bye-roads until we eventually arrived at the new bridge in Drogheda. We had got lost on the back roads. The driver asked us to get out of the car at the new bridge, he said he wouldn't take us any further because there would be check points out. Three of us got out there and we split. I walked into the town and bought a peach in a shop in a street near the big chapel, St. Oliver Plunketts. I ate the peach while I was walking and I went into the chapel and I thanked God that I had got away. I then walked away out the Dundalk road and started to thumb. I got a lift from a woman driving a blue Datsun or Toyota Corolla. She had a girl of about six or seven years

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with her. She said she was going to Dundalk. She drove me to the Dublin bridge. I got out there, and I went to Seamus McGrane's shop at the Laurels so that I would be seen. I asked him if he had any work for me and he said he would give me a few days and to start on the following day. I left him and got a taxi home. It cost me £1.80. I think the taxi driver was a Mrs. Dempsey. She told me that there was after being a robbery and that there was after being a robbery and that there was a Guard shot dead. I knew that this was the robbery I had be on, I felt sick. On the night before the robbery while we were at the sheds we were told that two men had gone to the Post Office and would have things in control when we got there. I took this to mean that the two men who had gone would have the way clear for us and we were told to collect the Guards guns and bring them with us. This statement has been read over to me and it is correct.

Signed: T. Eccles

Witness: Detective Garda James B. Hanley

Witness: Joseph O. Shelly, Detective Sergeant."

(b) Verbal statements alleged to have been made to D/Sgt. Shelly and D/Garda Hanley earlier than the written statement between 1.30 p.m. and 7.15 p.m. on the afternoon of the 23 August 1984 and written down as follows:

"Caution - D/Sergeant Shelly.

1.30 p.m. Dinner. Well looked after. Didn't believe that he told us the truth in his account of movements. Account time. You know I was in McGrane's. Were you ever asked to do robbery by Greene or Duffy. They wouldn't discuss things with me. Somebody has told you the story about it. I wouldn't shoot a

Guard. Tell me the truth what would a fellow be charged with if he only drove the car in that robbery. D/Sergeant Shelly - Up to the D. P. P. Names of fellows from Navan. Seamus Lynch, Joseph Gargan. Description. Somebody has told the story.

I had my mind made up that I would not make statement, go to jail for 40 years rather than have it said in Portlaoise I made statement. Tell the truth. Will tell truth, things to think about.

Returned after solicitor. Caution. Will confess to my part, no names. I will ask you something, laugh at it. Do you know what I did when I knew the Guard was shot. Not hard man you know, you might think I am bullshitting you. I went into a church, said prayer for Detective that morning after robbery. Only for wife and kids would have skipped it.

Notes read over, cautioned. Advised to make any changes or additions. That's how it happened. It's all in the statement I have signed for you. Can I see my wife before I go to Court".

Signed: Refused to sign.

Witnessed: James B. Hanley, D/Garda.

Witness: Joseph O. Shelly, D/Sergeant."

(c) Verbal statement alleged to have been made to D/Garda Mulvey and D/Sgt. Michael Finnegan shortly after 9.50 p.m. on 23 August 1984, including a sketch alleged to have been made by the applicant, written down by D/Garda Mulvey as follows:

"Navan 23/8/84. 9.50 p.m. I/V T. Eccles. Sorry didn't tell you, Cautioned by me, should have told today. M.F. came and cautioned by him. Sketch drawn of D/Ree and initialled. I told the truth to the lads, I went there on the date with two other fellows, one I think had a h/gun one had rifle.

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There was a walkie-talkie in the car. Got a lift to Drogheda in a Cortina from the field where I left the Merc, the bags of money put in Escort car. I didn't go to the Post Office in the dark. It was daylight at the Post Office. These notes have been read over to me and is correct.

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T. Mulvey D/Gda, witness.

Witness Michael Finnegan D/Sergt.

28/8/84."

(d) Verbal statement as follows alleged to have been made by applican to D/Garda Sullivan and D/Garda M. O. Lennon while being transported from Navan to the Special Criminal Court on the evening of 23 August 1984 after caution.

"He told me he was sorry for not telling the truth when I was there with him earlier that day. He told me he was on the job, that he drove the red Mercedes and that he collected it the night before in Duffy's yard at about 9 p.m. He drove it to a house near Drumree and he collected two armed men. He also said he got lost on the way. The day before the robbery a man took him to the post office at Drumree and told him that they were to do the post office van. He drove a dummy run there in his own car, which was a blue Hunter car, to the field where the Mercedes was burned and he also said they took the money from the Mercedes into a yellow car. He also stated there was up to eight or nine men on the robbery."

(e) A verbal statement alleged to have been made by the accused to D/Garda John Maunsell after the accused had been charged in the Special Criminal Court at 11.55 p.m. on the 23 August 1984 written down as follows:

"Look what I've been charged with, I didn't do the shooting.

I only drove the Merc." Cautioned. "I already made a statement what I told the lads is true. I didn't do the shooting".

On the 13th November 1984 at 10.30 a.m. I saw Thomas Eccles of 9 Grange Drive, Muirhavnamore, Dundalk, Co. Louth in a room at the Special Criminal Court, Green St., Dublin. I introduced myself to him and he said he remembered me. I told him that I had noted the conversation that I had with him on the night of the 23rd August 1984 and that I wished to read them over to him. I read over the above notes to him and cautioned him as follows: "You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence". I invited him to make any alterations or additions and he replied "no". I asked him if he wished to sign the above notes and he replied "no".

The second-named applicant was arrested at his home in Dundalk at 6.25 a.m. on the morning of 29 August 1984 by Sgt. McGee of Navan Garda Station under section 30 of the Offences Against the State Act 1939 on suspicion of having committed a scheduled offence under the Act, to wit, unlawful possession of firearms at Drumree Post Office on 10 August 1984. At 7.50 a.m. after being booked in as a prisoner he was placed in a cell at Navan Garda Station. At 8.05 a.m. he was taken to an interview room by D/Garda Hanley and D/Garda Healy where he was cautioned by D/Garda Hanley in the presence of D/Garda Healy. He remained in custody in Navan Garda Station and an extensior order made by Chief Supt. John Moore was read over to him by D/Sgt. Finnegan at 12.38 a.m. on the morning of the 30 August 1984 and at approximately 5 p.m. on the evening of 30 August he was charged with the offences for which he was subsequently convicted.

The following are the statements alleged by the Prosecution to have been made by the applicant in such circumstances as to render them admissible at the trial.

(a) An unwritten statement alleged to have been made by the applicant to D/Inspector Culhane and D/Sgt. O'Carroll after 2 p.m. on the 29 August after a statement alleged to have been made by one Noel McCabe had been read over to him by D/Inspector Culhane at the applicant's request.

The applicant was alleged to have said : "he has incriminated me in his statement. Ye know the part I played in the robbery but I did not shoot the guard." D/Sgt. Carroll made notes of this statement and cautioned the applicant. The garda read the note over to the applicant who replied "that's fair enough" but refused to sign the statement.

(b) An unsigned statement as follows alleged to have been made by the applicant to D/Garda Hanley and D/Garda Healy and to have been written down by D/Garda Hanley between 3.30 p.m. and 4.05 p.m. on the 29 August 1984:-

"all I want to say is that you already know the story of the robbery at Drumree on Friday the 10th August 1984, others have told you. My part in that robbery is just what McCabe has told you. I drove the Ascona from Dundalk to Dunshaughlin on the Thursday night, there were others with me. We stayed near Dunshaughlin that night. I knew that a Post Office van was to be robbed on Friday morning. This was discussed, we knew that there would be armed Guards with this van. Certain people got the job of looking after that part of it, I was not any of these. On Friday morning I travelled to Drumree Post Office in the red Mercedes with others. We were in radio contact with the people at the post office. My job was to load the bags of money into the Mercedes and bring it to a place where we would be met. When I got to the post office, I took mailbags from a post office van and put them into the

red Mercedes. I saw a number of people lying on the ground. The Ascona was there too and another car, it was the Police car. When the bags were in the Mercedes the guns were put in also the radios. I knew there was a Guard shot, there was no shooting while I was there, I did not fire my gun, I travelled in the Mercedes again to the place where we were to be met. There were to be two cars waiting there, one to take the money and guns and the other car was to bring us back to Dundalk. The Mercedes was driven into a field, I left it there and went to the other car which was waiting for us. The driver of this car then drove us along back roads we took a wrong turn somewhere. The map shown to me by Det/Garda Healy is the map that I was using to direct us back to Dundalk. I threw it out the window because I was afraid of being stopped by the Guards. I wish to say that I did not tell you where this map was. I got out of the car before we got to Drógheda and I made my own way home. I got a lift. On Thursday night it was discussed that there might be resistance from the Guards with the Post Office van. We were to get the call when our fellows had things in hand. I now regret being involved in this robbery. This statement has been read over to me and it is correct, I have nothing further to say."

The third-named applicant was arrested at approximately 6.20 a.m. on 29 August 1984 at his home by D/Sgt. Corrigan under section 30 of the Offences Against the State Act 1939 on suspicion of having committed a scheduled offence under the Act, to wit, unlawful possession of firearms at Drumree Post Office on 10 August 1984. At 7 a.m. he was booked in as a prisoner by Garda Cunningham at Navan Garda Station. At 8.10 a.m. he was brought to an interview room by D/Sgt. Lynagh and D/Sgt. Carty where he was cautioned by

D/Sgt. Carty at 12 noon. He was interviewed by D/Garda Tim Mulvey, D/Garda Martin Sullivan, D.Sgt. Lynagh and D.Sgt. Carty after being again cautioned. The applicant was served with an extension order made by Chief Supt. Moore and read over to him by D/Sgt. Finnegan at 12.30 p.m. on 30 August 1984

The following are the statements alleged by the prosecution to have been made by the applicant in such circumstances as to render them admissible at the trial.

(a) A written statement alleged to have been made by the applicant to D/Sgt. Carty and D/Sgt. Lynagh at 10.30 p.m. in the following circumstances.

At 10.30 p.m. D/Sgt. Carty cautioned the applicant and D/Sgt. Lynagh commenced to write the statement. At 11.30 p.m. approximately the statement was completed. After it had been read to the applicant, he replied "It is correct. I am signing nothing on the instructions of my solicitor." The alleged statement is as follows.

"Statement of Brian Paul Martin McShane, D.O.B. 26.2.64.

A labourer of 99 Oaklawn Park, Dundalk, Co. Louth made to D/Sergeant Kevin Carty and Patrick Lynagh at Navan Garda Station on the 29th of August 1984 after having been cautioned as follows by D/Sergt. Carty: 'You are not obliged to say anything unless you wish to do so, but anything you do say will be taken down in writing and may be given in evidence'

I was told to go to Paddy Duffy's on the night before the robbery. There was other fellows there. The guns were brought to Duffys yard and we put them into a car that was going on the job. I was driven in that car to a place near the Post Office. There was a man at this place and he gave the orders. He told us that a Post Office van would be at Drumree Post Office at



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8 o'clock the next morning. He said that there would be Special Branch with the van. He handed out guns to us and gave each of us our orders. He said that there was a couple of boys at the Post Office already staking out the place. The man told us that if the Branch went for their guns that we knew what to do. We stayed at the place for the night. The next morning we left and went where we were told to go. I was in a car near the Post Office. We got a call on the radio. I had to move in. We went to the Post Office and the van and Branch car was there. The other boys were there before us and they had the place held up. We helped to load the bags into the car. Somebody shouted an order and we moved out. That's my part in the job and I'm not saying any more about it. My conscience is clear. I didn't shoot the guard. This statement has been read over to me and it is correct. I am signing nothing on the instructions of my solicitor.

Signed: Refused to sign. B. MCS.

Witness: Kevin Carty D/Sgt.

Witness: P. Lynagh D/Sgt.

29/8/84.

3.05 p.m. 30/8/84 - Cautioned

The Guard was dead before we arrived at the scene.

B. MCS.

Witness: Kevin Carty D/S

Witness: P. Lynagh D/S"

(b) At 3.05 a.m. on the 30 August the applicant said to D/Sgt. Carty in the presence of D/Sgt. Lynagh after caution: "the guard was dead before we arrived at the scene." This latter statement was initialled by the applicant and is incorporated in Exhibit 314.

(c) A statement alleged to have been made by the applicant to D/Garda Mulvey and Garda Sullivan at approximately 10 a.m on the 30 August 1984 after being cautioned by D/Garda Mulvey. The applicant said: "I said it all last night." When asked if he signed notes or a statement the applicant said: "they read the stuff once to me. I can't sign them. I am afraid to sign them. What I told them is true."

(d) In the car on the way to the Court in the presence of D/Garda Kennedy, D/Garda Maunsell and D/Garda Lennon the applicant having been cautioned by D/Garda Kennedy stated "I made a statement back in Navan Garda Station. It is the truth. I had to tell the truth, sure they knew already."

All three applicants challenged the about referred to alleged statements and admissions, gave evidence and called witnesses.

The Court of Trial admitted all the alleged statements and admissions of the first and second-named applicants in a full and reasoned judgment and also admitted the alleged statements and admissions of the third-named applicant in a separate full and reasoned judgment.

The Evidence for the Defence

The Applicants in evidence denied that they made any verbal or written admissions of complicity in the crime and challenged the veracity of the evidence of the prosecution. They also gave evidence denying any involvement in the robbery and shooting and stated they were in their respective homes at the time of the commission of the offences.

Mrs. Eccles, the wife of the first-named applicant, gave evidence that on the morning of the robbery she was sleeping in the same room as her husband, the twins and a little girl. She and the children got up at about 8 a.m. She left the applicant

sleeping in bed. She called him at 8.30 a.m. and he came down and joined the family for breakfast. He left the house about 9.30 a.m. to see a Mr. McGrane about a job and returned about mid-day.

Mrs. McPhillips said she was at home on the morning of the 10 August 1984 and so was her husband, the applicant.

Mr. McDaniels said that on the morning of the 10 August 1984 the second-named applicant, was at his home between 10 a.m. and 10.30 a.m. and paid the milk bill.

Mrs. McShane, the mother of the third-named applicant, swore that on the night of the 9 August 1984 the applicant was in the house until 8.30 to 9 p.m. when he left to go fishing and that he was back in the house about 11.30 p.m. On the morning of 10 August the applicant was in bed until she called him about 10 a.m. He came down, took his breakfast and went into town to get fishing gear.

Counsel then submitted to the Court that all three should be acquitted of each offence. The Court rejected the submissions on behalf of the Defence.

In its judgment the Court said that it was satisfied beyond all reasonable doubt that the evidence of both the first-named applicant and his wife was untrue and rejected same. The Court was further satisfied beyond all reasonable doubt that the statements made by the applicant were true. The Court was satisfied that the admissions of the applicant established beyond all reasonable doubt the following facts:

1. The applicant was a member of the group that carried out the robbery at Drumree Post Office on the morning of 10 August 1984.
2. The applicant and other members of the group were on the night prior to the robbery informed that there would two guards with the van and that they would be taken care of.

3. The applicant was aware of the fact that guns had been distributed to the members of the group and would be used in the course of the robbery.
4. The applicant was further aware that the taking care of the guards would involve, if necessary, the use of such guns against the gardai to kill or cause serious injury to them.
5. It was part of the common agreement or design between the parties, including the applicant, to do all things necessary to execute the robbery and effect their escape and to shoot a member of the Garda Siochana acting in the course of his duty should that be necessary.
6. In pursuance of this common design, D/Garda Hand was murdered in the execution of his duty as a member of the Garda Siochana.
7. The action of the person concerned who shot at and killed D/Garda Hand was not outside the scope of the common design or agreement.

In the case of the second-named applicant the Court was satisfied beyond all reasonable doubt that the evidence of the second-named applicant and his wife was untrue and rejected same. The Court was further satisfied beyond all reasonable doubt that the statements made by the applicant were true. The Court was satisfied that the admissions of the applicant established beyond all reasonable doubt the following facts.

1. The applicant was part of the group which was engaged in the planning and execution of the robbery at Drumree.
2. On the night before, namely, the 9th August 1984, he drove an Ascona car to a rendezvous near Dunshaughlin.
3. He stayed there with others during the night.

4. He knew that a post office van was to be robbed on the following morning.

5. He knew that gardai would be with the van.

6. He knew that certain people "got the job of looking after that part of it."

7. On the morning of the robbery he travelled to Drumree Post Office in a red Mercedes.

8. His job was to load money in the red Mercedes and escape therewith to the agreed rendezvous.

9. At Drumree he loaded the money from the van into the Mercedes.

10. He escaped to the agreed rendezvous, when the money was transferred from the Mercedes.

11. He was armed at the time of the robbery and must have been aware that the others would be armed.

12. It was part of the common design or agreement between the parties, including the applicant, to the robbery to do all things necessary to execute the robbery and to shoot a member of the Garda Siochana acting in the course of his duty should such be necessary.

13. He knew that "looking after the armed guards" would involve the use of guns against the gardai to kill or cause serious injury to them.

14. In pursuance of this common design or agreement, D/Garda Hand was murdered in the execution of his duty as a member of the Garda Siochana.

15. The action of the person who shot at and killed Garda Hand was not outside the scope of the common agreement or design.

In the case of the third-named applicant the Court was satisfied beyond all reasonable doubt that the evidence of both the applicant and his mother was untrue and rejected same.

The Court was further satisfied beyond all reasonable doubt that the statements made by the applicant were true. The Court was further satisfied that the admissions of the applicant established beyond all reasonable doubt the following facts.

1. The applicant was one of the group that carried out the robbery at Drumree Post Office on the morning of the 10 August 1984.
2. On the night before the robbery he and others were informed that there would be "Special Branch" with the van.
3. The leader of the group handed out guns and orders.
4. He and the others were told that if the Branch went for their guns, "they knew what to do."
5. He was informed that the Post Office was already "staked out."
6. It was part of the common design or plan, to which the applicant was a party, to do all things necessary to execute the robbery and to shoot a member of the Garda Siochana in the execution of his duty, should such be necessary.
7. In pursuance of this common design D/Garda Hand was murdered in the execution of his duty as a member of the Garda Siochana.
8. The action of the person who shot at and killed D/Garda Hand was not outside the scope of the common design or agreement.

#### The Grounds of Appeal

In the case of the second and third named applicants, one of the grounds of appeal put forward was that the Court of Trial erred

in law and in fact in holding that a certificate signed by Simon P. O'Leary and an oral statement made to the Court by Charles Moran, Solicitor, on the 30 August 1984, complied with section 47(2) of the Offences Against the State Act 1939 and section 4(1)(a) and section 4(3)(b) of the Prosecution of Offences Act 1974 so as to confer jurisdiction on them to try the applicants.

Section 47(2) of the Offences Against the State Act 1939 as amended provides that:

"Whenever it is intended to charge a person with an offence which is not a scheduled offence and the Director of Public Prosecutions certifies that the ordinary Courts are, in his opinion, inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to the trial of such person on such charge, the foregoing (sub-section (1)) shall apply and have effect as if the offence with which such person is so intended to be charged were a scheduled offence."

Section 47(1) empowers the Director of Public Prosecutions, if he so thinks, proper, to direct that a person whom it is intended to charge with a scheduled offence be brought before a Special Criminal Court and there charged with such offence, whereupon the Special Criminal Court has jurisdiction to try that person on that charge.

Section 4(1)(a) of the Prosecution of Offences Act 1974 provides that:

"A law officer may direct any of his professional officers to perform on his behalf and in accordance with his instructions any particular function of the law officer in relation to a particular case or cases or in all cases in which that

function falls to be performed."

Section 4(3) provides that:

"The fact that a function of a law officer has been performed by him (whether it has been so performed personally or by virtue of subsection (1) of this section) may be established, without further proof, in any proceedings by a statement of that fact made -

- (a) In writing and signed by the law officer,
- (b) Orally to the court concerned by a person appearing on behalf of or prosecuting in the name of the law officer."

Since each of the applicants was charged with a non-scheduled offence, i.e. capital murder, the Court of Trial had no jurisdiction to try either of them unless the Director of Public Prosecutions or a professional officer discharging the function on his behalf issued a certificate in accordance with section 47(2) of the Offences Against the State Act 1939. Such a certificate was produced to the court of trial signed by Simon P. O'Leary who was described therein as a professional officer of the Director of Public Prosecutions. At the hearing before the court of trial, Counsel for the Director of Public Prosecutions stated orally to the court that the relevant function of the Director of Public Prosecutions in relation to the giving of such a certificate had been performed on his behalf of Simon P. O'Leary.

It was submitted on behalf of the second and third named applicants that, since the issuing of a certificate by the Director of Public Prosecutions under section 47(2) of the 1939 Act was an essential precondition to the exercise by that court of any jurisdiction to try either of the applicants, the necessary proof



of the issuing of the certificate should have been given to the court of trial when the applicants were first brought before it. As this had not been done, it was submitted that the court of trial thereafter had no jurisdiction to embark on the trial of either of the applicants.

It is clear that unless the Director of Public Prosecutions has issued a certificate in accordance with section 47(2) of the 1939 Act, the Special Criminal Court has no jurisdiction to try any person on a non-scheduled offence. Section 4(3)(a) of the 1974 Act provides for a method of proof of the fact that this certifying function has been performed on the Director's behalf by one of his professional officers. The submission advanced to the court of trial and again in this Court that this proof must be tendered at the stage when the accused persons are brought before the Court for the first time is, in the opinion of this Court, erroneous. While the issuing of the appropriate certificate by the Director or a professional officer on his behalf is undoubtedly a necessary precondition to the exercise by the Special Criminal Court of its jurisdiction to try any persons on a scheduled or non-scheduled offence, the fact that the certificate has been given may be proved in the manner described by section 4 of the 1974 Act at any time before the close of the prosecution's case. In this respect it is no different from any other proof which may be necessary to establish that a particular court has jurisdiction to try a particular offence. This ground of appeal accordingly fails.

The next ground of appeal was submitted on behalf of all three applicants. While each applicant had incorporated a number of grounds touching on this aspect of the application for leave to appeal, it was agreed that a submission worded as follows would

embrace all the points on behalf of all the applicants:

"Where a person has been arrested and detained pursuant to section 30 of the Offences Against the State Act 1939, and in the course of such detention a determination has been made not to rely upon, and/or waive such powers of interrogation, or of demanding of information as are conferred by the said Act, then the subsequent subjection of the detainee to a protracted interrogation, or to any interrogation, calculated to incriminate him, constitutes such a deliberate and conscious violation of his constitutional rights as to render any statement by such detainee made as a result of and/or in the course of such interrogation inadmissible upon the trial of such person."

The submissions on behalf of all the applicants were made by Counsel appearing for the first-named applicant.

Counsel submitted that the evidence established that on the night of 21 August 1984 there was a conference at Garda Headquarters, Phoenix Park. It was decided at the conference to send D/Gardai Shelly and Hanley to go to Navan Garda Station. This decision was made before the applicant was arrested and at a time when the Gardai had no evidence implicating him in the crime. Counsel further submitted that the evidence also established D/Sergeant Shelly and Hanley did not go to the scene of the crime at Drumree but went on the morning of the 22 August to Navan Garda Station to interview a prisoner (the first-named applicant) who had been arrested under section 30 of the 1939 Act.

Counsel submitted that in so far as the cases of DPP .V. Madden & Ors. 1977 I.R., p. 336, and The People .v. Kelly No. 2 1983 I.R., p.1, held that section 30 of the Offences Against the State Act 1939 or section 52 of that Act or the combined effect of the said two

sections read together authorised interrogation by the Garda Siochana of a person detained in custody under the said section 30 and that members of the Garda Siochana were not confined in relation to a person arrested under the said section 30 after arrest and during detention only to require that detained person to give an account of his movements or information as provided for in the said section 52, the said cases and each of them were wrongly decided.

It was further submitted that the evidence established that on the morning of the 22 August 1984 at the first interview with D/Gardai Skelly and Hanley the applicant was cautioned. Because he was arrested under section 30, Counsel submitted that once the applicant was cautioned before questioning he ceased to be a person in custody under section 30 and was now being interrogated as an ordinary prisoner under common law.

It was submitted that once the applicant was arrested under section 30 of the Act he could only be questioned under section 52 of the Act. Once a caution was administered the custodians of the prisoner had abdicated their powers under section 52.

It was also submitted that, from the time of the caution being given, when the applicant refused to make a statement he should have been brought before a court or released and as at that time there was no adequate evidence to warrant a charge he should have been released.

Counsel further submitted that the applicant was arrested for the purpose of being interrogated and that such a motive for arresting a person under section 30 of the 1939 Act should not be tolerated by the courts.

It was further submitted that the detention from the time of the giving of the caution in the circumstances of the applicant's case was unlawful as he was denied the ordinary constitutional

protection and rules applying to common law prisoners. Counsel referred to the People .v. Walsh ((1980) I.R. 294) and D.P.P. .v. Higgins ( judgment deliverd by Supreme Court, 22 November 1985); Maxwell on Statutes, 12th Edition, and Bingham or: Statutory Interpretation (1984), p.609 et seq. to 629. As tne other applicants were immediately cautioned before being interrogated in Navan Garda Station, Counsel on their behalf adopted the submissions made on behalf of the first-named applicant. Counsel for the prosecutor in reply relied on the judgment in The People .v. Madden & Ors. ((1977) I.R. 336) and, in particular, pp 336 to 353 and also the judgment of the Court of Criminal Appeal and the Supreme Court in D.P.P. .v. Kelly 1983 I.R., pp 1 et seq. Counsel referred to The People .v. Pringle, McCann and O'Shea, (Frewen's Judgment of the Court of Criminal Appeal, p. 57) and submitted that in the instant cases the Judges' Rules were at all times complied with. (The Judges' Rules are set out in The People .v. Cummins ((1972) I.R. at p. 317). It was further submitted that the giving of a caution to a person in custody cannot change the nature of the custody. It was also contended that fair procedures were adopted in this case in respect of the custody and questions of all the applicants. A caution can never be an abandonment of either the powers of arrest under section 30 of the Act or of a subsequent right to invoke the powers under section 30 of the Act. Finally, Counsel for the prosecution submitted that under section 30(1) of the 1939 Act

"a member of the Garda Siochana may without warrant.....  
 ..... arrest.....a person ..... whom he suspect of  
 being in possession of information relating to the commission  
 or intended commission of any such offence as aforesaid."

Section 30 of the Offences Against the State Act 1939 is always in force while the Act remains on the Statute Book. However, section 30 of the Act only applies to scheduled offences when and only for as long as Part V of the Act is brought into force and remains in force in accordance with the provisions of Part V of the Act.

Section 52 is contained in Part V of the Act and therefore the power to examine detained persons by virtue of the provisions of that section is operative only when Part V is in force.

The powers given to arrest and interrogate persons under section 30 of the Act are always in force in respect of offences under the Act itself as distinct from scheduled offences. These powers of arrest and interrogation which are always in force are subject to the Judges' Rules and the invoking of section 52 in the appropriate circumstances simply adds a statutory power to require the giving of the prescribed information and in no way limits the powers of interrogation already existing. The operation of Part V of the Act extends the pre-existing powers under section 30 of the Act to scheduled offences.

Therefore the Court is satisfied that the Applicants' submissions on this point are not well founded and the Court follows the reasoning of the Supreme Court in D.P.P. v. Kelly 1983 I.R. 1

Counsel on behalf of the second and third-named applicants contested the validity of the extension order under section 30(3) of the Act. Counsel for the second-named applicant contended (a) that the Court of Trial erred in law in holding that Chief Supt. John J. Moore had given a valid direction to Sgt. Finnegan for the the continued detention of the applicant after 6.25 a.m on the 30 August 1984

(b) that the Chief Superintendent should not have been allowed to claim privilege against the disclosure of the source of the information on which he decided to order the further detention of the applicant.

Counsel on behalf of the third-named applicant submitted that the Court was perverse in holding that a lawful direction for the further detention of the applicant had been given at 9 p.m. by Chief Supt. Moore.

Counsel for the second-named applicant submitted that the evidence established that the direction for an extension of the twenty-four hour period given by Chief Supt. Moore to Sgt. Finnegan was Exhibit No 298. It was contended that on the evidence the filling up of the contents of the document and its subsequent signature by the Chief Superintendent was irreconcilable with the uncontroverted evidence of Mr. Terry Carlin, a typographical expert, that three different typewriters had been employed to make various insertions in the standard form of order which could not therefore have come into existence in the manner sworn to by Chief Supt. Moore. Because Mr. Carlin's evidence was not challenged, at least a doubt must have existed and the applicant should have been given the benefit of that doubt. It was further contended that before giving a direction to extend the twenty-four hour period of detention the officer giving such a direction must at the appropriate time have a bona fide belief that the direction to detain for a further period is necessary in all the circumstances of the case. It was contended that when challenged as to the source from which he got the information on which he decided to make the extension order the Chief Superintendent refused to say whether it was from sources within or outside the Garda force. Counsel contended that if the source of the information was from within the Garda force, he might have been asked what facts were so communicated to him.

Counsel for the third-named applicant adopted the same arguments and further submitted that the making of the extension order was premature, being made over 6½ hours before the termination of the original twenty-four hour period of detention at 6.25 a.m. on 30 August 1984.

In relation to Exhibit No. 298 and Exhibit No. 300, (the relevant extension orders) Chief Supt. John Moore denied that he signed the documents in blank or that only portions were typed in on each of them.

Sgt. Finnegan also gave evidence as to the orders. He said that he read over to the third-named applicant at 12.30 a.m. on 30 August 1984 at Navan Garda Station the extension order directing his extension for a further period of twenty-four hours commencing at 6.25 a.m. on 30 August 1984 and expiring at 6.25 a.m. on 31 August 1984. It was signed by Chief Supt. Moore and was given to him by the Chief Superintendent at 9 p.m. on 29 August 1984.

He further gave evidence that at 12.28 a.m. on 30 August 1984 at Navan Garda Station he read over an extension order to the second-named applicant, given by Chief Supt. Moore, directing his detention in custody for a further period from 6.25 a.m. on 30 August and expiring at 6.25 a.m. on 31 August 1984. On cross-examination he said he received the order from Chief Supt. Moore at Navan Garda Station at 9.p.m. on 29 August.

Mr. Carlin gave evidence as a typographical expert that three different typewriters were used in the typing on both Exhibits 298 and 300 and Counsel for the second-named applicant contended that this evidence not being challenged should have been accepted by the Court of Trial, in which event the evidence of Chief Supt. Moore could not have been acceptable beyond all reasonable doubt.

It was further contended for the applicants that the Court of Trial erred in allowing Chief Supt. Moore to claim privilege in respect of the information he alleged satisfied him that there was a suspicion against the second-named applicant warranting the issuing of an extension order. Counsel submitted that on the authority of Murphy .v. Dublin Corporation (1972) I.R. 215 a member of the Gardai could not plead privilege when questioned about information he might have received from other members of the force.

Lastly, it was submitted that an extension order could not be issued prematurely. In the case of the second-named applicant the extension order was read over to him while there was still six hours unexpired of the original period of detention under section 30. Chief Supt. Moore, when cross-examined by Counsel for the second-named applicant, agreed that he gave the order for the further detention of the second-named applicant and pointed out that it did not need to be in writing. He said he gave the order because he believed that the applicant had committed a scheduled offence. Later he stated that he had quite a lot of information of a confidential nature that the applicant was involved in this crime.

The Chief Superintendent also said he was satisfied in his own mind that it was necessary to hold the applicant for a further period of twenty-four hours. He had formed the opinion earlier in the day but gave the direction at 9 p.m. He said that he based this opinion on confidential information of a sensitive nature. When asked whether somebody other than a guard gave him information which suggested that he should detain the applicant for longer than twenty-four hours the Chief Superintendent replied:-

"It was confidential, my lords, confidential information.

I don't think it would be fair to distinguish between persons who gave me confidential information."



He was then asked: "does it mean someone other than a policeman?", and he replied:- "If I answer that, I am distinguishing the person." He also said that he believed he could claim privilege in respect of his source of information if it was from a policeman and confidential. The witness refused to differentiate between a policeman and somebody else.

He was then asked by the presiding Judge: "Are you claiming privilege?", and replied:

"I am claiming privilege, my lords, yes. It would be dangerous to differentiate in cases such as this between one person and another and I am claiming privilege."

The Court held that the answer to Counsel's question was privileged.

Earlier, Chief Supt. Moore had been cross-examined by Counsel for the third-named applicant. In reply to Counsel's questions, he said that he was in possession of confidential information that a scheduled offence under the Offences Against the State Act 1939, had been committed. He said that he obtained this confidential information from a source other than a police officer. He stated that he obtained this information that evening in Trim. He agreed that he issued the detention order so that the applicant could be further questioned and went on to say

"Well, he was being interrogated in relation to this scheduled offence and if he had made an admission, naturally, of course, it would be used in evidence against him. If he did make a voluntary confession it would be used in evidence against him."  
Section 30 of the Act is as follows:-

"Whenever a person is arrested under this section, he may be removed to and detained in custody in a Garda Siochana Station,

a prison or some other convenient place for a period of twenty-four hours from the time of his arrest and may, if an official of the Garda Siochana not below the rank of Chief Superintendent so directs, be detained for a further period of twenty-four hours."

The Court is satisfied that on the evidence before it the Court of Trial was entitled to accept beyond reasonable doubt the evidence of Chief Supt. Moore as to the manner and circumstances in which he decided to extend the period of detention and signed the forms in the case of both applicants and to conclude beyond reasonable doubt that at the time of extending the period of detention he suspected both applicants of being involved in the commission of the scheduled offence for which they were originally arrested.

The Court is also satisfied that in the circumstances of this case the Court of Trial was entitled to hold that Chief Supt. Moore was entitled to claim privilege in respect of both the source, and the nature of the source, of the sensitive, confidential information he received in respect of the applicant. Normally, a member of the Garda Siochana cannot claim privilege in respect of information received from a fellow member of the force simply by virtue of its being such a communication. The circumstances in this case were, however, exceptional. As already indicated, when replying to Counsel for the second-named applicant, the witness had no hesitation in telling the Court that the information he received of a confidential nature which caused him to extend the period of detention did come from a source other than a garda officer. In the case of the second-named applicant, however, he claimed privilege on the ground that

"in a case such as this it would be dangerous to identify

whether the source was civilian or police"

This he was clearly entitled to do.

Finally, the Court is satisfied that on a correct interpretation of section 30(3) of the Offences Against the State Act 1939 any officer not below the rank of Chief Superintendent (or a Superintendent if authorised by section 3 of the Act) may direct that a person arrested under section 30 of the Act may be detained for a further period of twenty-four hours from the expiration of the first period of twenty-four hours provided that when he does so the detainee is bona fide suspected by him of being involved in the offence for which he was originally arrested. This direction may be given at any time during the initial twenty-four hours and must be given before the expiration thereof. For these reasons, these grounds of appeal also fail.

In the case of the first-named applicant, grounds 3, 4 and 5 of the Notice of Appeal were that:

1. The procedures adopted by the Gardai while the applicant was in custody were unfair and unreasonable, entailed threats both physical and psychological, were unduly protracted and oppressive, and were calculated so to break down the mental resistance of the applicant as to render involuntary and inadmissible the alleged oral and written statements.
2. By reason of the deliberate and conscious disregard of the applicant's constitutional rights by reason inter alia of the matters referred to in paragraph 1 above, the applicant was in unlawful custody at the time of the alleged making of the said alleged oral and written statements and each of them so as to render them inadmissible in evidence.

3. The Court of Trial in making its findings adverse to the applicant failed to have any, or any sufficient, regard to the principle of the presumption of innocence and/or the principle of reasonable doubt and in each such finding accepted unquestioningly the evidence of the prosecution and rejected the evidence tendered by the Defence in consistent disregard of the said principles.

4. In rejecting the evidence given by and on behalf of the applicant the Court of Trial took into account evidence irrelevant to his trial, namely, the evidence of Daniel McDonald.

In the case of the second-named applicant the first, fourth, fifth and sixth grounds of appeal were as follows:

1. The Court of Trial failed to pay any regard or attend to the evidence given by and on behalf of the applicant and found the evidence of Daniel McDonald as being given in relation to the first-named applicant instead of the second-named applicant, as was the case, and in so far as it purported to alter, on the 29 March 1985, the terms of the judgment delivered on the 28 March 1985, was not lawfully entitled to do so and was functus officio.

2. The Court of Trial was wrong in law in preferring on the issue as to whether the applicant made the alleged verbal statements the evidence of Garda witnesses who were shown to be evasive and untruthful to the otherwise uncontradicted evidence of the applicant.

3. Even if the Court of Trial was entitled to act on the Garda evidence it was wrong in law in admitting any of the alleged verbal admissions on the grounds that:

(1) All of the said admissions were obtained as a result of conscious and deliberate violations of the applicant's constitutional right to liberty and bodily integrity and access to and by his Solicitor.

(2) None of the said admissions was made voluntarily and there was no evidence on which the Court of Trial could have held that they were although the same were not induced by violence, threats and inducements and as a result of excessively prolonged and oppressive questioning without any or any adequate opportunity for rest or refreshment or that the procedures employed throughout his interrogation while under arrest were not unfair and unconstitutional.

(3) Having accepted the evidence of Mr. Frank McDonnell that he believed he had telephoned Navan Garda Station in the early afternoon on the 30 August 1984, and having found that there was doubt as to which Garda Station he telephoned, the Court of Trial failed to resolve the doubt in favour of the applicant.

In the case of the third-named applicant, the third, fourth, fifth, sixth, seventh, ninth, tenth and eleventh grounds of appeal were as follows:

1. The procedures adopted by the Gardai on the 29 and 30 August 1984 were unfair and unreasonable, entailed threats both physical and psychological, were unduly protracted and oppressive, and were calculated so to break down the mental resistance of the applicant as to render involuntary and inadmissible the said alleged oral and written statements.
2. By reason of the deliberate and conscious disregard of the applicant's constitutional rights by reason, inter alia, of the matters set out in the preceding paragraph the applicant was in unlawful custody at the times of the alleged making of the alleged oral and written statements and each of them so as to render them inadmissible in evidence.

3. The Court of Trial in making its findings adverse to the applicant failed to have any, or any sufficient regard, to the principle of the presumption of innocence and/or the principle of reasonable doubt, and in each such finding accepted unquestioningly the evidence of the prosecution and rejected the evidence tendered by the Defence in consistent disregard of the said principles.

4. The statements alleged to have been made by the applicant should not have been admitted in evidence for the reasons advanced in the course of the trial of the issue as to their admissibility.

5. The findings of fact made by the Court of Trial in relation to the issue as to admissibility of the statements allegedly made by the accused were contrary to the evidence and to the weight of the evidence and were contrary to the observations expressed by the Court to Counsel for the prosecution after it had called upon him to reply to the submissions made by Counsel for the applicant.

6. The Court of Trial should have granted the application for a direction made at the close of the prosecution case.

7. The Court of Trial in rejecting the evidence of the applicant and his mother failed to have regard to the fact that the evidence was not seriously challenged nor was the entirety or any portion of the prosecution case put to the applicant in his evidence and in the circumstances the Court should have entertained a reasonable doubt and thereby acquitted the accused.

8. The Court of Trial failed to pay any or any sufficient attention to the evidence adduced on behalf of the accused.

While some of the grounds of appeal set out above are relevant only to the cases of individual applicants, the principles of law which this Court is obliged to apply in respect of each of them

are the same in relation to all the grounds and they may therefore be conveniently considered together.

In the case of the first-named applicant, the evidence established that he was arrested by Sergt. McGee on the 22 August 1984 at 6.20 a.m. at his home and brought to Navan Garda Station where he arrived at 7.15 a.m. He was then given into the charge of the station orderly, Garda Keogh, and put by him in a cell. At 8.30 a.m. on the same morning, Det. Serg. Joseph Shelly and Det. Garda James Hanley, who were both members of the Investigation Section of the Garda Technical Bureau, Phoenix Park, Dublin, arrived at 8.30 a.m. and, having introduced themselves, began to interview the applicant. Det. Serg. Shelly said that the applicant was then cautioned and asked to account for his movements between 6.00 a.m. on the morning of the 10 August 1984 and 12 noon on the same day. He said that the applicant gave an account of his movements and that Garda Hanley then put it to him that he (the applicant) could help them with their enquiries into the armed robbery and the murder of Det. Garda Hand. He replied that he was not there and that he knew nothing about it. The witness then asked him if he had any knowledge of a red Mercedes motor car (registration number WCC 267B) and the applicant denied knowing anything about the car. The witness then asked him about Paddy Duffy from Drumeskin and he told him that he knew Duffy. At approximately 10.30 a.m. he was served a breakfast of bacon, egg and sausage, tea, bread and butter, which he was allowed to eat without interruption. Det. Serg. Shelly said that he and Det. Garda Hanley did not speak to the applicant while he was eating. They then had a further general conversation with him and at about 11.35 he was taken to another room to be fingerprinted. At that stage,

Det. Garda Kennedy started to interview the applicant and the witness and Det. Garda Hanley left.

They next saw him at 2.45 p.m. in the same interview room. Gardai Maunsell and Kennedy were with him at the time and left as soon as the witness and Det. Garda Hanley went in. Det. Garda Hanley cautioned him again and he and the witness put it to the applicant that he had not given a true account of his movements. The applicant denied this and the witness and Det. Garda Hanley then questioned him further about his movements, and in particular about his statement that he had collected the dole on Thursday, which they said was a peculiar day on which to collect it. He then told them about his financial problems and the witness and Det. Garda Hanley discussed his friends with him, and in particular friends from Northern Ireland whom the applicant said he thought were Republicans. The witness and Garda Hanley asked him if he was involved in politics and the applicant replied that he had no interest in politics. At around 3.50 p.m. he was served with fish and chips, tea and bread and butter, and he ate that meal. The witness and Garda Hanley questioned him further about his possible involvement in the armed robbery at Drumree after this meal and the applicant said he did not want to say more about it. Around 4.40, Det. Garda Maguire from the photographic section came into the room and photographed the accused. Det. Garda Hanley left at that time.

Det. Garda Hanley returned when Det. Garda Maguire left at approximately 4.45 p.m. and at that stage the witness and Det. Garda Hanley resumed their interview with the applicant. They again suggested to him that he was not telling the truth and the applicant replied that he did not want to say any more about it. Det. Serg. Shelly said that he and Det. Garda Hanley



spoke generally to him and that the applicant spoke quite openly to them. He said that the applicant remained silent for periods. At around 5.30 p.m. he and Det. Garda Hanley were informed that a doctor had called to the station to examine the applicant and he was taken to a room to be examined. He said that at approximately 5.45 p.m., the applicant was allowed a visit to his wife who had called to the station, and that they had a private meeting which lasted approximately 15 minutes. At 6.00 p.m. they again went back to the interview room and the applicant told them that he was being treated "O.K." and that he was glad he was able to see his wife. He also said to them that they had Duffy and Greene there and asked Garda Hanley what gear was found in Duffy's place that morning. Det. Garda Hanley told him there were a number of guns and forged money found on the premises. They asked the applicant if he knew anything about this as he was always round Duffy's place and he denied knowing anything about it. The interview finished at around 6.10 p.m. and Det. Gardai Kennedy and Maunsell then came into the room and commenced interviewing the applicant.

Det. Serg. Shelly said that at 9.00 p.m. that night he and Det. Garda Hanley resumed interviewing the applicant. At the outset, the witness cautioned him in the usual manner and they again proceeded to ask him about the events of the 9 and 10 August and in particular about the use that might have been made of his car on those days. The witness said that he put it to the applicant that they believed his car was observed in the Kentstown area of Navan on the evening of Thursday night and, that he remained silent for some time and then said "the less I say the better." At that stage he requested a drink of water and Det. Garda Hanley left the room and when he came back in gave him a full cup of water. They then asked him what he meant by this

remark and he said "look lads, I'm a married man with a family", and asked them "what would these fellows get if they were caught?". The witness told him that that would be entirely a matter, first, what they were charged with and, secondly, how the Courts would deal with the matter. They then had further discussions with the applicant about another motor car, a bronze Opel Ascona, registration number OZG 66. At approximately 12 midnight, Det. Garda Hanley read over the notes which he had been taking of the interview and asked him if they were correct. The applicant asked him to read over the notes again, which Garda Hanley did. He then said that the notes were "O.K.", but that he wasn't signing them. At approximately 12.10 a.m. on the morning of the 23 August, they handed the applicant over to the station orderly who was on duty and he was placed in the cell.

Det. Serg. Shelly said that he next saw the applicant at 1.30 p.m. on the following day, the witness being accompanied on this occasion by Det. Garda Sullivan and Det. Garda Mulvey. He was having his dinner at that time which he continued eating until approximately 2.15 p.m. The witness then cautioned him in the same terms and the applicant initially told them that he was putting on weight and was being well looked after. They again told him that they did not believe he was telling them the truth about his movements and there was a further discussion about what he had been doing on the morning of the 10 August and as to whether Duffy had been charged yet. They told him that that had not been decided and he then asked them if Duffy had made a statement and they told him that he had. He also asked them about Greene and they told him that they did not know the decision about Greene. There was a further discussion about Greene and he was again

asked to give an account of his movements for the 9 and 10 August and he gave the same account as previously. He was asked about the activities in Duffy's yard and whether he was there the night before the robbery when the guns were being loaded into the cars. He remained silent for some time and then said "someone has told you the story, I wouldn't shoot a Guard." After a further period of silence, he asked the witness "what would a fellow get if he only drove a car on the job?" A solicitor called to see the applicant at 5.15 p.m. and remained with him until about 5.30 p.m. Neither the witness nor Garda Hanley were present while the applicant was seeing his solicitor.

When he and Garda Hanley returned to the interview room, the latter cautioned him again and they then asked him had he now considered his position. The applicant then said that he would tell them the truth but that he wouldn't mention any names. The witness said that he told him at that point that the solicitor had told him that his wife had been arrested. He (the witness) had not been aware of that fact up until then and they informed the applicant of it. He asked them if he could have a visit from his wife and Det. Garda Hanley then left the room to see if this could be done. Det. Garda Hanley returned after some minutes and the witness asked the applicant if he would make a written statement about the part he played in the affair and he said he would. At that stage Det. Supt. Hubert Reynolds, who was also from the Garda Technical Bureau, came into the room and the latter asked the applicant if he wanted to see him. The applicant said to him that if it was possible at a later stage he would like to see his wife and Supt. Reynolds confirmed that she was detained and told him that if it was decided that she was going to be released

he would certainly see to it that he had a visit from her. The witness said that the Superintendent reminded the applicant that this was not an inducement or a promise to him in any way. After that the applicant proceeded to dictate the statement. While it was being taken a meal was supplied to the applicant, of fish and chips and a glass of milk. The meal was brought in at approximately 9 o'clock and he was given 15 or 20 minutes to eat it. The taking of the statement was resumed after the meal had been finished and when it was finished it was read over to the applicant who was invited to make any alterations or additions that he deemed necessary. He was also invited to correct any mistakes which were made in it. He asked Det. Garda Hanley to change the colour of the Mercedes from red to wine. He also initialled it and then signed the statement. The statement was also signed by Det. Garda Hanley and himself and was completed at 9.50 p.m. on the 23 August. Twenty minutes after the taking of the statement, the applicant was again seen by a doctor.

Det. Serg. Shelly's evidence as to the interviewing of the applicant and the taking of the statement was in general corroborated by Det. Garda Hanley.

Det. Garda Maunsell said that he and Det. Garda Kennedy began interviewing the applicant at about 11.50 a.m. on the 22 August. They had a discussion with him about his ownership of a car and his ability to pay for it, which was interrupted by the arrival of the applicant's solicitor from Dundalk. The applicant had an interview with his solicitor lasting about eight minutes and the interviewing of the applicant was then resumed by the witness and Det. Garda Kennedy, the witness first being cautioned again. There were further discussions about the applicant's motor car and the access

of other people to it, followed by a general conversation about the applicant's family. The interview came to an end at 2.15 p.m., when Det. Serg. Shelly and Det. Garda Hanley re-entered the room. They saw him again later that day at 6.10 p.m. when they questioned him further about his movements. This interview came to an end at 9.00 p.m., the applicant having been served tea at 8.30 p.m. He saw the applicant no more that day, but at 8.10 a.m. on the following morning, he brought him from the cell to the interview room accompanied by Det. Garda Kennedy who cautioned him again in the same terms. He was asked further about Duffy's yard and the car and the interview ended at approximately 10.00 a.m. Det. Garda Maunsell's account of these interviews was corroborated by Det. Garda Kennedy.

Det. Garda Sullivan said that he saw the applicant, accompanied by Det. Garda Mulvey, at 10.00 a.m. on the 23 August. Det. Garda Mulvey told the applicant that they were investigating the armed robbery at Drumree and that they believed that the applicant could help them with their enquiries. He was cautioned in the usual terms and asked to tell the truth about the matter. He denied knowing anything about the robbery. At 10.15 a.m. he was served with a breakfast, consisting of bacon and egg, tea, bread and butter. He ate the meal provided and the witness and Det. Garda Mulvey did not ask him any questions while he was having them. He asked to be brought to the wash-room after his breakfast and this was done. They again put it to him that he should tell them the truth about his involvement in the robbery and the applicant denied any knowledge of it. He had a visit at about 11.10 a.m. from his solicitor, Mr. Rogers, and was left alone with the latter until 11.30 a.m. He was further interviewed about his

involvement in the robbery at Drumree at 11.30 and the applicant again denied any knowledge of it. He was given a change of clothing at approximately 12.20 p.m. after which they had a general conversation with him. At 1.30 p.m. he was served his dinner and Det. Sergt. Shelly and Det. Garda Hanley then came into the room. Det. Garda Sullivan's evidence in relation to this was in general corroborated by Det. Garda Jim Mulvey.

The applicant then gave evidence. He said that he was never cautioned at any stage during his interview with Det. Sergt. Shelly and Det. Garda Hanley. He said that he was treated very badly by both Gardai, who used abusive and obscene language to him. He said that Det. Garda Hanley grabbed him by the throat and called him a liar. He said that a request by him for a solicitor was rejected in an obscene and abusive manner and that both Gardai kept shouting at him and banging the table. He said that the only breakfast he had was a piece of bread and a cup of tea. He said that the two detectives who replaced Det. Sergt. Shelly and Det. Garda Hanley were polite but kept insisting that the applicant should give them an account of his movements and that he kept insisting that he should see a solicitor. He said that they told him they could not get him any cigarettes. They then had a further conversation about his possible involvement in the robbery and murder.

When Det. Sergt. Shelly and Det. Garda Hanley returned, the atmosphere changed completely and he was again subjected to verbal abuse by them and was told that he would be going to Portlaoise. He said that he was seen by a person whom he did not know, in the afternoon, who described himself as a solicitor. He said that he (the applicant) was suspicious of him and thought he might be a detective and, accordingly, made no complaints of ill-treatment

to him. He asked if he could be seen by a doctor and the solicitor said he would look after that. The interviewing then resumed and he said that it was conducted in the same aggressive manner as before. He said that he only had one cigarette, although he was a heavy smoker, during the time that he was detained in the Garda Station. When he attempted to re-light that cigarette, he was told in a rude fashion by Det. Sergt. Shelly and Det. Garda Hanley to put it out. During the course of the first day, Det. Garda Hanley also spat in his face several times. He also told him to stand up against a wall where he kept digging him in the ribs, pulling him by the hair, spitting into his face and calling him a murdering bastard. He said that he saw his wife during that night and was given an ample opportunity to talk to her. She asked him if he was alright and he said that he was and that she was not to worry.

He was put in the cell that night, where there was a horrible smell and where the bed clothes were dirty. He slept for only 2½ hours that night and felt tired and hungry the next morning when the interviewing resumed. He had seen his solicitor twice the previous day. The questioning by Det. Gardai Maunsell and Kennedy on the second morning was polite at the outset, but their manner changed at a later stage and they began to abuse him verbally. He said that Det. Garda Kennedy pulled out a hand gun and pointed it at him and said he would blow his f----- head off and that he (the witness) had murdered Frank Hand and that he (Garda Kennedy) was at his wedding six weeks ago. He said that this scared the life out of him. He said that during the course of the interviewing on the 23rd, Det. Garda Hanley kicked him on the behind and on his legs. He made no complaints about these assaults to any of the three doctors who visited him while he was detained in the Garda Station. He said that while he was provided with meals during the

day, he didn't eat them as they were mainly fish and chips and they were "rotten". He said that during the course of the interviewing, Det. Garda Hanley pulled him by the hair, made him get out of a chair, put him up against the wall and kept forcing him down onto the ground until he was on both knees. He kept spitting into his face while doing this and calling him an f----- murdering bastard who was going to Portlaoise. He kept insisting that he (the witness) had killed Garda Hand and had committed the robbery. He said that Det. Sergt. Shelly and Det. Garda Hanley continued to question him and that at one stage they went "pure mad". He said that just before he saw his solicitor at 5.15 on that day, the Gardai kept telling him that "a whole pile" had been found in his house and that they were going to charge his wife with having explosive substances in her possession. He said that they said she would be sent to Mountjoy jail where she would be with the prostitutes and drug addicts, that their children would be taken off them and put into a home and that, if he did not agree to sign the statement, he would be in Portlaoise as well and the whole family would be destroyed. He said that Det. Garda Hanley wrote out a statement and told him to sign it and that when he (the witness) refused to sign it, Garda Hanley grabbed him by the hair, put a pen into his hand and tried to make him sign it. He said that he thought they were bluffing when they told him his wife had been arrested. He said that he told his solicitor that he was being ill-treated and that the solicitor told him his wife had been arrested. He said he was "shattered" by this information. When the interviewing with Sergt. Shelly and Garda Hanley resumed, he told them that his solicitor had informed him that his wife had been arrested and that they told him in abusive language that when he went home neither his wife nor his children would be there. He said that he told Garda Hanley that he would do anything as long



as his wife was allowed go home and that Garda Hanley said "right, sign this statement." He said that he did not dictate any part of the statement and that he simply signed it where Garda Hanley indicated.

Mr. Rogers, the applicant's solicitor, gave evidence of having had three interviews with him in Navan Garda Station while he was being detained there. He said that the applicant had complained of being ill-treated by the Gardai and that at the third interview, he seemed shocked when the witness told him that his wife had been detained.

In the case of the second-named applicant the evidence established that he was brought to Navan Garda Station at 7.50 a.m. on the 29 August 1984. Det. Garda Hanely gave evidence that he began to interview the applicant at approximately 8.05 a.m. on that morning in an interview room in Navan Garda Station. He was accompanied by Det. Garda Healy. They told him that they were investigating the armed robbery at Drumree and cautioned him in the usual terms. He said that the applicant replied that he knew nothing about it and that Garda Healy told him that they had information that he was involved in the robbery and to tell the truth. He said that the applicant continued to deny having had anything to do with it and he was then asked for an account of his movements on the 10 August 1984. After some further discussion about his movements on that day, Dr. Kiernan arrived at 9.45 a.m. to examine the applicant and the witness and Det. Garda Healy left the room. They went back into the room after fifteen minutes and at 10.10 a.m. the applicant's fingerprints were taken and he was examined again by Garda doctor, Dr. Hayes, at 10.25. At 10.40 a.m. they returned to the interview room and breakfast was served to

the applicant which he refused to take. A solicitor, Mr. Frank McDonnell, arrived to see him at 12.30 p.m. and Det. Garda Healy and the witness left the room. He thought that the interview with Mr. McDonnell lasted about half an hour. They returned to the interview room and resumed their interviewing of the applicant, who again said that he had nothing further to say. At 1.15 p.m., Det. Sergt. O'Carroll came to the interview room and the witness and Garda Healy left.

He saw the applicant later that day at 5.45 p.m. in the interview room, again accompanied by Det. Garda Healy. He said that he cautioned the applicant again and that the latter continued to deny any involvement in the killing of the Guard. They had a further discussion with him and at 7.20 a meal was supplied to him of salad which he ate. They did not question him while he was having the meal, which took him about twenty minutes to eat. They resumed questioning him at that stage and at 9.30 p.m., the witness read over the notes of the interview to him and cautioned him again. The applicant refused to sign the notes when asked to do so.

The witness did not see the applicant again until the following day at 8.00 a.m. when he was again cautioned and questioned about the robbery and the shooting of Garda Hand. The applicant again said that he did not wish to discuss it and there was a further discussion of a general nature. At 9.45 a.m. breakfast was served to the applicant, which he took about half an hour to eat, during which time he was not questioned. That interview lasted until 11.15 a.m. when Det. Sergt. O'Carroll entered the room and the witness and Garda Healy left.

They saw him again at 2.25 p.m. in the interview room when

he was again cautioned and asked then "what was happening to McCabe", another person who was suspected of involvement in the robbery and killing. The witness told him that McCabe was being charged with the armed robbery and he replied "I wouldn't like to be him going to Portlaoise when they hear the names he dropped in the statement." The witness told him that the third-named applicant had also made a statement and he asked if the third-named applicant had mentioned him in that statement. The witness told him he had not read the third-named applicant's statement but he was satisfied that he had not mentioned the second-named applicant's name in it. At the applicant's request, a copy of this statement was then read to him. He was then shown a map which had been found by a Garda search party in the Julianstown area. After further discussion about the circumstances in which this map had been found, the applicant said:

"You know well that that's the map. Look, everybody else has told their part in it. I will tell my part. You know it already anyway."

The witness then wrote down the statement as dictated by the applicant who, however, refused to sign it. At 5.50 p.m., he was taken to another room where he was examined by Dr. Hayes. Neither he nor his colleague had used any physical force during the course of any of the interviews, nor had they threatened him or held out any inducements to him. Det. Garda Healy gave evidence to the same effect.

Det. Sergt. O'Carroll and Det. Insp. Culhane gave evidence of having interviewed the applicant between 1.15 p.m. and 5.45 p.m. on August 29. At approximately 2.45 p.m. he was supplied with a meal which he took about half an hour to eat. Det. Sergt. O'Carroll saw him again the following day at 11.15 a.m. and was with him

until 12.45 p.m. Insp. Culhane and Sergt. O'Carroll said that during the course of the interview they did not use any physical violence or threaten or abuse the applicant in any way or make any promises to him in order to get him to make a statement.

The applicant said in evidence that during the course of the interview on August 29, Det. Garda Healy constantly thumped the table and used bad language towards him. At one stage he walked round the room with a piece of stick about two feet long, tapping it off his hand and saying that he was going to kill the witness if he did not make a statement. At one stage Garda Healy lunged forward and caught the witness by the throat and pushed him against the wall and slapped his face. Det. Garda Hanley at that stage said "don't hit Paddy, Paddy is not a bad man." He said thereafter the mood changed slightly. He had a consultation during the morning with his solicitor and told him of being slapped. His solicitor said he would make a complaint about this matter and advised the witness that he had the right to remain silent. As soon as he left, Det. Gardai Healy and Hanley returned and the former said that he (the witness) had reported him for hitting him. Det. Garda Healy was using bad language again and said that the witness "hadn't seen anything yet." The witness told him that he hadn't anything to say and that he had seen his solicitor. He said that they continued shouting at him, slapping the table and making threats.

Some time later, Det. Sergt. O'Carroll told him that a statement had been made by Noel McCabe that had incriminated him and the witness told him that he had never heard of Noel McCabe and wasn't involved in any crime. He was also told by the Gardai that his wife was going to be brought into custody and charged if he (the witness) did not sign a document. He said that at one stage

Det. Sergt. O'Carroll wrote out a statement and said that if the witness signed it, he would get 15 years. He had said he was signing nothing and Det. Sergt. O'Carroll then said it would be 40 years and that that was the best he could do for him. He was also using abusive language to the witness. He was questioned all the time he was having a meal and had never been cautioned by any of them. Det. Garda Murray at one stage stood in front of the witness, twiddling some bullets in his fingers, and said that some dark night he would come up behind the witness and would kill him. He was eventually put in a cell and tried to sleep but the door was rattled at intervals and woke up the witness.

He had no breakfast the next day and was again interviewed by Gardai Healy and Hanley who said that his wife was in custody and that if he didn't make a statement and sign one she would be charged with the murder. He was then taken to another room and Det. Sergt. O'Carroll rushed across the room to him, gripped him by the ears and shook the chair. He told the witness that his wife wasn't there when he went to arrest her that morning and that he would murder the witness if he didn't make a statement and sign one. He said that Det. Garda Hanley and Det. Sergt. O'Carroll kept pushing a statement across the table which they said had been made by the third-named applicant and kept insisting that the witness should make a statement. He denied ever having made any statement himself.

Mr. Frank McDonnell, the second-named applicant's solicitor, gave evidence that he saw his client in Navan Garda Station at 12.30 p.m. on August 29. He said that the applicant told him that he had been interrogated continuously since he arrived in the Garda Station and that one of the Gardai interviewing him had taken

a piece of wood, approximately two feet long, from a nearby press and had tapped this on his hands for some time and walked about. He said that the applicant also told him that the Guard had grabbed him by the throat or the top of his shirt and lifted him out of his seat and slapped him. He also told the witness that immediately this incident occurred the other Guard had told his companion to stop. The witness advised him of the nature of his detention, that he was not obliged to answer any questions other than to give his name and address and if called upon to do so to account for his movements and also advised him that he was obliged to submit to certain forensic tests. He further advised him that at the expiry of the first 24 hours the Gardai had power to detain him for a further 24 hour period and that he should be aware if an extension order was read out to him that that was what it meant. The witness transmitted the applicant's complaint to Garda Robinson, gave the latter his office number and home number and asked him if it could be seen to that he would be 'phoned in the event of his client being charged. He said that Garda Robinson agreed that he would look after that. The following day he decided to ring Navan Garda Station and, since he did not know the telephone numbers from memory, took out a telephone directory and looked up the listing "for the Gardai in County Meath." He said that he dialled a number which he did not now remember and a man identified himself as a member of the Gardai. He said that he identified himself to this person and said that he was a solicitor from Dundalk and was "enquiring about Paddy McPhillips." The person to whom he was talking said "I don't know anything about him." The witness then said that he had been over to see him yesterday and asked "Is he not there anymore?" The person on the line then said "Well, if he was, he's not here now." The witness then said to him "I take it he has

been released" and was told "He must be", or words to that effect. It came as a complete surprise to him to learn at 5.30 p.m. that evening from Mrs. McPhillips that her husband was being charged before the Special Criminal Court.

In the case of the third-named applicant, the evidence established that he was brought to Navan at 7.00 a.m. on the 29 August 1984. Det. Sergt. Carty said that at 8.10 a.m. on that morning he brought him to an interview room. He was accompanied by Det. Sergt. Lynagh. He informed the applicant that they were investigating an armed robbery at Drumree in the course of which Det. Garda Hand had been shot dead, and then cautioned him. The applicant denied that he was involved in the robbery and they then had a general conversation. At 10.10 a.m. the applicant was served with breakfast in the interview room which he declined to eat, saying that he wasn't hungry. At 10.30 a.m. he was taken to be finger-printed and photographed and returned at 10.45 a.m. when Det. Sergt. Lynagh and the witness resumed the interview. The former asked the applicant if he would give them an account of his movements for the 9 and 10 August, 1984. Having thought for a while, the applicant gave an account of his movements, which the witness wrote down. At 12 noon, Det. Gardai Mulvey and Sullivan entered the room and Det. Sergt. Lynagh and the witness left.

During the course of the same afternoon, the witness met a Mr. Lavery, a solicitor, in the Public Office area of the station. Mr. Lavery told him that he was there to see the applicant, and the witness told him that he had already been seen by Mr. Rogers at around 2.30 p.m. Mr. Lavery then asked the witness to ask the applicant if he would see him. The witness went to the interview room where the applicant was being interviewed by Det. Gardai Sullivan

and Mulvey and told him there was a solicitor called Mr. Lavery from Dundalk in the building and asked if he wished to consult with him. The applicant told him he had already seen a solicitor and that he was "O.K." He then returned to the Public Office area, spoke to Mr. Lavery and told him this. Mr. Lavery said that he would go and have a drink and would return to the station later. He asked the witness to enquire from the applicant if he would see him when he returned after a short time. The witness went back to the interview room and asked the applicant whether he would see Mr. Lavery on his return and the applicant replied that that would "do the best." He then returned to Mr. Lavery and told him this, and Mr. Lavery then left the station.

Det. Sergt. Carty said that at 5.00 p.m. he and Det. Sergt. Lynagh returned to the interview room and that he (the witness) cautioned the applicant in the usual terms. In response to a query from Det. Sergt. Lynagh, the witness said that he was "O.K.", that he had seen his solicitor and his mother and had been examined by the doctor. They had a conversation with him for a time and then at 5.35 p.m. he was taken to be examined by another doctor. He returned to the interview room at 5.45 p.m. and Det. Sergt. Lynagh and he had a conversation with him until 6.15 p.m. when his colleague took the applicant to meet his solicitor, Mr. Lavery. At 6.45 p.m., Det. Sergt. Lynagh and the applicant returned to the interview room. At 7.20 p.m., the applicant was served with tea and sandwiches in the interview room, which he ate. Between 6.45 p.m. and 7.20 p.m., there was a general conversation at the end of which Det. Sergt. Lynagh told him that he did not believe the account he had given of his movements and he (the witness) asked the applicant to tell the truth. He asked for time to think things over and they



agreed to this request. After a time the applicant said that there were other men arrested in connection with the robbery and that he was afraid of them and could not tell them everything but would tell his part as he wanted to get it off his mind. At that stage the witness cautioned the applicant in the usual terms and asked him if he wished to make a written statement, which he agreed to do. This was at approximately 10.30 p.m. The witness then wrote down the statement as dictated to him by the applicant. When it was completed, he read it over to him and asked him if it was correct. He told him that he could change anything in the statement that he wanted or that he could add anything he wanted. The applicant said that the statement was correct and that he did not want to change it. The witness then asked him to sign it and he refused, saying that his solicitor had told him not to sign anything.

Det. Sergt. Carty said that he saw the applicant again at about 3.00 p.m. on the 30 August. He spoke to him and said that Garda Mulvey had informed him (the witness) that the applicant wished to see him. The applicant said he wanted him to read the statement to him again, which the witness did. The applicant then said "You told me last night that I could add anything to that statement that I wanted to." The witness agreed that was correct and the applicant then said "I want you to write something else at the bottom of that statement." At this stage, the witness cautioned him and then wrote down what the applicant had said, read it over to him and asked him if it was correct. The applicant said it was correct and that was all he wished to add to the statement. The witness asked him to sign it, which he refused to do but said that he would initial it, which he did.

Det. Sergt. Lynagh gave evidence confirming Det. Sergt. Carty's

account of these interviews.

Det. Garda Timothy Mulvey gave evidence that at about 12 noon, accompanied by Det. Garda Martin Sullivan, he interviewed the applicant. He said that he cautioned the applicant in the usual manner and asked him to tell the truth about his involvement in the crime. The applicant denied any involvement and they then asked him to account for his movements on the 9 and 10 August 1984. He said that he had accounted for his movements and that he was at home on the night of 9/10 August. They again asked him to tell the truth about his involvement and he denied being involved, saying that he was exercising his right to remain silent. When they asked him about it again, he said "What did the other fellows say my part was in it?" They asked him what fellows was he talking about and he made no reply. He remained silent for most of the time. At about 2.15 p.m., he had a visit from his solicitor, which lasted until approximately 2.30 p.m. They then resumed interviewing him again and cautioned him again. They again asked him to tell the truth and he replied that his solicitor had told him not to say anything and not to admit to any involvement in the robbery. He went on to say that if he admitted any part in the robbery "he could be done for capital murder." He also went on to say that he could not admit it because of fear, not for himself, but for his family. The witness took notes during the interview of these remarks.

At 2.45 p.m. a meal was supplied to the applicant, which he did not eat. He asked for water which was given to him. At 2.55 p.m. he was photographed and at 3.10 p.m. he had a visit from his mother and sister which lasted until about 3.30 p.m. The witness and Det. Garda Sullivan returned to the interview room when that visit had ended. They again asked him to tell the truth about his involvement and he made no reply. Dr. Coleman visited him at about

4.40 p.m. and spent a couple of minutes with him. Shortly after the conversation between Det. Sergt. Carty and the applicant as to the presence of Mr. Lavery in the station, the witness read over the notes he had made of the interviews to the applicant. He cautioned him in the usual manner and asked him if he had anything to say about the notes. The applicant said that he had nothing to say and the witness noted his reply, and invited him to sign the notes which he declined to do.

He saw the applicant again the following day at 10 o'clock and he cautioned him again and asked him how he was. The applicant said he had no more to say, that he had said it all the previous night and that what he had said was the truth. The witness asked him had he signed anything and he said that he had not because of fear. The witness noted this conversation and again asked the applicant to tell the truth. He cautioned him again at 11.30 a.m., having read the notes over to him, and asked him to sign the notes, which he declined to do. He brought the applicant to the interview room for the purpose of having an interview with Mr. Rogers but could not say whether Mr. Rogers had actually seen him. At 1.15 p.m. the applicant was placed in the cell and the witness did not see him until approximately 2.40 p.m. He and Det. Garda Sullivan then saw him again in the interview room and he cautioned him again in the same terms. He asked him a few questions, to which he made no replies. At about 2.50 p.m., Det. Sergt. Corrigan informed the applicant that he was being brought before the Special Criminal Court to be charged. The witness said that at no stage during any of the interviews did he or his colleague use any physical violence or touch or assault the applicant in any way, nor did they threaten him in any way or issue any threats in regard to his family or friend

They had not give him any promises or other inducements to make him say any of the things that he had said.

Det. Garda Sullivan gave evidence confirming Garda Mulvey's account of the interviews.

The applicant said in evidence that until he saw Mr. Lavery at 6.15 p.m. on August 29, he had never been told that the latter had called to see him. He had never at any stage told the Gardai that he (the witness) did not want to see Mr. Lavery. He said that Mr. Lavery told him that the best thing was not to answer any more questions and he agreed with that. He said that when the questioning resumed, Det. Sergt. Lynagh made him stare at autopsy photographs of the dead Guard. He said that both Gardai then started issuing threats to the witness and members of his family. They told him that his mother would be walking down the street one day and that a car would come and kill her and no more would be said about it. One of the Gardai said that they would take him out the back of the station and shot him and make it look as if he was escaping, if he did not admit to the robbery. Both Det. Sergt. Lynagh and Det. Sergt. Carty got hold of his arms, stretched them out and started twisting them for long periods of time. The former thumped him in the stomach. This went on for about 20 minutes. After that Det. Sergt. Lynagh made him stand in the middle of the room. He then switched off the light and banged something on the table at which stage Det. Sergt. Carty tripped him. This happened three or four times. They also told him that McCabe had made a fifteen-page statement and that he was prepared to go into the witness box and say that he (the witness) was in the car and did the robbery. He was made to sit in the chair again and the two Gardai then asked him if he was prepared to make a statement. He again said that he was not involved and that Det. Sergt. Carty then said he would make a statement for hi

and began writing the statement. He would write a few lines and then show it to the witness and ask him if it was correct. The witness kept telling him that he did not want to have anything to do with it and that it was not his statement. He took about 20 minutes to write it and then asked the witness to sign it. The witness told him it was his own statement and he could sign his own name to it. They said it would be their word against his and that if the two of them went into the witness box and gave evidence against him they would be believed instead of the witness.

The applicant further said that the following morning he was interviewed by Sergt. Mulvey and Garda Sullivan. He said that he told them the statement was written out in his presence the night before by Det. Sergt. Carty and he denied that he told them that he had been afraid to sign it. He said he was not cautioned at any stage by either Det. Sergt. Mulvey or Det. Garda Sullivan. He saw Mr. Rogers at about 2.00 p.m. that day and told him how he had been thumped and slapped and had his arm twisted. He said that shortly afterwards Det. Garda Corrigan told him that he was being taken before the Special Criminal Court to be charged. Following this, Det. Sergt. Mulvey and Det. Garda Sullivan kept telling him that he would have to sign the statement or he would be charged with murder. He told them that he would not sign any statement. He said that Det. Sergt. Carty then took a statement out of his coat pocket and put it in front of him and asked him to sign it. The witness told him he would not sign it. Det. Sergt. Carty then wrote something on to the statement and said "That's the best I can do for you, everybody knows you had nothing to do with the murder of that Guard." He then asked the witness to sign it and the witness declined. The witness told Detective Sergt. Carty that

he would initial the fact that he was not going to sign the statement.

Mr. Rogers said that he saw the applicant at 2.20 p.m. on the 29 August. The applicant told him that he had given an account of his movements over a specified period. He said that he had not been threatened but that he would like to be seen by a doctor. He said that he had been told that a statement had been made implicating him in the armed robbery. The witness advised him that if this were correct he would be involved in a murder charge. He also advised him that he was not obliged to make any statement or to answer any questions and that he had given the statutory information required. He saw the applicant again the following day at 2.20 p.m. when the latter told him that he had been interrogated until 12.30 a.m. that morning. The applicant told him that at about 11.30 the previous night a detective had written a statement in his presence and had read it over to him, but that he (the applicant) told the detective that he did not want to have anything to do with the statement and he refused to sign it. He said that before the statement was written he was put standing against the wall by two detectives with his arms out-stretched, that his arms were twisted and that he was slapped in the face by one of these men. He also said that he had got a thump in the stomach as well.

Mr. Lavery gave evidence that when he went to Navan Garda Station on August 29, he was accompanied by his colleague, Mr. Roger McGinley. Sergt. Carty told him (the witness) that in his case they (the Gardai) did not think it was reasonable for him to see the applicant again so soon, as he had already seen another solicitor. The witness said to him that he thought it was not unreasonable since the applicant had been in custody since 6.00 o'clock and that in any event he was his solicitor and wanted to see him. Sergt. Carty

then said: "he is all right, he does not want to see anybody. He has seen a solicitor." The witness then said he would like Sergt. Carty to tell the applicant that he was there and to ask him would he see him. He said that Sergt. Carty went inside again for a very brief period, came out and said: "He dosen't wish to see you and he has never heard of you." The witness again indicated his desire to see the applicant, but Sergt. Carty was unwilling to do this and eventually said: "however, things may different in an hour. Come back in an hour, you can see him." The witness went away and came back in about an hour and was then shown into a room where the applicant was. The applicant told him that the first he had heard of his presence was ten minutes ago. He gave general advice to the applicant as to his rights. Mr. McGinley gave evidence confirming Mr. Lavery's account of his interview with Sergt. Carty when they first arrived at the Garda Station.

On the 15th day of the trial, the Court, having heard legal submissions ruled that, in the case of the first and second-named applicants, the statements made were voluntary statements and were admissible. At the beginning of its ruling, the Court referred to the statement of the law by Griffin J. in The People .v. Shaw 1982 I.R. 1 at p. 60 as to the admissibility of such statements. The Court also referred to the statement of the law by Walsh J. in The People .v. Lynch 1982 I.R. 64 at p.84 and p.87. It has not been submitted to this Court that the Court of Trial in any way erred in treating these as the principles of law applicable to the issue as to the admissibility of the statements.

In the case of each of the applicants, the Court of Trial concluded that the Garda witnesses had given truthful evidence as to the events in Navan Garda Station during the period of the applicants' detention and as to the subsequent admissions by the

applicants prior to their being brought before that Court. The Court further rejected the evidence of the applicants as to these events. The Court was accordingly satisfied beyond reasonable doubt that, in the case of each of the applicants the interrogation conducted by the various members of the Gardai was conducted in a fair and reasonable manner, was not of such a nature as would render any reply thereto as other than voluntary and was not, at any time, accompanied by threats, abuse, assault or any physical or psychological pressure. In the case of the second-named applicant, the Court said it was satisfied beyond reasonable doubt that he had dictated the statement in question to Det. Gardai Hanley and Healy and made the statements to Det. Insp. Culhane and Det. Sergt. O'Carroll, of which they gave evidence.

The Court also said that it was satisfied beyond reasonable doubt that in the case of each of the applicants he was at all times afforded his right of reasonable access to his solicitor. In the case of the telephone call made by Mr. Frank McDonnell, the solicitor for the second-named applicant, in the course of which he was told that his client had left the Garda Station at a stage when he was in fact still being detained, the Court said that it was satisfied that Mr. McDonnell had dialled the number of a Garda Station in Meath other than the Navan station. The Court also said that in the case of each of these applicants it was satisfied that the Judges' Rules had been observed and that the applicants had been properly cautioned in accordance with the requirements of those rules.

On the 16th day of the trial, the Court gave its ruling on the admissibility of the statements alleged to have been made by the third named applicant. Having again referred to the legal principles applicable to the admissibility of the statements, the Court said that it



accepted the evidence of the Garda witnesses as to the events in Navan Garda Station during the period of the applicant's detention as truthful and rejected the evidence given by the applicant as to these events. The Court then said that it was satisfied beyond reasonable doubt that the interrogation of the applicant was conducted by the Gardai in a fair and reasonable manner, was not of such a nature as would render any reply thereto as other than voluntary and was not accompanied by threats, abuse, assault or physical or psychological pressure of any kind. The Court also said that it was satisfied beyond reasonable doubt that the applicant had adequate rest and nourishment. The Court also said it was satisfied beyond reasonable doubt that the applicant dictated the statements to Dets Sergt. Carty and Lynagh and made the verbal statements referred to in the evidence to other members of the Gardai. The Court also found that the requirements of the Judges' Rules in regard to each of the statements had been complied with. The Court accordingly ruled that the statements made by the applicant were admissible in accordance with the legal principles already referred to.

It is, accordingly, clear that, in the case of each of the three applicants, the conclusions of the Court of Trial as to the admissibility of the statements were based on the sworn testimony of witnesses seen, heard and accepted by the Court of Trial. These conclusions <sup>are</sup> ~~were~~ manifestly beyond the reach of an appellate court to disturb, having regard to the following statement of the law by O'Higgins C.J. in Northern Bank Finance Corporation Limited .v. Charlton & Ors. 1979 I.R. 149 at p.180:

"A judge's findings on fact can and will be reviewed on appeal. Such findings will be subjected to the normal tests as to whether they are supported by the evidence given at the trial. If such findings are firmly based on the sworn testimony of

witnesses seen and heard and accepted by the judge, then the court of appeal, recognising this to be the area of credibility will not interfere."

In The People .v. Kelly (No. 2) 1983 I.R., 1 at p.24, O'Higgins C.J. reaffirmed this statement of the law, on this occasion with particular reference to the functions of this Court:

"It is submitted on this appeal that the principles laid down in The People .v. Madden imposed too rigid a restriction on the powers of the Court of Criminal Appeal and that the Court, on an examination of the evidence as disclosed in the transcript, should have felt free to come to a conclusion different from that of the court of trial upon the facts. Necessarily involved in this submission is the assertion that, from a reading of the transcript, the Court of Criminal Appeal could have, and should have, concluded that the various garda witnesses involved in the allegations of ill-treatment had committed perjury in their denials of the appellant's allegations and that, contrary to the conclusion reached by the court of trial, the evidence given by the appellant was true in substance and in fact. If this submission were well-founded and accepted, we would be required to hold that this drastic conclusion should have been drawn by a court which neither saw nor heard any of the witnesses involved but which, nevertheless, was at liberty to brand as untruthful those witnesses who, by their manner, demeanour and evidence, had satisfied experienced judges at the trial that they were telling the truth. If such were truly within the powers of a court of appeal in our jurisprudence, one wonders what would be the function of a court of trial."

And again at p. 25:

"In these circumstances I am quite satisfied that the principles set out in The People .v. Madden (and referred to in the judgments of this Court in Northern Bank Finance .v. Charlton) apply and that the Court of Criminal appeal was correct in regarding the decision of the Court of trial on the issue of the facts surrounding the making of the various statements as one which should not be disturbed....."

The same considerations apply to the rejection by the Court of Trial of the evidence of the various witnesses as to the movements of the applicants on the day of the commission of the crime.

Particular stress was laid by Counsel for third-named applicant on the fact that the Court of Trial accepted as truthful the evidence of the two solicitors, Mr. Lavery and Mr. McGinley, as to what transpired in the course of their interview with Sergt. Carty. He submitted that this necessarily involved a finding by the Court of Trial that the evidence of Det. Sergt. Carty on this matter was untruthful and that accordingly the Court of Trial could not reasonably conclude that this testimony afforded a reliable basis for the admission of his client's statements. The essential conflict of evidence, however, which the Court of Trial had to resolve was between the evidence of the Garda witnesses and the applicant and not between Det. Sergt. Lynagh and the two solicitors. The discrepancies between the evidence of Det. Sergt. Carty and the solicitors was only one of a number of matters which the Court of Trial was entitled to take into account in resolving this conflict. Even if their finding on this particular topic justified the inference that Det. Sergt. Carty was not telling the truth in relation to it (and this Court is by no means satisfied that that is a necessary

inference from this finding), that would not necessitate a conclusion that the evidence of all the Garda witnesses as to the events in the Garda Station should be rejected as untruthful or unreliable. On the contrary, the fact that such a finding was made indicates no more than that the Court of Trial addressed themselves expressly to this matter before reaching their conclusions as to the weight which should be given respectively to the Garda evidence and that of the applicant. For the reasons already stated, that conclusion is beyond the reach of this Court to disturb.

Similar considerations also apply to the observations of the Court of Trial during the course of submissions by Counsel for the Director of Public Prosecutions on the reference by the third-named applicant in his evidence to a fifteen-page statement made by Noel McCabe. The Court of Trial drew Counsel's attention to the fact that, although the Garda witnesses had denied producing this statement to the third-named applicant, he had accurately identified the number of pages in it. This again was one of a number of factors which the Court of Trial was entitled to take into account in assessing the credibility of the Garda witnesses on the one hand and the applicant on the other, and again the fact that they referred to it during the course of Counsel's submissions indicates no more than that they expressly addressed their minds to that matter before reaching their conclusions.

The Court is, accordingly, satisfied that each of these grounds of appeal fails.

In the case of the second-named applicant, a further ground of appeal was that the Court of Trial failed to have any regard to the evidence given by and on behalf of the applicant and found the evidence of Danny McDonnell as being given in relation to the first-named applicant instead of the second-named applicant as was

the case, and that in so far as it purported to alter on the 29 March 1985 the terms of the judgment delivered on the 28 March 1985, it was not lawfully entitled to do so and was functus officio.

This ground of appeal refers to the fact that in the course of the judgment delivered in this case by the Court of Trial, reference was made to the evidence of Daniel (or Danny) McDonnell. This witness was called on behalf of the second-named applicant and gave evidence that he had spoken to the latter at his home between 10.00 a.m. and 10.30 a.m. on the morning of the commission of the offences with which he was charged. In its judgment, the Court referred to this evidence when dealing with the case against the first-named applicant. The apparent error was drawn to the attention of the Court who made it clear that they had considered the evidence in relation to the case against the second-named applicant only, but had in error referred to it in the context of the case against the first-named applicant. This Court is satisfied that in these circumstances the mistake in ascribing this evidence to the case against the first-named applicant affords no ground for a successful appeal on behalf of either of these applicants. This ground of appeal accordingly also fails.

The final grounds of appeal on behalf of the first and second-named applicants were

(i) That there was no or no sufficient evidence adduced by the prosecution to entitle the Court to hold that the applicants knew that Garda Hand was a member of the Garda Siochana acting in the course of his duty when killed.

(ii) That the Court erred in law in holding that the mens rea of capital murder is constituted by adherence to a common design which includes even a risk of causing death or serious injury to a guard.

(iii) That there was no or no sufficient evidence on the part of the prosecution to prove that either of the applicants intended to kill or cause serious bodily injury to any person and in particular Garda Francis Hand, and that therefore the Court was not entitled to find any of the applicants guilty of capital murder.

(iv) That the Court of Trial erred in law in holding that it was entitled to find either of the applicants guilty of murder.

It was submitted on behalf of the first-named applicant that on the prosecution's case Guard Hand had been shot before he arrived on the scene. A similar submission was made on behalf of the second-named applicant. It was further submitted that the shooting of the guard was outside the common design to rob the Post Office van. It was also submitted on behalf of both applicants that it was outside the common design of robbery to kill or seriously injury anyone in the robbery.

Counsel on behalf of the first-named applicant referred this Court to the submissions in Book D 1 on 27 March in the transcript and adopted them before this Court. He submitted that the evidence against the first-named applicant was his knowledge that "the guards will be taken care of" did not establish that the first-named applicant knew or could have known that the guns would be used to kill or cause grievous bodily harm to anyone and in particular to a member of the Garda Siochana on duty. Counsel referred to R .v. Anderson (50 C.A.R. p. 216) and submitted that the killing in the circumstances of this case was not part of a joint enterprise in which the applicant was engaged.

It was submitted on behalf of the second-named applicant that there were only two passages in the verbal admissions relating to guards: "We knew there would be armed Guards" and, on the second page, "might be resistance from the guards". Counsel submitted

that the capital letter "g" in "Guards" was written down by the guard taking the note to imply, wrongly, that the applicant was referring to the Gardai as distinct from security guards.

This Court is satisfied that the Court of Trial, adopting the majority decision of the Supreme Court in D.P.P. v. Murray, (1977) I.R. 430 correctly held that to prove capital murder in the present case the Court would have to be satisfied beyond all reasonable doubt that the participants in the crime

- (1) had to have prior knowledge that the Post Office van would be escorted by members of the Garda Siochana,
- (2) knew of the arrangements made and outlined at the meeting of the raiders after they had left Mr. Duffy's house,
- (3) were aware that certain members of the raiders were allocated to render ineffective the members of the Garda Siochana, necessarily involving the use of firearms if the situation arose.

In the first-named applicant's statement he set out in detail his part in the planned robbery, including the route he was to take from Drumree Post Office after the robbery and where he was to drop the money. He also stated that when the operation commenced a number of guns and walkie-talkies were loaded into the Ascona at Mr. Duffy's yard. They then moved out of Duffy's and stopped in a lane. The statement continues:

"The bag of guns was taken out of the Ascona. There were a few rifles and I think only one machine gun and small guns. One man was given a rifle and he acted as a look out. There were eight or nine men there. Three of them were called aside and there was a discussion amongst them. After a while one of the fellows came to the rest of us and said that there would be two guards with the van in the morning and that they would be taken care of. .... I was to get a call on my

radio to move into the Post Office."

And later in the same statement

"On the night before the robbery while we were at the meeting we were told that two men had gone to the Post Office and would have things in control when we got there. I took this to mean that the two men who had gone would have the way clear for us and we were told to collect the guards guns and bring them with us."

In his statement to Guard Sullivan he stated: "..... the day before the robbery a man took him to the Post Office at Drumree and told him they were to do the Post Office van." And to Guard Maunsell: "look what I have been charged with. I didn't do the shooting. I only drive the Merc".

The applicant told Det. Insp. Culhane and Det. Sergt. O'Carroll : "..... ye know the part I played in the robbery but I did not shoot the guard." In the course of the written statement made to Guard Hanley and Guard Healy, the applicant said:-

"I knew that a Post Office van was to be robbed on Friday morning. This was discussed, we knew that there would be armed guards with this van. Certain people got the job of looking after that part of it. I was not one of these ..... I knew there was a guard shot, there was not shooting while I was there. I did not fire my gun ..... On Thursday night it was discussed that there might be resistance from the guards with the Post Office van. We were to get the call when our fellows had things in hand."

The Court has already referred to the seven reasons given by the Court of Trial for convicting the first-named applicant of the capital murder of Det. Garda Hand and the nine reasons for



convicting the second-named applicant of the same offence.

The Court is satisfied that on this evidence the Court of Trial was entitled to convict both applicants of capital murder and that in reaching their decision they applied the correct principles of law. Both applicants voluntarily participated in an expedition to carry out an armed robbery. They had prior knowledge that the Post office van, the subject of the robbery, would be escorted by guards. They were also informed that "there might be resistance from the guards" and that "the guards would be taken care of", that is to say, overcome with the use of firearms by the raiders. As this was a robbery planned on a Post Office van, of monies the property of the State, the only reasonable inference is that the "guards" anticipated would be members of the Garda Siochana (or as popularly referred to, "the guards"). There was no evidence to suggest that this was not the correct inference to draw from all the circumstances of the case. Once the applicants were aware that any prospective resistance by the guards would be overcome by the use of firearms they are guilty of whatever offence arises from the actual use of firearms by those with whom they were acting in concert.

For these reasons this ground of appeal also fails. The Court, therefore, refuses leave to appeal in respect of all three applicants.

*C. J. A.*

*15-2-56.*