APPROVED **NO REDACTIONS NEEDED**

THE COURT OF APPEAL

[2024] IECA 273
Court of Appeal Record No. 113/2017

Edwards J

McCarthy J

Ní Raifeartaigh J

BETWEEN/

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

-AND-

VESEL JAHIRI
APPELLANT

JUDGMENT of the Court delivered on the 27th day of February 2024 by Mr Justice McCarthy

INTRODUCTION

1. The appellant was convicted on the 12th of April 2017 of the murder of Anna Finnegan ("*the deceased*") at her home of 16 Allendale Glen Clonsilla, County Dublin ("*the deceased's house*"). In addition to the conviction for murder, the appellant was convicted at the same trial of assault causing harm contrary to section 3 of the Non-Fatal Offences Against the Person Act 1997 of one Karl Finnegan, the deceased's brother, arising from the same event. During the course of the proceedings the appellant questioned whether or not he had been charged with both offences or murder only despite acknowledging this was done elsewhere. Certainly, at least in his submissions to this Court, he also asserted that the charges were illegitimately laid (to put the matter shortly).

None of this is correct. He has been before the Central Criminal Court over a lengthy period and was properly charged for good reason on the basis of the evidence, as will appear below.

2. There were two trials – the first resulted in a disagreement. The second trial proper commenced on the 1st of March 2017. A jury had been sworn on the 22nd of February 2017, and in the intervening period an issue of fitness to be tried and an application under section 4E of the Criminal Procedure Act 1967 as amended (which latter was unsuccessful) were considered. The jury returned verdicts on the 12th of April 2017.

3. The appellant was represented by solicitor and counsel in the first trial and the prosecution in their submissions say that the appellant had no less than five "*legal teams*". It is not clear if these might have been "*full*" teams that is to say of solicitor and counsel but he himself has asserted that he consulted a series of solicitors after the first trial.

4. We might say at the outset that the judge, throughout the trial, displayed great patience but because of the appellant's gross misconduct it was necessary to exclude him from the trial for a period. This is manifest from the transcript. It is plain from it also that the judge was justified in excluding the appellant. Prosecuting counsel fulfilled his obligations of fairness in dealing with the appellant. Indeed, during the trial the appellant physically attacked and injured senior counsel for the DPP. Whilst this brought the appellant's misbehaviour to a new level, it was merely the most serious manifestation of his misconduct. The latitude afforded by the judge to the appellant as someone defending-in-person extended to the toleration of lengthy and irrelevant cross-examination and submissions. In particular the appellant gave "*evidence*" between the 4th of April and the 6th of April 2017 and at inordinate length conflated evidence with submissions (as to fact and law).

FITNESS AND REPRESENTATION

5. Senior counsel for the respondent had raised an issue as to fitness on the 23rd of February 2017. In advance of the appellant being put in the jury's charge (on the 1st of March 2017), the trial judge heard evidence on the issue and ruled that the appellant was fit to be tried on 28th of February 2017. Dr Conor O'Neill, a consultant forensic psychiatrist, gave evidence on that occasion and stated that in his opinion there was no indication for any psychiatric medication, hospitalisation, or transfer to the Central Mental Hospital. Ultimately the appellant discharged his lawyers on the 10th of March 2017 (Day 8 of the trial) and thereafter defended the charge in-person. Dr O'Neill had further engagement with the accused during the course of the trial to which we refer below.

6. On the 15th of March 2017 (Day 11 of the trial) Mr Collier, the solicitor who appeared for the appellant in the first trial, appeared in court and indicated that the appellant had requested him to represent him again and that he would require time to instruct counsel. The trial judge indicated that the appellant had already been afforded significant leeway and that if he were in a position to have such arrangements put in place within the day, he would be sympathetic to the appellant. Ultimately the matter was adjourned into the 16th of March 2017 (Day 12 of the trial). In any event, the court extended legal aid to encompass both Mr Collier and the law firm who had previously represented the appellant in the event that attempts to instruct counsel proved successful.

7. On the 16th of March 2017, senior counsel who had appeared for the appellant during the trial informed the trial judge as a courtesy to the court that the appellant did not wish to instruct any of the lawyers. The appellant was given one last opportunity to instruct them, which he refused, and the trial proceeded.

8. On the 31st of March 2017 (Day 22 of the trial), the appellant was excluded from the court by the trial judge for repeated misconduct and after repeated warnings. It is clear from the transcript that the judge's patience went beyond the call of duty. The appellant repeatedly failed to submit to rulings of the judge. The judge was in the best position to decide on the necessity for exclusion and it is plain that it was a last resort.

9. On the 3rd of April 2017 (Day 23 of the trial), Mr Collier appeared in court to say he was asked by the appellant's family to consult with him. He was accordingly, in a sense, retained again on the appellant's behalf albeit to a limited extent. He indicated, however, that because of some of the instructions he had received he was not in a position to advance the case further. He indicated that he had a concern about the appellant's mental health, though he conceded that he had been assessed previously by a number of psychiatrists and had been held fit to plead. He submitted that there "*must be a concern in relation to Mr Jahiri's ability to make any sort of sound decisions… or give instructions to a legal team that are of his benefit and not the contrary and that seems to be a pattern throughout*". For that reason he asked that the court seek a psychiatrist's report about the appellant. This application was made on the appellant's instructions. The judge pointed out [as was the fact] that on a previous occasion when the court directed an enquiry, the appellant declined to be examined. Notwithstanding that fact on such previous occasion, the judge indicated that the psychiatrist who had observed him was of the opinion that he was fit. Counsel, when retained, had also indicated that such issues had been "*comprehensively addressed*" and did not seek to reopen the matter. Prosecuting counsel opposed the application because in his submission it had been canvassed on a previous occasion very fully and it was apparent that no psychiatric issues had arisen whilst and since his incarceration. The judge had serious reservations about yet another examination

because in his view, to put the matter shortly, the appellant had been acting in bad faith or otherwise misbehaving throughout the trial. Nonetheless he did so grant it.

10. A report was presented the next day by Dr Conor O'Neill (who had examined the appellant before) in respect of an examination he carried out on the appellant carried out over the preceding night. Whilst the matter is not precisely clear, it would seem that the ground had shifted, so to speak, from the previous day and that on the 4th of April 2012 (Day 24 of the trial) the matter of the appellant's fitness had now boiled down to whether or not his English was sufficient to conduct the case or he was otherwise in a position to do so – and not on the basis of any mental health issue. The judge held that the appellant was in a position to proceed and defend the case properly in-person. Subsequently that same day, Mr Collier informed the court that he was not in a position to continue to represent the appellant in light of his instructions and having advised him as to his rights; he applied to come off record which application was ultimately acceded to by the judge. The appellant then remained defending-in-person for the duration of the trial.

11. In relation to evidence of the appellant's wellbeing during the trial whilst incarcerated we think it proper to set this out at this point before proceeding to the substantive matters.

12. The appellant asserted that he had ill health. In that regard he referred *inter alia* to his teeth and stomach problems. He had complained in addition of being tired and being unable to work on his case because of the lateness of the hour at which he returned to the Midlands Prison. Reasonable accommodation was afforded to the appellant to defend the proceedings by the intervention of both the judge and prosecuting counsel; whether or not reasonable accommodation had been provided is in strictness a point of law but we are

satisfied there is no substance to the complaint on the facts. We see nothing in the transcript which gives rise to any issue in this regard.

13. Declan Purcell, a prison officer, gave evidence on the 14th of March 2017 (Day 10 of the trial) to the effect that the appellant had been moved to Wheatfield Prison and would remain there until the conclusion of his trial. He was asked to give evidence in relation to the appellant's position since the appellant raised issues as to his needs within prison during the course of the trial and with an assertion that he had not received his medication. Mr Purcell stated, in respect of medication, that where a prisoner is transferred, the doctor in the new receiving prison must see the prisoner first following which a prescription will be reissued. It was accepted that the appellant had not received his medication from the 8th to the 10th of March but this issue had been addressed upon his transfer, the appellant having seen a doctor in Wheatfield Prison the night before, following which his prescription was in the process of being reissued.

14. The appellant sought further to complain in relation to his treatment in the prison and the judge (rightly) informed him that the Court could not micromanage his needs in respect of issues raised as his diet, or as to the turning on and off of lights, and that he was best placed to raise and continue to raise these matters with his doctor and the Prison Service.

15. Thereafter, on the 14th of March 2017, Dr Mohammed Wassif Ghaffar confirmed that he had examined the appellant. He stated that the appellant had complained of pain and ultimately he gave him painkillers for relief. The appellant further disputed that he had received other medications prescribed to him, but failed to substantiate this complaint and that was the end of the matter. We refer again to the evidence of Declan Purcell above which settled that matter.

THE CORE OF THE PROSECUTION CASE

16. The prosecution's case was that on the 21st of September 2012 the deceased and her brother Karl Finnegan were present in her home that evening at around 8pm; Mr Finnegan was temporarily residing with her because there was in existence a so-called "*safety plan*" for the protection of the deceased from the appellant which had been agreed between her and social services in light of the appellant's misconduct towards her. The appellant and the deceased had been in a relationship for approximately ten years and had resided together for a number of years but became estranged. During the period leading up to events of the 21st of September 2017, the deceased had recourse to a shelter for victims of domestic violence ("*the refuge*"). They had two children together, then aged four and one years old respectively. The evidence is not precise as to which was in being at the time but it appears that either a protection order or a barring order against the appellant had been granted to the deceased against the appellant. The safety plan involved arrangements to ensure that the deceased was not left alone lest she be approached by the appellant – when her brother was at work during the day she went to the home of a relative (her sister Lisa Finnegan) or a friend (one Janice O'Neill), by arrangement. The locks of the house were changed after the appellant had accordingly ceased residing there.

17. On any view of the evidence, on the 21st of September 2017 the appellant forced his way into the deceased's home by smashing the front door – Mr Finnegan described first hearing the intrusion by way of a bang and appellant "*bounding up the hall*" into the kitchen. The appellant, who gave evidence in his defence, could not ultimately deny this fact but asserted, in effect, that he did so because he was refused entry by the occupants with special reference to Mr Finnegan. The prosecution contends that the appellant fatally

stabbed the deceased with a knife brought by him from his home and seriously injured Mr Finnegan with it on the same occasion.

THE CORE OF THE DEFENCE CASE

18. The nature of the appellant's case appears in detail later. Notwithstanding its length we set out below passages from his garda interviews and from his evidence for the purpose of seeking to encapsulate it. At this stage however we think that it is appropriate for context to say that his case was that he arrived at the deceased's house at 16 Allendale Close where she was present with her brother Karl Finnegan, that whilst he forced entry he was met with aggression on Mr Finnegan's part, whose conduct extended to attacking him with two knives in the kitchen. According to the appellant's version of events, Mr Finnegan was caused to drop one of the knives which he picked up and with which he sought to defend himself. He said that Mr Finnegan wounded him with his knife and that he, acting in self defence, did the same to the latter. His version of events as to how the deceased might have been stabbed to death varied from a refusal to accept she had been stabbed at all, to a denial in any event that he had done so, and an assertion expressly or by implication that she had been stabbed by her brother whether accidently or deliberately.

19. It is clear from the evidence that he wished to place blame on the deceased's family and third parties (e.g. the social services) for the estrangement and wished to show that a number of family members were hostile to him, were of bad character, and were lying. He also alleged that there was a conspiracy against him by conspirators who included, *inter alia*, the Gardaí and that he had been the victim of threats by the deceased's family

– at this juncture we do not fully elaborate on these aspects but refer to them now to give a context.

GROUNDS OF APPEAL

20. There are no coherent or properly set out grounds of appeal. The grounds of appeal, in fact, are conflated with argument or submission, primarily upon the facts. Issues of fact and law are repeatedly confused. Three sets of handwritten purported grounds of appeal mixed with submissions were to this Court on the 14th of October 2022, the 11th of November 2022, and the 27th of January 2023. For ease of reference, and we are obliged to counsel for this, junior counsel for the respondent provided typed versions of these.

21. Purported grounds consist primarily of repetition of assertions as to matters of fact made by him at trial. This is so, notwithstanding that issues of fact were matters exclusively for the jury. Further, many of his assertions as to matters of supposed fact were unsupported by, or against the weight of, the evidence actually adduced at the trial. Further, he purports to offer new evidence on certain aspects of the case on appeal, although he has brought no motion to adduce new evidence and has not been granted leave to adduce new evidence. Moreover, it is clear that the matters he alludes to would never have qualified for the granting of such leave, even if such a motion seeking such leave had been properly brought. He also, to a very limited extent, raises a number of legal issues. We admit frankly that having regard to the form on which this appeal has been presented, we have had considerable difficulty in disentangling any legal matter from factual issues and, indeed, engaging with the factual issues as they have been put. Given the length and nature of these submissions, it is impossible to set them out as would normally be done with grounds of appeal. In order to be scrupulously fair to the appellant,

we have sought to engage with all of the issues he has raised, in so far as was possible to do so, but have had to reject a great many of his complaints from the outset as being legally misconceived, or as being matters that were exclusively within the province of the jury and being unassailable as such, or as being matters not legally capable of being relied upon to support an appeal. We do not propose to set out the written submissions of either side given their great length. At the hearing of the appeal the appellant read from a lengthy document which in effect constituted his oral submission and we have had regard to that also. We have also attempted to isolate any issue of law which we conceive to be relevant.

THE EVIDENCE

22. We think it is necessary to deal with the evidence at greater length than might otherwise be necessary. There were a significant number of witnesses and the trial took thirty days from the 1st of March 2017. This is primarily because this appeal is founded upon matters of fact. The appellant contended that the judge ought to have directed an acquittal, certainly on the murder charge, and we infer, both. This application was refused, and we may say at this stage rightly so although we will deal with the matter in greater detail below.

23. We need hardly say that we do not propose to set out here, or deal with, the evidence of every witness (although we have considered the entirety of the evidence); we have sought to confine our review of the evidence to what is essential to the case being made.

BACKGROUND TO OFFENCE AND EVENTS PRECEDING THE *RES GESTAE*

Preliminary

24. We firstly deal with the evidence of the events which preceded the murder on the night of the 21st of September 2012. This is because what occurred and what was said prior thereto is germane to those events – in part because they "*set the scene*" and give the background for what occurred that night, disclose the appellant's state of mind at the time, and primarily because he wished to canvas that background.

WITNESSES FROM SOCIAL SERVICES

Anne Marie McMorrow

25. Ms McMorrow, acting assistant manager of the refuge, said the deceased contacted her about its services on three occasions on the 30th of August 2012. She said that when the deceased was offered places there for herself and her children, she arrived there and stayed until the 4th of September 2012. Ms McMorrow was subsequently told by the deceased that she would not be returning to the refuge and would stay out of her home until the appellant left it.

Tara O'Connor

26. Ms O'Connor, a social worker was informed of a history of domestic violence against the deceased on the 6th of September 2012 and she ascertained that the deceased had been admitted to hospital because of an overdose of tablets. The deceased told her that she did not want to continue her relationship with the appellant (the alleged abuser) but was prepared to allow him access to his children. Ms O'Connor was the one who decided that a so called "*safety plan*" be put in place. The appellant denied the allegations

of misconduct towards the deceased, blamed the deceased's family for the difficulties which had arisen, alleged that the deceased's family and friends were involved in drugs and asked Ms O'Connor why this was not being investigated by the HSE. He agreed to the "*safety plan*" which meant that he moved out of the house. Supervised access took place on the morning of the deceased's death at the Wellmount Health Centre but had to be aborted shortly after it commenced. We might say at this stage that there was no evidence adduced at the trial that the deceased's family or friends were involved in drugs in any meaningful way (although Mr Finnegan accepted that he used cannabis on occasion).

Emma Crehan

27. Ms Crehan, another social worker, attended a meeting with appellant on the 7th of September 2012 at the Wellmount Health Centre for the purpose of explaining the "*safety plan*". The appellant there asserted that the deceased had not told him that she wished for the relationship to end, subject to the fact that he could have access to the children. At that stage he said he did not wish to see the children, that he and the deceased were best placed to solve their problems and that he believed that the deceased, in fact, wanted to continue the relationship. He asserted that he had received threatening text messages (and death threats) and he was advised to speak to the Gardaí. Having regard to the thrust to what the appellant had said, it was open to inference (although it was a matter for the jury) that he was suggesting that such threats or text messages were from the deceased's extended family.

Philip Tyson

28. Mr Tyson, who worked at the Wellmount Health Centre said that, on the date of the deceased's death, Lisa Finnegan (the deceased's sister - as we now know her to be) said to him "*will you tell him [the appellant] to stop talking to us, he is here to see his children and he was going on about some logbook*" (or words to this effect). [the latter a reference to a dispute between the appellant and Lisa Finnegan about a car or it's logbook, raised by the appellant in the proceedings]. He recalls Karen Byrne, referred to below, asking her to take the children and shortly thereafter the appellant left with what the witness described as a "*stoic face*".

Karen Byrne

29. Ms Byrne was a child protection social worker attached to the Wellmount Health Centre. She had given evidence at the first trial but was unavailable for the re-trial. In the circumstances her evidence from the first trial was read to the jury. The deceased was referred to her from the refuge. She said that the appellant agreed to the "*safety plan*" whereby he was to move out of the property he shared with the deceased, which he did, and to not further attend there but he refused to accept that the relationship was over. She had confronted the appellant with the allegation that he had threatened to kill the deceased and/or their children. Ms Byrne's recollection was that he had responded that "*If I wanted to stab Anna, I could do so at any time, I would go and kick the door*", and then added "*but I wouldn't harm Anna because I love her*". Ms Byrne did not consider the appellant's response to be a threat. She initially rejected the proposition, put by defence counsel (the appellant was legally represented at this point in the first trial) that he could have said "*…killing my children. Sure, if I wanted to do that, I could have done it yesterday, any*

day. I know the house there; I'd just walk in and do it. It's not making sense what you are saying".

30. The appellant had, however, made a recording of his conversation with Ms Byrne and relying on a transcript of recording that was adduced in evidence his counsel had asserted in cross-examining Ms Byrne that he did not use the precise form words being attributed to him, but rather had spoken the alternative words that had been put. The witness initially was inclined to accept that her recollection on this and certain other details did not appear to be correct, agreeing that "*if it's on the tape it's on the tape*", but later maintained that the tape must have been doctored. The appellant also maintained he had not said he would "*…not do that because he loved her*". Ms Byrne, however, asserted her belief that he had definitely said this, and that pieces of what had occurred were missing from the recording. She accepted that some of these matters were not in her notes or statement.

31. In any event the access meeting had to be aborted – during it there was an argument between Lisa Finnegan and the appellant, in the course of which she said the deceased was petrified in a corner. Ms Byrne told him that he could see the children on foot of a court order. She had been informed by the appellant and one Miles Finnegan (another brother of the deceased) that Karl Finnegan had smoked "*hash*" in the presence of the children. No access took place between the 6th and the 21st of September 2012 although access had been arranged for the 11th of September but the deceased changed her mind as she feared that the children would be abducted.

FRIENDS AND FAMILY WITNESSES

Janice O'Neill

32. Ms O'Neill, a friend of the deceased, was present in the deceased's company when the appellant phoned her on the 21st of September 2012. He was described as sounding angry, "*scary*" and aggressive. The deceased was deeply upset and crying at the conclusion of the call such that she contacted both the Gardaí and a cousin. Amongst the words spoken by the appellant and related by the witness who had overheard them were a statement that "*this is very dangerous what you are doing Anna, I want to see the kids*" and a further statement, when the deceased told him she would not permit him to see the children until the matter was dealt with in court, that "*I don't care about anything, I want to see my kids by 7 o'clock or else…*". The witness related that in the course of the conversation the deceased had sought money from the appellant which she said he owed to her, and which the deceased required in order to repay an aunt of hers to whom she in turn owed money. The witness went on to say that the appellant further stated "*I want to see the kids. I want to buy my fucking children things*" and "*I know where you fucking are, I'll come and kill ys*". Although it is not clear to us whether or not these are direct quotes, the witness said that the appellant further stated "*I'm going to kill you. This is very fucking dangerous what you are doing, I know where you are*" and "*This is dangerous. I'll fucking kill you Anna*". Ms O'Neill accepted in cross-examination that the appellant's threats were made in the context of a heated argument and at the time the appellant was "*going nuts*" about the fact that he was not seeing his children.

Lisa Finnegan

33. Ms Finnegan, a sister of the deceased, received a call from a woman she did not know on the evening in question in which she was told that Mr Finnegan was injured and their sister, the deceased, had been taken to hospital. En route she phoned the appellant and he returned her call. She asked him what he had done to her sister. He said that he had taken her to hospital. The witness had responded in turn that "*if anything happens to my brother and sister, jail will not save you*" – she accepted that she had abused and threatened the appellant. She said that the appellant threatened her to the effect that he would come after her and her children next. She was questioned about threats supposedly made in or about May 2012 in the context of a dispute about a car – the appellant's proposition to her being effectively that "*all the trouble*" (between the deceased or her family and the appellant) had started in or about that time. She rejected this and said, in effect, that the "*trouble*" had started when the deceased's family found out the appellant was beating the deceased – she had told the appellant that because of this he would never see the children again. She denied the proposition that she was telling lies or forcing the deceased to breakup with the appellant, or that she had arranged in the deceased's flight to a refuge for the purpose of allowing a cousin (of hers) to kill the appellant – the deceased had arranged the refuge herself. She was pressed extensively about the aforementioned dispute about a car (which seems to have occurred) but stated that since the deceased's death it was of no importance and her position was, to put the matter shortly, that in that context the appellant had been at fault contrary to his suggestions to her.

34. The appellant raised the issue of an accusation by the witness that he had in the past burned the deceased's arm and had punched her – asserting that hospital records

made no reference to any such injuries; it might be pointed out in this context that the deceased was taken to hospital by the appellant on the 12th of August 2012 as a result of a suicide attempt. She accepted that it was possible that the knife EOD1, (handed over to Gardaí by the appellant at Cabra Garda Station in the course of the Garda investigation into the deceased's death) could have come from her home although she could not imagine why this might be so. She accepted that such knife could have been the property of her deceased mother since her sister had received her belongings. It should be noted at this stage that at the appellant's request Ms Finnegan was recalled for further examination by him. This is but one example, albeit a minor one of the repeated consideration afforded to the appellant during the trial.

Brian Conlon

35. Mr Conlon, a cousin of the deceased (who formally identified her body), rejected the appellant's proposition to him in cross-examination that he had forced the deceased to go to a refuge so that he could kill the appellant – he said that he had taken her to the refuge for her safety and that of her children. He said that the appellant had rowed with the deceased, burned her arm with a poker and prevented her from bringing one of the children to a doctor – effectively he said that she had to leave because of assaults on her by the appellant and that had taken money for food from her. He accepted that he had made threats to the appellant. However, he had also contacted the Gardaí because of the appellant's conduct. This was in desperation because of concern for the deceased's welfare. He said that there were no problems until he found out about the appellant's abuse of the deceased and said this had nothing to do with a dispute about a car or cars. He said this began in 2007 when the appellant had first assaulted the deceased and on that

occasion the appellant was removed from the house. He rejected the proposition that he had ever assaulted the appellant.

EVIDENCE OF *RES GESTAE*

Karl Finnegan

36. The core of Mr Finnegan's evidence was upon the surprise arrival of the appellant, who he described as carrying a knife to which he responded by picking up a kitchen chair to defend himself. Mr Finnegan said that the appellant thereafter caused him, or forced him, to drop the chair, whereupon he was stabbed twice by the appellant and fell to the ground which rendered him semiconscious ("*blacked out*" as he put it) for what must have been a brief period, perhaps no more than seconds. Mr Finnegan was aware that he had suffered injury; he bled from the head and, later, he realised he was bleeding from the chest also. The deceased, who was also present, left the kitchen in the course of the incident and even though he did not see the appellant do so, he believed that the appellant must have followed after her. As a result, Mr Finnegan went outside as he was concerned for her safety.

37. Mr Finnegan described that having left the house he saw his sister in the next-door neighbour's garden and the appellant was within six or seven feet of her. He described telling the appellant that he "…*should get out of here before you get into more trouble*". He could not remember whether or not the appellant was then (still) in possession of the knife nor whether or not his sister had been injured but he thought she was "*very quiet*" and that she seemed "*a bit distant*".

38. Mr Finnegan then described putting his arms around the deceased and taking her down the neighbour's driveway to bring her back to her home. He stated that the appellant

had run off around the corner and that he had not seen any physical interaction between his sister and the appellant. When asked to explain what he meant by the term "*distant*" he said that the deceased "*just seemed faint, she wasn't talking, she wasn't responding to me in any way*". As he took her down the neighbour's driveway on reaching the front of the deceased's house she passed out and fell to the ground.

39. Mr Finnegan went on to describe that he saw the appellant then reappeared on the scene in his car from the direction in which he had earlier departed the neighbouring driveway. He said that the appellant picked up the deceased and put her into the back of his car, and tried to make the witness get into the car also but he did not get in. He could not stop the appellant from putting his sister into the car and thereafter the appellant drove off. At that stage Mr Finnegan was beginning to have trouble breathing and he said that he entered the deceased's house with the assistance of a neighbour, one Joan Broe. He described getting a towel in the kitchen due to the fact that he was starting to feel very faint. He said that Ms Broe helped him sit down against the wall until ambulance personnel arrived. It was later established that Mr Finnegan had suffered a stab wound to his head (behind his right eye) and another stab wound to his chest. He was subsequently taken to hospital by ambulance; medical evidence was subsequently given as to his injuries.

40. Mr Finnegan was asked to look at the knife EOD1 and stated that "*From what I remember, it's similar to the one he was holding but I wasn't able to say whether or not it was the knife*". We pause here to state that it is not in debate but that this knife was given to the Gardaí by the appellant at Cabra Garda Station on the 22nd of September 2012.

41. Under cross-examination Mr Finnegan said that as he picked up the chair in the kitchen to defend himself he had a memory of the deceased moving to the right of the table at which they had both been sitting but he had no memory of where she went thereafter until he saw her again outside. He stated that it was "*a matter of a second between when he came through the door and when he reached the kitchen door*". This was when he saw the appellant was carrying the knife, i.e., as he was coming through the hall. It was suggested to him in cross-examination that there was a discrepancy between the evidence which he gave and what he said in his first statement to the Gardaí after the event in question. In it, he had stated that "*As I grabbed the chair, when Vesel was coming for me, I saw the knife*" – it was suggested to him that this was a different proposition to that of which he had given in evidence. He rejected the proposition that he was attempting for some reason to "*fit*" the appellant with the latter proposition as against his more contemporaneous account of what had happened.

42. Furthermore Mr Finnegan stated in cross-examination that he thought that the appellant was holding the knife in his left hand; adding, however, that he had not said "*definitely*" whether it was in his left or right hand because he really could not say. Mr Finnegan was then tasked with how he could have seen that the knife wielded by the appellant had a wooden handle with rivets in it. It was put to him that when asked at the first trial whether or not he had seen the handle he had stated he had not. In response, he said that what he had in fact said was: "*I didn't see the handle of the knife but was able to see the knife and I suppose the top where it jutted out of his hand but for some reason, I don't know why, the image of a wooden knife stuck in my head, the wooden-handled knife with rivet on it. It seemed to be that kind of a knife*", adding that, at that time, i.e., the first trial, this was "*probably the last clear memory I have before I blacked out*".

43. Pressed further to the effect that he couldn't have seen the handle Mr Finnegan ultimately said yes. He however rejected the proposition that he was now saying something different to what he had said on the point in the first the trial - asserting that "*it sums up to pretty much the same thing*". He agreed, however, on being further pressed that in the first he had said that he didn't see the handle as he couldn't see it, because it was in the appellant's hand (on his version of events) and had in effect guessed that the knife had a wooden handle with rivets. When asked to explain this discrepancy he said to counsel that "*It's very intimidating when you're up here. You draw a blank on your statement a little bit. You try to remember exactly as you said it but as I said, it was all a long time ago so I'm doing the best I can*". He contended that he did not have a memory for those or other details canvassed by counsel with him at that stage and he repeated his explanation for supposed discrepancies as between his accounts by again asserting his nervousness in giving evidence, and the fact that his statement was taken from him soon after the event. He made no mention of a blackout.

44. During further cross-examination it was sought to introduce elements of the account of one Joan Broe as to what she had seen or done when the event came to her attention. This was an inappropriate procedure in cross-examination; a witness is not required to comment nor should there be any mention of the fact that the propositions are derived from a statement of proposed evidence of another individual. Nonetheless insofar as that version of events was put to him, Mr Finnegan stated that the version as given in evidence by him was the correct one, regardless of what that third-party might say that she had seen or heard. There were a number of points of agreement, however, between him and the assertions of that witness in the contents of her witness statement put to him.

45. Mr Finnegan rejected the core proposition put to him in evidence that the appellant arrived at the house with money that had been requested of him and in order to see his children. He stated that he was not aware of any argument still pertaining to money and he stated that although there may have been some dispute over a car that it was no longer important after the deceased had ended up in a refuge; the issue of the car was only now being raised by the appellant. He had not known that a request for money had been made of the appellant by the deceased over the phone until evidence was given to that effect by the witness Janice O'Neill. Furthermore, he stated that the appellant had never knocked on the door (as had been put to him) or that he told the deceased not to answer the door. He rejected a suggestion that there had been a tension between him and the appellant and stated that he was not a confrontational person. He could not recall an incident around drugs or where the appellant had seen him with drugs on the table, supposedly giving rise to tension. Mr Finnegan, while accepting that he had some cannabis in his pocket on the same evening, stated he did not take drugs in the deceased's home.

46. He rejected a number of additional propositions put to him in respect of the altercation. He rejected defence counsel's assertion that when the appellant entered the property he did not have a knife, and that it was the appellant who was in effect confronted in the kitchen by the witness holding the chair, and that the witness had hit him with it knocking the appellant to the ground. He further rejected the proposition that he had armed himself with knives and that in response the deceased became involved in an attempt to stop what the appellant contends was Mr Finnegan's aggression. It was further put to him that he dropped one of the knives which the appellant then picked up, and that he had hit the appellant with the knife in the thumb, the appellant responding two or three

times with the knife he had. Mr Finnegan rejected all these propositions and emphatically denied that he ever had a knife.

47. It was further put to the witness that when the fight came to an end the appellant "*panicked and he left the kitchen and he dropped the knife on the way out in the house*" but Mr Finnegan had no memory of this at all, nor did he see any knives in the hallway or kitchen area on his way out of the house. Moreover, he had no recollection of the appellant returning to the house as had been suggested by the appellant. He also did not see the deceased calling at her the neighbour's door and having it shut in her face, as was put to him.

Dr Mayilone Arumugasamy

48. Perhaps somewhat out of turn, we think that it is important to deal with the medical evidence of Dr Arumugasamy pertaining to Mr Finnegan at this point. On arrival at the hospital on the 21st of September 2012 Mr Finnegan was diagnosed as having a fracture of a part of the cheekbone, with bruising in the area and what he described as a penetrating injury into his right lung. This was in the context of information to the effect that Mr Finnegan had been stabbed. Mr Finnegan's right lung collapsed and this was due to the so-called penetrating injury. He was treated as an inpatient for three days and subsequently elsewhere.

49. He was cross-examined by the appellant. In answer to an enquiry as to what the stab wounds were, what he found and how he assessed Mr Finnegan, he said: -

> "…*We assessed him with the history, examination, clinical examination, so we take a history from the patient, you know, about his symptoms. And then you examine the patient, examining the wounds that they've had and then all the*

parameters needed after that. And then you make investigations following that, depending on what your findings are."

50. In investigations following that [which included CAT scans] he said that in order to give rise to a collapsed lung "*the implement which caused it [a knife] would obviously have to penetrate the chest wall into the lung to allow gas to go in and therefore, the lung collapses thereafter*". In this context the appellant was seeking to establish the depth such an implement would have to go to cause such an injury. Dr Arumugasamy said that there was no injury to Mr Finnegan's ribs. The appellant also made enquiries as to notes or results of tests kept in the hospital and about the treatment afforded. The witness was also asked about the width of the wound but said that he could not give an exact measurement. He said that in any event it would have been within the diameter of the "*little dressing*" that had been placed over it. The depth could be measured by reference to the CAT scan. He could not comment on the level of force used. He said Mr Finnegan gave him no information about the "*fight*" (the appellant's term).

Joan Broe

51. Ms Broe gave evidence that she lived nearby the deceased's house and was walking her dog in the vicinity on the 21st of September 2012 when at a given stage she heard what she described as a "*a large smashing sound and then the sound of glass smashing*". She heard the screaming of "*help us, help us, somebody help*" from someone who was standing in the doorway of Number 16 Allendale (who it emerged to be the deceased). She described the deceased to have been "*looking sort of frantically up and down the road for somebody to help her*", she was very panicked so Ms Broe crossed the road to

assist her. As she got closer to the house she described a man emerging from the house, closely followed by a second – the former was described as quite a big build and who she now knows to be the appellant, and the second of very slight build, who had the appearance of being a teenage boy, whom she now knows to be Mr Finnegan. Thereafter she described observing the deceased as standing with her back to the house next door (it seems that she meant Number 14), Mr Finnegan was standing with his back to her; and that the appellant was "*sort of approaching them*".

52. Ms Broe said that the deceased was screaming "*leave him alone, leave him alone*", "*defending herself with her brother's body from Mr Jahiri, sort of, attacking them, and also pulling her brother back kind of in a motion as she was screaming*". Ms Broe then heard her screaming "*No, No*" and she thought at that stage that Mr Finnegan may have been punched in the stomach and slumped down in the arms of the deceased. She also saw an injury on the side of Mr Finnegan's head and described both of them being at the pillar at Number 16 with the deceased standing as Mr Finnegan laid there. Ms Broe said that the deceased said "*help us. He's been stabbed. Please get help*" or "*help us, he's been stabbed*". As the witness approached, she said that the deceased appeared to have been looking beyond her and suddenly screamed and ran off past the opening of her own garden and continued on to the house on the left-hand side. Ms Broe stated that thereafter the appellant abruptly came into view and ran after the deceased, jumping on her back and swung his right arm at her and around her neck onto her left shoulder. She described that as a result of this the deceased fell flat on the footpath with the appellant sat astride her – she was kicking her legs and screaming. She described the appellant as seeming to be of the appearance of someone who was "*absolutely crazed*" and he was punching her. Ms Broe felt the need to help but she was afraid to intervene on her own.

53. Ms Broe decided to run in search of an occupied house for assistance and found lights on in the house around the corner at Number 17. She obtained assistance from one Valdis Marma. The witness obtained a mobile phone from Mr Marma and proceeded to call 999 as she led Mr Marma to the scene. She described hearing Mr Finnegan screaming as she made the phone call and observed the appellant having lifted the deceased off the ground and dragging her by her neck along the footpath. She described hearing Mr Finnegan screaming "*Vesel, just leave her*" or, "*Just leave her. Vesel, just leave her*". Ms Broe saw someone driving away and heard screaming "*leave her, just go*" and "*come back, come back*". The witness asked Mr Finnegan what had occurred (as was she was on the phone to the emergency services at that point) and he responded "*he's taken my sister and I think my sister has been stabbed*". She assisted Mr Finnegan and thereafter took him into the deceased's house.

54. Ms Broe was cross-examined in some detail about the contents of her statements to Gardaí and specifically concerning what she had said on the morning after the offence. This was by special reference to alleged omissions or discrepancies which, frankly, we do not see as having been of any significance. She said that she did not see anybody stabbing the deceased and was not aware that she had been stabbed. She also said she never saw a knife. So far as Mr Finnegan was concerned, she had said in a statement made on the 23rd of September 2012 that he had been stabbed, although at the time she thought he had been punched. It was suggested to her that she was tailoring her evidence to ensure that it was in accordance with what the State Pathologist had said in evidence at the first trial. She stood by her evidence throughout.

55. It was suggested to Ms Broe by counsel for the appellant that in fact the appellant had not been violent towards the deceased and that her evidence was are at variance with

the evidence that others had provided. Counsel confronted her with the witness statement of Mr Marma, notwithstanding the irregularity of such a course. In any event it was suggested to her that at both the earlier trials that there were discrepancies between what she said and what Mr Marma had said in evidence.

56. Ms Broe was also asked about the contents of her conversation with the emergency services operator to whom she made her 999 call. The recording was put in evidence in the first trial but it was not sought to do so in the second. No application was made to introduce it as an exhibit when senior counsel for the appellant was cross-examining her out of its contents.

57. During their deliberations the jury asked for a transcript of the 999 call made by Joan Broe to the emergency services. Mr Collier, then solicitor for the appellant, had indicated to the judge of the appellant's concern that this material had not been put before the jury. This was the first time in that trial that the question of putting this into evidence had arisen even though when it was first referred to, the appellant was represented. The judge declined and told the jury, in effect, that it could not be furnished because it was not an exhibit in the case. It was simply not in evidence and the judge was entitled to refuse to permit the matter to be reopened. We say at this stage that appears to have been an entirely proper and legitimate exercise of his discretion. The document had not been exhibited, and the evidence was at that point closed. Amongst the appellant's many unfounded complaints on this appeal was the fact that this was not given to the jury.

Valdis Marma

58. Mr Marma is a Lithuanian national who has lived in Ireland for a number of years. He lived in the immediate vicinity and was in his home at the time of the events. He

described that matters were first brought to his attention when Ms Broe came to his front door and asked for his assistance outside as she was afraid and after hearing some noise outside, Mr Marma accompanied her from his house towards the locus. He saw a portion of the event which gave rise to the prosecution. In particular he saw who we now knew to be Mr Finnegan near a pillar outside the deceased's house. He was asking for help and blood was visible on his head – he was holding a towel to it. He further recollected that he observed a bald man wearing a black jacket [now known to be the appellant] alongside a woman with dark hair [now known to be the deceased] hugging each other or in very close in proximity to each other. Mr Marma then returned to his house to obtain his mobile phone and thereafter returned to the deceased's house. He observed the appellant walking away from the house. He said that the deceased was being assisted by Ms Broe and another female neighbour at this point. He went to help Mr Finnegan who was still outside the deceased's house and he helped him inside. As this transpired, Mr Marma observed the deceased was holding her stomach and thereafter, collapsed outside the driveway. Whilst we will come to the cross-examination below, in fact, during that period, he said that he had not seen her collapse but saw her on the ground. He then heard a car which he observed to be white.

59. In cross-examination, he said that he did not see the appellant having a conversation with the deceased – she was standing, at least when he first saw her. He was cross-examined also as to detail of his movements and propositions were put by counsel to him as to the appellant's movements but these do not appear to add anything one way or another. When he returned to the locus having collected his phone, he saw the appellant walking to what we know was his car. He said he heard nothing of what she said nor saw her being placed into the car. He further stated that he did not see the deceased fighting

with the appellant, didn't see her being lifted by the appellant and agreed that the appellant returned quickly with his car. When asked, it appears that he thought (and there was no basis for him so thinking) that the appellant and Mr Finnegan had been fighting.

60. We might make a number of observations pertaining to these witnesses at this juncture. Regarding witnesses as to the *res gestae*, they were cross-examined in some detail and there are undoubtedly inconsistencies between them as to precisely what occurred; unsurprisingly the appellant has placed strong emphasis on this. He went so far as to say (by way of submission) that at least Ms Broe was suborned by the Gardaí to give evidence in a sense which he regarded as unfavourable to him, something for which there is no evidence. This was not put to that witness in cross-examination. Those inconsistencies, insofar as they are relevant, and inconsistencies in a fraught situation such as that which had developed are commonplace and are jury matters.

Caroline and Kevin Croly

61. Mr and Ms Croly who were the immediate neighbours to the deceased's house also gave evidence at the trial. Ms Croly said that she heard screaming, knocking at her door and saw the deceased there. The deceased looked frightened, was shaking and said "*call the police, call the police*" – she also saw a man running into her driveway. She was frightened and closed the door. When she next looked out, she saw Mr Finnegan in a bloodied state and the arrival of third parties who assisted him. In cross-examination she said that when she heard the deceased speaking her voice was slurred but she saw no bleeding. Kevin Croly added nothing of significance.

APPELLANT'S CONTACTS IN IMMEDIATE AFTERMATH

Helga Duffy

62. Ms Duffy gave evidence on the ninth day of the trial. This consisted of contact with the appellant through her partner, one Paul Callan, who had a working relationship with the appellant – Mr Callan gave brief evidence-in-chief the tenth day of the trial. Cross-examination did not immediately follow, in circumstances where the appellant contended he was ill. After the appellant had been medically assessed, and was found fit to continue, he declined an opportunity to cross-examine Mr Callan. At any rate, Ms Duffy said that her partner told her that the appellant would stay at their home in early September 2012 with his two children for a brief period. He subsequently stayed at her home from the 7th of September with his two children. Ms Duffy was aware that the circumstances giving rise to the appellant's stay were that the deceased had been hospitalised. She understood that the appellant stayed at her home from that date up until and including the night of the 21st of September 2012. She stated she was away on holidays for a period during the appellant's stay but had returned on the evening of the 21st of September 2012, although the appellant wasn't in her home upon her return. She said, however, that at approximately 10.05pm she observed the appellant outside her house and that he indicated that he wanted to speak to her on her own. She said that he told her that "*something bad had happened*" and relayed to her that he went to the deceased's home to see his children (who had since been returned to her) where an altercation arose. She said that the appellant told her that Mr Finnegan would not let him go into the home but when he got inside, he was hit with chair on the side of the head by the Mr Finnegan who then came at him with a knife. She described the fact that the appellant gestured to her how Mr Finnegan came at him with the knife and that he held it above his head with two hands. She stated that the appellant

told her he tried to stop Mr Finnegan, the deceased got involved and that she "*got hurt*". Ms Duffy was not informed of the severity of the injuries sustained by the deceased or those sustained by Mr Finnegan only that the appellant tried to take them both to the hospital. She was told that only the deceased came with him. Ms Duffy said that the appellant then stayed the night at her house; her husband was not in the home because he was in hospital. The next morning the appellant came into the sitting room and retrieved a new SIM card he had left behind the night before whilst they were speaking. She said that the appellant then phoned her husband and asked him for permission to use a vehicle that was parked outside the property, a Renault Megane. The appellant subsequently retrieved the key for the vehicle which was in the house and left the property.

63. In cross-examination, the appellant put a number of matters to Ms Duffy. She rejected the propositions that her account of her conversation with the appellant was incorrect, that he had told her that the deceased had told him to deliver money to her or that he had told her Mr Finnegan was preventing her from opening the front door. She also rejected the propositions that he had told her that Mr Finnegan had picked up two knives from the table (after Mr Finnegan had hit the appellant with a chair). In effect he suggested to her that he had told her his core version of what had occurred in the house but she said that this was not so. He suggested to her that he had used the word "*stab*" when explaining the events that had occurred at the deceased's house. He also accused her of having spoken to Gardaí after the date of his arrest; it was also put that she had a garda neighbour and was helping the Gardaí to "*get him*" as "*he is a foreigner*" with the assumption that he was "*going to jail for 20 years*". Ms Duffy denied all of those propositions.

Paul Callan

64. Mr Callan said that on the night of the 21st of September 2012 he spoke by telephone with the appellant who told him that he had gone to the deceased's house, that something bad had happened, that there was a scuffle with Mr Finnegan, that he been hit by a chair and that he had taken the deceased to hospital.

Detective Inspector Kieran McEneaney

65. Detective Inspector McEneaney testified that he was able to contact the appellant on the morning of the 22nd of September between 11.45am and 12pm. When he did so, the appellant told him that he understood what the Detective Inspector was calling about. The witness said he then cautioned the appellant and confirmed his fluency in the English language before the appellant said anything more. Thereafter the appellant told him that "*he was in a bad fight and something bad happened the night before and that he already told the Gardaí and that he was going to hand himself into Gardaí*". The witness tried to arrange to meet with the appellant. The appellant agreed he would meet him at Finglas Garda Station but the appellant did not attend. Subsequently the witness phoned the number numerous times but there was no answer. Detective Inspector McEneaney then became aware that the appellant had another phone number and he attempted to contact him on it, but again he received no response. He was subsequently informed that the appellant had presented himself at Cabra Garda station that evening at 5.40pm.

Garda Amanda Lynch

66. The appellant phoned Garda Lynch on the afternoon of the 22nd of September 2012. She stated in evidence that she cautioned him because she knew Gardaí were looking for

him and that he explained to her that he had been in a fight the night before with the deceased's brother, that they were fighting with knives and that the deceased got in between them. She stated that he told her that he had heard on the news of the deceased's death that day. She recalled that on numerous occasions he told her that he could not live without the deceased and was going to commit suicide. She became concerned about this and asked him to come into Cabra Garda Station to speak with her. The appellant agreed to do this and he met with her shortly afterwards. At the garda station he took a knife from his jacket pocket and placed it on a table. In response to her enquiry as to whether or not he had any other items, the appellant turned out his pockets and nothing else of any relevance was found. She said that the member-in-charge, Garda Eoghan O'Doherty, took possession of the knife; i.e., that marked EOD1, which the prosecution said is the murder weapon. She was not asked, nor did she volunteer anything, concerning whether the appellant had said anything about how he might have held the knife at the relevant time.

THE HOSPITAL WITNESSES

Kenneth Leech

67. Mr Leech is a firefighter with the Dublin Fire Brigade and was on duty on the evening of the 21st of September 2012. He was at Connolly Hospital when at 9pm he observed a car arrive, which he then approached to see if he could provide any assistance. He stated that when he and a Kevin Maypother attended the vehicle, they found the appellant lifting the deceased from the back of the car. The deceased appeared to be unconscious and she was slipping from the appellant's grasp at the back of the car. He described that the appellant uttered the words "*hospital*" and was in an agitated state. He described noticing a wound on the left side of the deceased's chest and said that he placed

his hand on the wound. He believed the wound to be consistent with a stab wound, he was familiar with such wounds. Mr Leech tried to get a response from the deceased and he said that she became alert and was able to say her brother's name on a number of occasions. She gave him her first name and a partial address also.

Korill Allen

68. In September 2012 Mr Allen was a security officer attached to the James Connolly Memorial Hospital in Blanchardstown and on the 21st of September was on duty from 8.00pm until 8.00am the following morning. He described the fact that at 8.40pm he was in the Accident & Emergency Department of the hospital when he and a colleague Svetlana Akopova heard a car arrive and ambulance crew attending to it. He described going outside to offer further assistance, and how upon doing so he encountered a white Ford Focus with a male driver and a female who appeared to be injured. There were two responders already assisting at the car, and he went with Ms Akopova to retrieve a trolley from the resuscitation area. He stated that when he arrived at the car with the trolley, he assisted the deceased who was on the ground and tried to hold her head to lift her onto the trolley. As he did so, she pointed towards the driver and said that "*he did it*". He said that the driver was a few metres away when she pointed to him and he described the appellant as a bald man, in his 30s, and that he appeared to have a wound on his head with blood on it but that it was no longer bleeding. Mr Allen stated after taking the deceased inside, he then spoke to a manager there before phoning Gardaí. He said that by the time he went back outside, the appellant and the car were gone. In cross-examination, he was asked whether or not he (the witness) had said, at one point, that the deceased's words

were "*he did that to me*" and that at another point he said the deceased's words were "*he did it*". He denied that he gave these differing versions of what the deceased had said.

Svetlana Akopova

69. Ms Akopova was also a security officer working at the James Connolly Memorial Hospital on the 21st of September 2012. At approximately 8.55pm she observed a white Ford Focus pulling up outside very quickly on the CCTV monitor which she had in front of her. She described hearing a male from the car shouting "*help, help my lady*" and said that, along with Mr Allen, she went out to assist. She described trying to calm down the appellant who seemed to be bleeding from his head, and also to be very nervous. She then described going back with Mr Allen to get a trolley on which the deceased was placed on. She said she asked the appellant if he was going, and he told her that he was just parking his car but did not return. She also had a recollection of the deceased having said something, but while she could not recall what it was she said, she was conscious that the deceased had tried to say something.

Angel Canidan

70. The statement of Ms Canidan, a nurse at James Connolly Memorial Hospital, was read to the jury. She recalled that at the request of ambulance personnel, she went outside and saw the deceased on the ground. She was bloodied and pale but conscious and breathing. She recalled that the deceased was speaking and saying "*my brother, my brother*". She said that when outside she saw a person whom she described as being a "*tall guy*" standing beside a car, and she assumed that he had brought the deceased to the hospital as he had blood on his clothing. They did not speak to each other, however.

GARDA INVESTIGATION (GENERAL) (INCLUDING SEARCHES)

Garda Eoghan O'Doherty

71. Garda O'Doherty was on duty and the member-in-charge at Cabra Garda Station on the 22nd of September 2012. He was present when the appellant voluntarily attended at approximately 5.25pm and met Garda Amanda Lynch who brought him into a private consultation room where he joined them. He confirmed that the appellant was cautioned and that when the appellant sat down, he produced a knife from the lefthand side pocket of his jacket and placed it on the table. Garda O'Doherty took possession of this as evidence, placed it into a sealed bag using sterile gloves and marked it EOD1. He then handed the item over to one Garda Brendan O'Hora when he arrived at Cabra Garda Station moments later. Garda O'Doherty stated that the appellant remained in the consultation room voluntarily for some ten minutes. The appellant briefly spoke with Detective Sergeant Callaghan who then arrested him on suspicion of the offence of murder of the deceased (Anna Finnegan). Garda O'Doherty then filled out a custody record for the appellant. On the application of Detective Sergeant Callaghan, he detained the appellant under the provisions of section 4 of the Criminal Justice Act 1984 for the proper investigation of the offence, for which he had been arrested, and informed the appellant that he was doing so. The appellant was advised as to his rights. The lawfulness of that detention or subsequent extensions of the period of detention are not in contest.

Garda Sharon Duncan

72. On the 23rd of September of 2012 Garda Duncan participated in a search of the appellant's residence at 19 Lohunda Crescent in Clonsilla in Dublin under the supervision of Sergeant Anne Ellis. She gave evidence that when searching the kitchen of the

premises, she located a wooden knife block which contained one black handled knife. She also located, six more knives, all of which had black handles and one of which in the event was, or at least would later be described as, a meat cleaver. She described being involved in the labelling and bagging of these items and these were marked SD1 and she gave them to a Detective Sergeant Gavin Ross. In cross-examination she said that she had been briefed prior to the search and was told that the purpose of it was to search "*for knives, black handled knives*". She was not able to say which of the knives seen on a photograph proffered to her had been in the block. She recalled that all were put in the same evidence bag.

73. Whilst we will deal with her evidence further below, we digress as it may be helpful to say at this stage that Dr Hillary Clarke of Forensic Science Ireland examined the seven knives exhibited SD1 as well as the knife exhibited EOD1 (which the prosecution said is the murder weapon and had been given to Gardaí by the appellant). She said that one of the knives found in the appellant's residence had a black handle in which there were what were described as three silver coloured rivets (similar to the knife given to the Gardaí by the appellant and contended to be the murder weapon). Both such knives had the same brand name and logo on their blades. The prosecution relied upon this to support the proposition that the appellant attended at the deceased's house with EOD1 and that he had brought it from his own property.

Detective Inspector Anne Ellis

74. Detective Inspector Ellis testified that she, alongside a Garda Sergeant Eamon Whelan, were jointly overseeing the search of the deceased's home on the 23rd of September and a number of items were retrieved therefrom. Detective Inspector Ellis had

also overseen the search of the appellant's residence at 19 Lohunda Crescent earlier that day. She said that she was given entry to the appellant's property by Mr Khalifa although a warrant was also in existence.

75. She she gave evidence that, while at the deceased's house, she retrieved two knives from a kitchen sink which she gave these to Sergeant Whelan. They were bagged and marked by him and exhibited as EW2. She also retrieved a document (a "*Protection Order*") in a press, as well as letter written by the deceased which was found in the deceased's handbag (these were marked and exhibited as EW3 and EW4 respectively). It is not in dispute that a protection order had been made against the appellant. In addition, a small grey handled knife (marked and exhibited EW7) was found in a bedside locker.

76. In the course of being cross-examined Detective Inspector Ellis said that only two knives were found in the kitchen area of the deceased's house (she had searched the kitchen, a utility room, a rear garden, and a shed). The appellant put it to her that it did not make any sense that there were only two knives found in the kitchen of the deceased's house. He suggested to her that there were "*loads of knives there*". The witness did not agree and said that she was not the only member searching there. She knew nothing of the knife found upstairs. In any event she did not see any knives other than the two she had seized. Her search extended to searching various cupboards. She said that all areas of the kitchen were searched by her and her colleague; that colleague was a Garda Butler. Her colleague searched what she described as the lower end of the kitchen, and her search included the counters and kitchen tables. She had not searched a cutlery drawer. She was asked whether or not she had seen a black handled knife on the floor (in the appellant's contention that which was dropped by Karl Finnegan) but she said she did not locate a knife there. She was asked whether or not she recalled locating a knife on the floor or

knives in the kitchen from the drawers on the 21st or 22nd of September 2012. The witness said that she was not then there, that the first time she was in the house was on the 23rd of September. Of the knives in the sink, she described one as being large with a serrated edge and which looked like a bread knife, and the second as being a small black handled knife – she described it as looking like a fish or fruit knife. She qualified her evidence in respect of the larger of the two knives to the effect that it looked to her (by reference to photographs) like it had a dark grey handle. The appellant referred the witness to a photograph of the kitchen that showed a knife on the table. The witness said that she had been searching and had been asked to seize knives similar to that which had been handed to Gardaí by the appellant which she described as a "*smallish steak type knife*" with a "*dark handle, a black handle*". She distinguished between knives "*similar*" to EOD1, and "*ordinary eating knives or kitchen knives*", and she said that what was on the table did not fall into the former category. There was some element of confusion in cross-examination and the judge clarified the matter to the latter effect. The knife on the table as shown on the photograph can be seen on a plate (on which there is bread) and seems to be a dinner knife or something similar (which was wholly made of stainless steel); in any event such knife is of a different class to EOD1, and the other knives seized.

Garda Sergeant Eamon Whelan

77. Garda Sergeant Whelan stated that he was also involved in the search of the deceased's house on the 23rd of September of 2012. He was tasked as exhibits officer of the search and he also was jointly in charge of the search alongside Detective Inspector Anne Ellis. He stated that a Garda Gail Donoghue was also present during the search and that she had retrieved "*a small grey handled knife in a bed side locker*" in an upstairs

bedroom. He stated that upon conclusion of the search, he gave the exhibits to Garda Brenda O'Hora, who was the exhibits officer in Blanchardstown Garda Station.

78. Thus, three knives only were seized in the deceased's house. A number of Gardaí were involved in both searches. It is clear that the evidence adduced at trial did not support a suggestion that there may have been knives other than the three seized in the deceased's house and that on the table. We refer to this because the appellant contends that the Gardaí did not seize all knives in the premises – by this we understand him to imply not merely the knife on the table but other "*potential*" knives. However, there was no evidence that other knives existed which the Gardaí failed to seize, other than this assertion.

Garda Patricia Davey

79. Garda Davey was responsible for the very significant volume of CCTV footage collected by the Gardaí in the ordinary course of the investigation. On the 31st of March 2017 (Day 22 of the trial), the appellant in cross-examination enquired specifically about CCTV recorded at Cabra and Blanchardstown Garda Stations. She said that such footage is retained on a so-called "*three week loop*" which means, we understand, that it is erased after three weeks. She said that only relevant evidence such as the CCTV from the hospital was retained at the time and that there were witnesses who able to give in evidence that the appellant had been present in the garda stations on the dates in question. This was the first time from the inception of the proceedings that mention was made of CCTV footage from Cabra Garda Station [and, we may say, if necessary Blanchardstown Garda Station]. The appellant also put it to Garda Davey in cross-examination that she had fast forwarded over a piece of CCTV being shown to the jury covering his interviews

with Gardaí. On this occasion the trial judge intervened and the transcript records the following exchange: -

> "*JUDGE: The burden of what you're suggesting is that the jury have been deprived of the question that is question 55. They have it on the transcript, they saw it when the video was played, but more importantly they have it on the transcript.*
>
> *MR JAHIRI: What I'm saying, Judge, the fact that --*
>
> *JUDGE: So, what's the relevance of all of this?*
>
> *MR JAHIRI: The fact that she did that in front of all of us here deliberately --*
>
> *JUDGE: She didn't, she rewound and she did so, if my memory is correct, at the direction of the trial judge, namely myself.*
>
> *MR JAHIRI: Well then why did she do that then? Why did she just fast forward that question*."

Ahmed Khalifa

80. Mr Khalifa's witness statement was read out to the jury under section 21 of the Criminal Justice Act 1984. The statement in question had been served in due time before the trial and there was no objection to the receipt of the witness's evidence by reading it in under the section in the ordinary way within the requisite twenty-one day period. On the evening of the 21st of September Mr Khalifa, a housemate of the appellant's, said he was at home and, to put it shortly, described someone leaving that evening around 8pm in the Ford Focus. He asserted his belief that that person had been the appellant although he did not see him. He himself left the house at 10pm returning approximately an hour later. So far as the contents of the house were concerned he said everything was accounted

for and that "*all the knives were accounted for in the kitchen*". As to the appellant's presence in the home, Mr Khalifa stated that: -

> "*Vesel never cooked in the house. He doesn't even have toilet paper. Everything outside his room doesn't belong to him. He always locks his room. Vesel has access to the kitchen and sitting room area but he never uses it*."

Detective Garda Janette O'Neill

81. Detective Garda O'Neill was attached to the ballistics section of the Garda Technical Bureau and is a qualified scenes of crime examiner. On the 22nd of September 2012 she attended the scene of the crime at 4.25pm which was being preserved by Garda Andrew McGrail of Blanchardstown Garda Station. She found a great deal of blood at the scene both outside the neighbouring house (14 Allendale Close) and outside that the deceased's home. The position was the same inside the deceased's house She found damage at the front door. Blood was found to have been extensively deposited on the ground floor of the deceased's house. Accordingly, numerous swabs and tape lifts of the blood were taken from various places within the deceased's home.

82. She also examined the appellant's white Ford Focus (it is not in debate that the appellant's car used on the evening of the offence) and subsequently examined a Renault Megane (the latter car was used by the appellant with the consent of Paul Callan on the day after the offence, a matter equally not in dispute). In examining the Ford Focus blood was found in the interior and on a number of bags. On examination of the Renault Megane blood was found on bags found in the boot. Swabs of the blood were taken from the items found in both vehicles and the interior of the Ford Focus.

83. Subsequently she came into possession of EOD1 (which was surrendered by the appellant to the Gardaí) and a number of items found at the appellant's house at 19 Lohunda Crescent. The items found at the appellant's house consisted of a knife block containing one knife as well as "*five further black-handled knifes*" and a meat cleaver. She described them and said that of those knives taken from 19 Lohunda Crescent, two were from the same manufacturer and had an inscription saying "*Problade forged steel*" and these seemed to her to be part of a set. She went on to say that a further knife was similar in design but did not have a manufacturer's mark. She also made reference to a "*Victorinox Fibrox kitchen knife*". She said that "*these would have been, if I may add Judge, would have been (sic) similar in size to the specifications given to us by the pathologist to look for from the wound of Ms Finnegan*". She said that the knife EOD1 was ostensibly by the same manufacturer as the manufacturer of two of the knives from 19 Lohunda Crescent, because it also bore the inscription "*Problade forged steel*". She examined these items and described them. Photographs were available and they were produced.

84. The appellant said that he was not ready to cross-examine the witness. Counsel for the DPP pointed out, and it is the fact, that on the previous sitting day, a Friday, the appellant had been told in open court that the witness was travelling from abroad to give evidence. The judge rightly pointed out that it was the appellant's duty to be prepared to deal with the evidence, having been given "*fair warning*", as the judge put it, of the fact that the witness would be giving evidence. In cross-examination the appellant asked her whether or not three of the knives which were identified to her had come from the same set. She said "*No, that three of them appeared to be from one family of knives*" and the others were "*all of different manufacturers*". Asked whether or not the knives came from

the block, she said she could not give a definitive answer to that. The appellant did not cross-examine further.

EXPERT WITNESSES AND STATE PATHOLOGIST

Dr Michael Curtis

85. Dr Curtis, the state pathologist, gave evidence to the effect that the deceased had suffered a single stab wound to the left side of the upper chest downwards into the abdomen. This in turn caused injuries to the stomach, pancreas and abdominal aorta. He said that this would have caused what he characterised as a massive haemorrhage into the left chest cavity and the abdominal cavity. Essentially the wound was non-survivable. He said there was no evidence of any typical defence type injuries to the body.

86. Dr Curtis' understanding (which appears to be correct) was that "*there [was] an absence of [the deceased's] blood in [the appellant's] car which she was driven to hospital in and it was forensically examined and no blood was detected or certainly nothing of any significance*". In this connection he said that whilst one may well bleed out to the external world it is also perfectly possible for the bleeding to be entirely internal.

87. The deceased may well have been able to survive and function for a short period after infliction of the wound – several minutes, possibly longer and she would, possibly, have been in position to walk. He said that the nearest analogy with a person in such an injured state would be with the person who suffered a ruptured abdominal aneurysm. These conditions are not necessarily instantly fatal and people can survive to get to hospital.

88. The angle of the stab wound was 45 degrees from the horizontal and slightly backwards. The approximate wound track depth was 14cm. The overall length (including

the handle) of the EOD1 knife was 23.5cm and the blade length itself was 14cm. The blade had a single edge and a maximum width of 1.9cm. The blade had a blunt back, it 0.1cm wide and there was damage to the very tip of it – which deviated to the right (over the last half centimetre of its overall length). The nature of the wound indicated a knife with a blunt edge and a sharp side – a single bladed knife. In his opinion the knife in question (EOD1) is a similar type of knife to that which could have inflicted the wounds sustained by the deceased. There was no evidence to suggest that the knife had come into contact with any bony structure such as to cause the damage to its tip. There was no way of stating from a pathological point of view that the EOD1 had caused the injury.

89. Under cross-examination Dr Curtis stated that the injury suffered was in what counsel called "*…a somewhat unusual place in the body in terms of its track*" and that "*…not perhaps the most common sort of track one would observe as a pathologist*". He accepted that it was possible that the wound was caused by a knife with a longer or shorter blade or indeed a wider blade or narrower blade within certain parameters. The stabbing was not in what counsel described as "*a… head-on situation*". He also said that the absence of defensive injuries might have meant that the deceased did not see the attack coming or that it may have happened so quickly as to mean that the deceased did not defend herself. There was nothing in the nature of the injuries which would indicate attempted strangulation or a neck hold nor any injuries to the deceased's neck.

90. As to the immediate aftermath of the injury, Dr Curtis stated that a person may not themselves be aware of the severity of an injury which they might have. The scrapes found on the knees of the deceased were consistent with terminal collapse. The witness could not exclude the possibility that the deceased had come between two persons who

were fighting with knives and that she could have been accidentally struck with a knife in consequence.

Detective Garda James Cunningham

91. Detective Garda Cunningham was attached to the Fingerprints Section of the Garda Technical Bureau and had many years' experience in relation to fingerprints. At a given stage he received a control set of the fingerprints of the deceased, of Karl Finnegan, and of the appellant – he examined many exhibits with special reference to those from the deceased's home but the appellant's fingerprints, those of the deceased and those of Mr Finnegan were of no significance because they had lived in or visited the premises. He received the knife block and four black handled knives, one of which had been within the knife block and three which were "*loose*" (comprising of the items exhibited as SD1). No finger marks were developed from those knives – for the sake of clarity that his evidence extended to the proposition that there was no fingerprint evidence linking the appellant to the knives. He also examined the knife EOD1 and gave evidence that he had developed one finger mark on the blade. On further analysis he concluded that this finger mark matched the left forefinger of prints provided by the appellant.

92. In the absence of the appellant (who at this stage had been excluded from court by order of the trial judge), senior counsel for the prosecution asked questions of the witness on the basis that, if the appellant was present, he would have made the case that, on his own admission, he handled the knife and had placed his hand on the handle of the EOD1 and that, because his fingerprints were not found there, they must have been wiped. The witness responded thus: -

"*On my examination I've no evidence before that the knife was wiped. Sometimes if you're holding -- for example, the blade, if one is holding a blade of a knife one would hold it quite gently and be careful, I would imagine. If one is handling a knife by the handle and if there was a -- just say a dispute or a fight or whatever, an altercation, you would have to use a certain amount of force to grip the knife and what sometimes happens when you use a lot of force and you grip an object quite tightly is that the sweat which lined the tops of the ridges will be forced down in between the ridges and that can basically clog things up and that could -- that is one explanation I could give in this case, is that just because you handled something doesn't mean to say you're going to leave your finger marks behind. You could handle it, you could handle it too tight, not knowing to yourself that you are probably obliterating the finger marks you're leaving yourself. So, it could be due to excess smudging, distortion, et cetera*."

And he went on to say: -

"*…while we're on that point, on the other side of the blade there was some ridge detail also on the opposite side of where the left forefinger impression was made which could be just if the knife was held like this, gently, it could be the thumb but that's -- I just want to let the Court know that there was ridge detail on the other side of the blade, opposite to the left forefinger*."

He said that he could not attribute that to anyone.

Dr Hilary Clarke

93. Dr Clarke of Forensic Science Ireland examined the seven knives (exhibited SD1 being the knives taken from the appellant's home) as well as the knife exhibited EOD1. EOD1 was found by her to have "*light blood staining along one side of the blade*". This "*light film*" or "*smear*" (as she described it) was approximately 8cm in length and there was also bloodstaining along the cutting edge of the knife which was up to a distance of approximately 12cm or as she also described running from the tip nearly the whole length along the blade. Photographs were produced in this regard. She said that there was some damage to the knife in that a small piece of the handle (as she put it) was broken off near the blade end and she referred also to the fact that the blade was slightly bent (the latter, in our understanding, having been found also by Dr Curtis).

94. She said that one might not get blood on the blade of the knife used to stab someone as it can get wiped from the knife on the way out of the body either by the skin or by the clothing. She would have had an expectation of finding DNA [from substances] on a knife if it had been inside and then pulled out of a person but she said that that expectation is not always realised.

95. DNA was extracted from bloodstaining on the tip of the blade as well as the edge of the blade. She concluded that DNA matched the DNA profile of the deceased. She said the chance that another would have the same profile was less than one in one thousand million.

96. Extensive bloodstaining had been found both inside and outside the deceased's house (including on the driveway) and in the driveway of the deceased's immediate neighbour (14 Allendale Glen). DNA was extracted from separate samples of blood recovered from a number of places in these areas. DNA was also extracted from

bloodstaining on the front and back of Karl Finnegan's jeans. In all instances, the DNA extracted from them yielded the same result, i.e., that the profiles matched that of Karl Finnegan. She again determined that the statistical likelihood that the DNA was from someone other than Mr Finnegan as being less than one in one thousand million (a statistic which, having regard to the form of words she used, is equally applicable to the bloodstains found elsewhere). She later described that she was asked to return to the deceased's house to carry out DNA profiling on three areas of blood staining found there. She said that in all these cases, they again matched the profile of Mr Finnegan. She said however that the likelihood that the DNA had come from someone unrelated to Mr Finnegan was one in four hundred thousand on these samples. Asked to why there was a change in statistics on these samples she stated that what was found here were what are called "*partial profiles*" that did not contain the same number of elements for comparison and that changes the statistic slightly.

97. Blood samples were recovered from the appellant's Ford Focus and the Renault Megane which he took from Paul Callan's house as well as from items found within them. When DNA was extracted from those samples it similarly yielded the profile of Mr Finnegan.

98. Blood samples were also taken from items of clothing taken from the appellant and in respect of samples taken from the front and back of his jeans as well as the parts of his jacket, these were found to contain a major DNA profile that matched that of Mr Finnegan. The witness stated that she did not find any bloodstaining on two t-shirts belonging to the appellant or on a fleece also retrieved from him. She described that she also observed the items of clothing worn by the deceased. She said that there was a stab cut to the left area of the deceased's sweatshirt which was heavily bloodstained but that

there had been some damage to the clothing which appeared to be as a result of medical intervention. She stated that no further work was carried out on the deceased's clothing.

99. Dr Clarke described carrying out an examination of the knives exhibited SD1. She described them as seven black-handled knives, which included a meat cleaver type knife amongst them. She stated that one of the knives in SD1 appeared to be similar to the knife EOD1, in that it had a black handle with three silver coloured rivets and a distinctive brand/logo on one side of the blade although it appeared to be faded. She stated that on examination that particular knife had "*Victorinox Fibrox written on the handle and was distinct from the other six knives*" of SD1.

100. Under cross-examination by the appellant, Dr Clarke was asked why she examined only the deceased's clothes and had not examined the deceased's shoes. She explained that she had examined the deceased's clothing because she thought it be possible from the blood staining on the clothing to establish the order in which various stab wounds had been inflicted. However, given the heavy degree of blood soaking on the clothing, she said it did not prove possible to sufficiently distinguish bloodstaining attributable to different wounds to enable any conclusions to be drawn in that regard. She further stated that it was not unusual not to examine that is handed into the laboratory and that she only examined what she thought was relevant. The appellant then asked her whether any of his clothes had been washed, as he claimed that he had been told this during his interviews with Gardaí. Dr Clarke stated there was no indication the clothes had been washed.

101. The appellant put a number of other propositions to Dr Clarke, including that she had wiped fingerprints off EOD1, and had had conversations with Detective Garda Brendan O'Hora and/or a Garda Kieran McEneaney. She rejected these propositions. She also rejected that she had in some way interfered with the handle on EOD1. The appellant

put it to Dr Clarke that in the first trial she had described finding the DNA of Karl Finnegan on the knife EOD1 but no evidence in support of this was adduced. Following objection by counsel for the prosecution, the appellant was admonished by the trial judge that it was improper to put such a matter to the witness if he was not in a position to substantiate it with evidence. The appellant (although in possession of the transcript of the first trial) was unable to produce such evidence and withdrew the allegation.

102. When asked whether she would have expected to recover Mr Finnegan's DNA on the knife EOD1, she stated that blood or DNA may or may not transfer – it could be wiped off on withdrawal of the knife from the body. As to the proposition put by the appellant that it would be a fair assumption to find blood and a DNA match on such a knife given that Mr Finnegan had bled extensively from two wounds (if it had not been washed or wiped away), she said it would depend because one may or may not get blood on the blade of a knife. She stated that there were no mixed DNA profiles and the DNA profile matched that of the deceased. She described that the embellishment on EOD1 was a labelling saying "*Stainless steel*" and "*Pro Blade Forged Steel*" (in what was described as in a "*kind of oval shaped design*"). She stated that there was no obvious sign of blood on any of the knives constituting SD1. She rejected the proposition put by the appellant that the deceased's DNA had not been found on EOD1, and that it was Mr Finnegan's blood on the knife, and that she was involved in some form of "*collusion or campaign*" against the appellant where the Gardaí were telling her what to say, and what conclusions to arrive at in her findings. Arising from a question in re-examination as to whether she had a view as to whether the knife could have been used to stab both Mr Finnegan and the deceased in spite of the lack of Mr Finnegan's DNA she stated that she could not address the issue of whether that was the knife that was used to stab both or whether it

was just used to stab the deceased and as to the likelihood of it being used to stab the deceased, she said that "*it's most likely that knife was used to stab her because of the pattern, the smearing along the blade*".

INTERVIEWS WITH GARDAÍ

103. Subsequent to his arrest and detention on the 22nd of September 2012, the appellant was interviewed on six occasions by a total of six members of An Garda Síochána as set out below.

104. We cannot set the appellant's interviews with Gardaí in full but we think that it will be of assistance so that the appellant's defence can properly be understood to refer in some detail at least to the first of them because the core of his version of events is contained in the first, and then varied and supplemented thereafter in ways which go to credibility which we will also set out. The written and oral submissions include extensive and repeated quotations of what the Gardaí said or asked in interviews.

105. In any event the appellant seeks to build on this material for a number of purposes. First, to suggest that a number of the Gardaí are themselves lying and engaged in a conspiracy to suborn witnesses to give false testimony to "*fit*" the prosecution case. Second, for the purpose of relying on what they have said as evidence of the facts thereby stated. The first even when seen in the context of all of the other evidence in the case gives rise to no implication of a conspiracy or the like. The second indicates a failure on his part to appreciate that what is said by the Gardaí in interview is not evidence of fact of what is thereby stated (see *People (DPP) v Almasi* [2020] 3 IR 85). The appellant's respective interviews were conducted as follows: -

22nd September 2012

Interview 1: 7.20pm to 10.43pm - DG Patrick Traynor & DG Brendan O'Hora.

Interview 2: 10.31pm to 11.48pm - Garda Paul Kirwan & DG Bernard Connaughton.

23rd September 2012

Interview 3: 8.39am to 10.43am - DS Daniel Callaghan & DG Bernard Connaughton.

Interview 4: 2.30pm to 3.44pm - DG Tom Cooney & DG Bernard Connaughton.

Interview 5: 5.24pm to 7.39pm - DG Patrick Traynor & DG Brendan O'Hora.

Interview 6: 8.51pm to 11.36pm - DG Tom Cooney & DG Bernard Connaughton.

Dr Haroon Khan

106. Dr Khan examined the appellant on a number of days during his period of detention and we think it appropriate to refer to this evidence before proceeding to deal with the interviews. He was deemed fit at all times to be interviewed. Of particular significance is the fact that when Dr Khan conducted a physical examination of the appellant, commencing at 10.09pm on the 22nd of September 2012, he noted "…*on the right eyebrow, on the right side, on the lateral, outer side, there was an abrasion… at the lateral canthus of the eye*". By reference to a photograph he stated that it was an abrasion or graze. He also noted that on his left thumb (the dorsum) another abrasion was found and that also was photographed. He described them as being "*fresh*". To put the matter shortly the appellant expressly or by implication contends that these wounds were suffered in the kitchen when he was defending himself from Mr Finnegan's attack.

Interview 1: 7.20pm to 10.43pm - DG Patrick Traynor & DG Brendan O'Hora.

107. In his first interview with Gardaí, the appellant denied stabbing the deceased but said that he had a fight with her brother Mr Finnegan – he could not remember that she was so stabbed and did not see it occur. The appellant by way of background stated that he had attended the deceased's home on the 21st of September 2012 because he had been asked to call over and drop in some money to "*pay her auntie*", having phoned that aunt ("*Frances*") beforehand. When he arrived he said that he sought admission but the deceased and Mr Finnegan refused him admission and said that they were calling the Gardaí. He heard them saying that the Gardaí would arrive and that he was going to be arrested, as he put it, "*for up to five years*" (he thought that the latter was said by Mr Finnegan). The appellant contended that he couldn't take it anymore, had a pain in his stomach and recalled saying that "*maybe it's better me in jail that (sic) living like this*". He explained that he "*just wanted to see the babies for ten minutes*" having booked a ticket for a holiday on that date and wished to give her the money. The appellant accepted that thereafter he forced his way through the door and into the deceased's home.

108. When he went in, the appellant described seeing the deceased and Mr Finnegan in the kitchen. He stated that the deceased was to his left at the doorway and Mr Finnegan was sitting in a chair. The appellant described that Mr Finnegan picked up a chair, pushed at him and hit him with it, causing him to fall down. The appellant's evidence was not clear from this point whether as he was falling he pushed the chair with his leg back at Mr Finnegan or pushed at him with his leg when he described himself as "*waking up*" from the fall. In any event, the appellant characterised what was happening as occurring "*very fast*" and described how subsequently Mr Finnegan had picked up two knives from the table beside him (one of which the appellant had handed into the Gardaí when he

arrived earlier that day). The appellant stated that Mr Finnegan tried to stab him with the knives and the appellant in response hit him with his leg and pushed the chair at him which caused Mr Finnegan to fall and "*drop the knife down*" in the course of which the appellant retrieved it to use to defend himself. The appellant then described that a scuffle ensued where they were both "*just trying to stab each other*". The appellant said that the knife he picked up was the same knife he handed into Gardaí.

109. The appellant described the fact (if a fact) that during the scuffle with the knives that he was stabbed in his left hand causing "*a small mark*" and it was in response to this that he stabbed Mr Finnegan because he thought he was going to kill him. The appellant did not know where he stabbed Mr Finnegan but insisted he had only stabbed him once. He said that he could see blood on the floor and then he ran out the front door after the deceased who had walked out in that direction. The appellant at first described the deceased as having walked to the door and being at the door with Mr Finnegan following after. He said of the deceased that "*I don't know was she running away from me. She was there trying to stop us fighting and I told her to stop now, we have to go to hospital, all the fuss*". He told both the deceased and Mr Finnegan to come into his car quick because he'd seen blood but Mr Finnegan wouldn't come nor did he want him to take the deceased and told him to just go away. At that stage he described observing the deceased "*dropped down*". He said she was panicked and he then put her into the back of his car and drove to the hospital very quickly.

110. It was put to him that he was telling lies and that he had stabbed the deceased; effectively that he was lying in maintaining that he didn't know the deceased had been stabbed yet knew he had to bring her to the hospital. In reply to this, the appellant said he knew she needed to go to hospital because she had dropped down outside the neighbour's

door, after saying "*please help us, please help us*" in response to which "*she [the neighbour] slammed the door on her*". He, in other words, only realised that the deceased was hurt when she collapsed after this in the neighbour's garden.

111. In the course of the drive to the hospital, the appellant described how the deceased "*kind of flipped over behind the seats*" or effectively that she fell onto the car floor and how he had to hold her head so she would not fall further. The appellant said that accepted that he left the deceased outside on the ground at the hospital but had received help from another to get her out of the car and had called out to a few people in the vicinity to help her.

112. It was then put to the appellant that he was trying to put himself in the best possible light but he denied this. The appellant was asked to further explain the background to forcing his way into the deceased's home and why he was angry. He stated then that on that same morning he had attended Social Services with the deceased "*and the kids*", so as to be able see his children. This visitation had proved abortive at an early stage – a dispute had arisen at that stage with the deceased's sister (Lisa Finnegan) who was also present, apparently the immediate trigger being a request for the return of a logbook (presumably of a motor vehicle); he was involved in the motor trade. Gardaí asked him then whether this was the real reason he had been angry outside the deceased's house or whether it was wanting to see his kids, the door not being opened to him or the logbook of a car that caused him to force entry. The appellant said that he was told by social services on that morning that he would not see his children again, giving rise to anger on his part.

113. The appellant was then asked to describe his relationship with the deceased, in response to which he said that they argued before and he had hit her before "*a little bit*"

and that she also hit him. He maintained that they did this a few times "*just as a joke*". He went on under further questioning to admit hitting the deceased but said that he wouldn't give her a "*hard hit*" and that it was "*to stop her*" or in response to being hit himself by her. He acknowledged that he had hit her two or three months previously causing her to end up in hospital.

114. The appellant denied bringing anything with him to the deceased's home such as a knife and maintained that he had just wanted to tell her about the holiday he was taking to visit his father who was dying and to see his children when they couldn't come with him. At this point he was asked about Gardaí what about the reason he had earlier given, namely that he had wanted to give the deceased money. He claimed he was trying to do that, but then matters had unfolded in the kitchen as he had described them and he didn't know why Mr Finnegan decided to hit him.

115. Gardaí continued to put to the appellant that his rendition of events did not make any sense. They explained that his explanation of Mr Finnegan wielding three items, i.e., the chair as well as two knives, all at the same time was not possible and again put to him that he must have brought a knife into the house with a view to using it. The appellant denied this and said that it was after Mr Finnegan hit him with the chair first that he then picked up the knives and that thereafter, in the course of the appellant pushing the chair with his legs towards Mr Finnegan which hit his arm causing him to fall down, that he was able to retrieve one of the knives to defend himself.

116. Gardaí suggested that he knew that he had stabbed the deceased and that was why he was trying to get her to the hospital. The appellant rejected this proposition and said it was that only when he saw the blood on the floor that he said "*we need to go to the*

hospital", and that he had only realised she needed assistance after the door was slammed in her face at the neighbour's property.

117. The appellant was asked whether or not he had carried the knife outside with him and he said he still had the knife at that stage, adding, "*well, I must have had it because the knife then was in the car on the floor*". Gardaí then pressed the appellant as to whether the deceased was still in the kitchen when he stabbed Mr Finnegan. Initially he said that that she was not but then he went onto to say that it was actually when the deceased saw blood that she ran out of the kitchen. This came after he stabbed Mr Finnegan as she was "*there beside him*" or effectively between them still trying to stop them when that happened.

118. As to why the appellant left the deceased behind on the ground at the hospital if he had not stabbed her, he claimed that he did so to go back for Mr Finnegan who wouldn't come earlier with them. He was asked whether he ended up doing this and replied that he told hospital staff about the address and called the hospital. Apart from this he had just driven around or that waited. He said he rang the hospital later to ask about the deceased and Mr Finnegan but he kept being put through to different sections and asked for a lot of details.

119. He said that the incident was a bad accident and that he and Mr Finnegan should not have been fighting. His constant refrain was that the deceased had not been stabbed or that he didn't stab her, or that he had not seen her being stabbed. He repeated that she had fallen to the ground when a neighbour slammed the door on her. He contended that he didn't see the deceased bleeding in the house. He was confronted with how it was that he had checked for blood in the backseats of his own car if he had no idea nor belief that the deceased had been stabbed. His response was that he had "*moved the diagnostics*"

from one car to another. He said that "*I check all of the time*", i.e., when he moves things. When pressed he said again "*I just checked it just to see*" and "*just like, well you know when you want to check something you just check*", and "*I just checked for blood because I knew Anna didn't bleed last night and I wanted to know because I told Anna it was going to be perfect*". He insisted that he was telling the Gardaí everything he could remember.

120. The interview then concluded and it was put to the appellant who read over the memo, declared that he understood his rights under detention and signed it accordingly.

Interview 2: 10.31pm to 11.48pm - Garda Paul Kirwan & DG Bernard Connaughton.

121. In the appellant's second interview he was asked for further detail about background matters. He said that he and the deceased had had a very good relationship where they worked in a garage together [such garage was the appellant's business]. He accepted that they "*sometimes argued*" and the relationship recently deteriorated. As to why the deceased attended a women's refuge in Bray three weeks prior to her death, the appellant said this was about leaving him and "*everyone*" was pushing her to "*take the children off him*". He said that she took him back three days later and he collected her from the refuge. It was also put to the appellant that the deceased was clearly scared of him, hence her going there and subsequently contacting Gardaí on two occasions after her return in the three weeks prior to her death. The appellant disagreed with this and claimed that the problems between himself and the deceased were caused by others, namely: the social services, a cousin, friends and family (including the deceased's sister Lisa Finnegan).

Interview 3: 8.39am to 10.43am - DS Daniel Callaghan & DG Bernard Connaughton.

122. In the third interview the appellant was again asked why the deceased feared him and as to what had happened to cause her to attend hospital after she returned from the women's refuge. He said that she ended up in hospital because after she returned she had taken an overdose of tablets. Asked again asked about problems in his relationship with her, he described one argument between them had arisen because the deceased did not think he was making enough money and wanted him to sell drugs, which suggestion had angered him. He said that he was in conflict with her family because her sister, Lisa Finnegan and her cousin Brian were making up stories about him and contacting social services. He also claimed that it was Lisa Finnegan, Brian Conlon and two friends of the deceased who had "*forced her*" into getting a protection order against him. As to his issues with Lisa Finnegan he continued to contend this related to transactions with her concerning the buying and selling of vehicles where she was at fault in a number of respects.

123. The appellant also changed his account of what Mr Finnegan had told him in response to the appellant's request to him to go to the hospital. He said that Mr Finnegan replied saying "*look, just bring Anna*" and "*look, I have to mind the kids*". It was put then to the appellant that he was telling lies and this was not the account given by Mr Finnegan. It was then put to him that he was also lying about being unaware that the deceased had been stabbed and that Gardaí were aware that he had told friends that he was staying with on the night of the fact that the deceased had been stabbed. The appellant then said that it was the hospital that had told him, that they "*said outside that Anna is hurt, a stab*" and that accordingly he had known about it from that point.

Interview 4: 2.30pm to 3.44pm - DG Tom Cooney & DG Bernard Connaughton.

124. At the fourth interview the appellant was asked about his phone contact with the deceased prior to visiting her property on the date of the murder. It was put to him that he told her if he "*hadn't the kids by 6pm, that someone in her family would be killed*". The appellant in reply initially stated that he said "*somebody is going to get hurt if you keep listening*…" before Gardaí interjected. He was asked to answer directly if that which had been put to him was, in fact, what he had said. The appellant initially said he could not remember before accepting that he "*had a fight and I did say a few things*…" which he described thus: -

> "*I just said that its not safe like this, somebody will get hurt the way things are going*."

The appellant was insistent that he was not making a threat and wanted things to be sorted "*in a peaceful way*".

125. Excerpts of the statements of Karl Finnegan, Helga Duffy and Korill Allen were then put to him. We think it necessary at this stage to refer briefly only to the latter two.

126. It was put to the appellant that Mr Allen had said, outside the hospital, that the deceased said "*he did it*" and pointed to the appellant. The appellant rejected this and said that all he had heard at the hospital was someone asking him what was wrong with the deceased.

127. The appellant was asked to respond to the fact that Ms Duffy said that the appellant told her he had stabbed the deceased and had stated that when the appellant was describing same, he had gestured to his left rib. The appellant was told by Gardaí that the deceased had indeed received one fatal stab wound to her left side exactly where he had shown Ms

Duffy. The appellant denied all such propositions put to him. He said that he had only said where he himself had been stabbed, and that he hadn't known the deceased was stabbed at all. He further claimed that "*a girl outside the hospital, she lifted her* [the deceased's] *clothes and chest and couldn't see anything*".

Interview 5: 5.24pm to 7.39pm - DG Patrick Traynor & DG Brendan O'Hora.

128. In the appellant's fifth interview the appellant was taken through CCTV from the hospital (marked Exhibit RB1) and to this he replied looking at a female on the recording that he could "*remember that girl*", whom he said had asked him to drop the deceased down and "*she lifted [the deceased's] jumper and we couldn't see anything wrong*". On this occasion he went on to add that he asked her "*what's wrong, what's wrong*?" and that she told him that the deceased had been stabbed. He continued to say that when he saw her, her stomach specifically, that he could see nothing wrong.

129. The appellant was asked whether he fought with Mr Finnegan or stabbed him outside in the front garden of the deceased's home but he said he did not, rather that he had stabbed him in the kitchen, and when outside they had only "*talked*".

130. The statement of Joan Broe was then put to the appellant, and he was confronted with how her account of what she saw outside was at complete variance with his assertions. He responded upon hearing her account that "*half of that is true*". He continued to deny that any fight had spilled out into the garden and maintained that he only said "*come on, come on*" trying to get Mr Finnegan to also come to the hospital. He rejected that Ms Broe had witnessed him punching Mr Finnegan three times in the stomach in the garden, or that was where he had stabbed him. He denied that he jumped on the deceased

and had his arm around her neck and shoulder and had pulled her to the ground or that was how he stabbed her. He also denied having the knife outside at this point.

131. Gardaí then invited the appellant to point out what parts of Ms Broe's account he was accepting as true and what parts he wasn't. He again asserted that the fighting outside did not occur but that Ms Broe was "*right for most of the things what she saw and she hear the words help and she hear the girl in the garden which Anna. On most of those questions she's right but there is some questions, no. Definitely*".

132. It was put to the appellant that during an earlier interview, on the day before, he had said he had brought the knife outside with him. He resiled from this, stating that what happened was as follows: -

> "…*the knife I left in the house and then before I left I took the knife while I was talking to Karl and said I brought it with me to go to the Garda Station.*"

133. In respect to questions about knives, the appellant denied seeing EOD1 prior to the offence or ever seeing the knives taken from Lohunda Crescent; he said that he did not go into the house in Lohunda Crescent because "*I didn't live in the house for two years*". He also said that the knife he had couldn't have come from the same set as his knife looked old and the other ones, by which he meant those retrieved from his house in Lohunda Crescent, "*looked brand new*".

Interview 6: 8.51pm to 11.36pm - DG Tom Cooney & DG Bernard Connaughton.

134. In the appellant's final interview he was asked to trace the route he took from the deceased's home to the hospital. He described driving her there, breaking through red lights as he drove, and stated that he "*never drove like this before*"; it was put to him, but

was not accepted by him, that this was because he knew he had fatally stabbed the deceased. Gardaí continued to press the appellant as to why, having been satisfied that Mr Finnegan would [as he had earlier said] be looked after, he did not return to the hospital to check on the deceased he had claimed to love so dearly. He continued to assert that he did not know she was injured until someone told him at the hospital. He accepted that he had made a mistake in not returning.

135. The appellant's mobile phone (marked Exhibit PK6) and its activity was then put to him as well as that of the deceased's phone. He said he recognised the phone and the number on it was a relatively new number, that he was using two mobile numbers. It was put to him that the deceased had text him calling him a "*control freak*" on the 8th and 9th of September 2012 whilst on the 10th of September she texted him saying *inter alia* that he was a "*bully*" and "*first you tell me to watch my back and now you expect me to feel safe bringing Lulu to Kosovo*". The appellant denied that these messages were from the deceased or that she was being forced by others to send them. A number of other irate texts sent by the appellant were further put to him and he agreed that he sent them. A text message from the 14th of September 2012 that he had sent to the deceased was then put to him which said: -

"*can you let me see the kids in the garda station if you don't feel safe?*"

The appellant acknowledged that he sent this message and said that the request was refused also. However, he stated that she did not feel unsafe and he maintained that she was not the person who had been texting him.

136. A letter from the deceased addressed to the appellant found in the deceased's handbag (exhibited as EW4) was also put to him and although we cannot set it out *in*

extenso effectively its tenor can be seen from her statement within the letter to the effect that "…*I can't live [with] you because you make my life hell – its your fault I cant live with you because you make my life hell… I don't deserve to live like this. You owe me a solution after all the bad things you did on me over the years*…".

137. It was put to him that this meant he knew that the deceased was afraid of him but he continued to assert that she was not afraid of him. He then said she was not the person sending texts to him, alternatively sought to contextualise them by saying "*we talked a lot of rubbish*". Eventually when a number of the texts messages were again put to him, he rejected that she had sent any of them and asserted a belief that all the texts were sent by "*Lisa and her cousin*". He said that the letter must have also been written under the influence of Karl and Lisa Finnegan.

INTERVIEWING GARDAÍ

138. A number of these Gardaí had been called to read the notes of interview into evidence. In summarising their evidence, we accordingly place most emphasis on their cross-examination. However a number of these witnesses gave evidence of involvement in the investigation beyond issues pertaining to interviews, to which we also make reference.

Detective Garda Bernard Connaughton

139. Detective Garda Connaughton (who participated in interviewing the appellant and re-arrested him for the purposes of charge following his release from his section 4 detention), was cross-examined on the basis that the DPP did not authorise the charge of murder and that there was no charge sheet, which the witness denied.

140. In cross-examination it was put to him that he had put the deceased's blood on the knife EOD1. The appellant further suggested that Karl Finnegan had told him that he was the one who had stabbed the deceased. The witness responded to the effect that he had no interaction with Mr Finnegan and denied those propositions put to him.

Detective Garda Tom Cooney

141. Detective Garda Cooney participated in interviewing the appellant. He produced a letter to the appellant that was found in the deceased's handbag (EW4); we referred to this above when dealing with Interview 6. Plainly, having regard and in response thereto, prosecuting counsel asked him whether or not he had fabricated any of correspondence from the deceased put to the appellant and he said he had not. Asked whether or not he had interfered with the knife EOD1, he similarly said that he had not. It was pointed out to him that the appellant was advancing a case that members of An Garda Síochána had wiped fingerprints from that knife and he was asked whether he "*was involved in wiping fingerprints from that knife*" which he denied. Counsel also addressed the suggestion made by the appellant that the deceased's blood must have been obtained from the hospital or at post-mortem by Gardaí and planted on the knife after the fact to make it look like it had been used "*on her*" when, in fact, another knife had been used. He again denied that suggestion put to him or being involved in anything like that.

142. During cross-examination, the judge and counsel interrupted the appellant when he enquired of the witness whether or not "*you know*" that Gardaí Connaughton, O'Hora and Traynor, had criminal records or he alongside various members of the Gardaí were members of the "*IRA*" [propositions for which there was no basis]. It was conceived at that point that the appellant was abusing his position as his own advocate but he went

onto suggest that "…*people got shot with your gun and you got your gun back*". The appellant sought to persist and the judge took the view that he was obstructing the orderly progress of the trial and terminated the cross-examination.

Detective Sergeant Daniel Callaghan

143. Detective Sergeant Callaghan gave evidence about his arrest of the appellant and the application he made to Garda O'Doherty for the detention of the appellant under section 4 of the Criminal Justice Act for the investigation of the offence (and was subsequently instrumental in extensions of the appellant's periods of detention). Reference has been made to evidence to this effect in our summary of the evidence of Garda O'Doherty who at that time was member-in-charge of Cabra Garda Station. On the 30th of March (Day 21 of the trial) he gave evidence as to the search of 19 Lohunda Crescent having procured a warrant from the District Court. He was also involved in interviewing the appellant.

144. It was put to Detective Sergeant Callaghan in cross-examination that *inter alia* he had told Janice O'Neill to say that the appellant had made threats against the deceased that he had not made. It was also put to him that he told Garda Eoghan Doherty that the appellant stabbed the deceased and Karl Finnegan was a witness to the attack having been himself subsequently attacked also. Furthermore it was put to him that Karl Finnegan admitted to him (as well as Garda Niall Phelan and others) of being the person who stabbed the deceased to which Mr Finnegan was told to instead accuse the appellant. Detective Garda Cooney denied all these propositions and said he had never seen Mr Finnegan until the beginning of the first trial. Furthermore the appellant also accused

Detective Garda Cooney and Detective Garda O'Hora of wiping his and Mr Finnegan's fingerprints off the knife EOD1. Again, he denied those propositions as put to him.

Garda Paul Kirwan

145. Garda Kirwan was the original Exhibits Officer in respect of the garda investigation herein concerned. He was appointed to that role on the 22nd of September 2012 but for personal reasons he could not continue in that role and Detective Garda Brendan O'Hora took it over on the 23rd of September 2012. In the brief period during which he acted as Exhibits Officer, he seized and kept in safe custody numerous exhibits including the knife EOD1 which was given to him by Detective Garda O'Hora. Subsequently he gave it to a Garda Minogue and the latter returned it to Detective Garda O'Hora who was by that stage acting as exhibits officer. We do not intend to proceed separately with Garda Minogue's evidence which was to the effect that he retained the knife in safe custody for a short period and gave it to Detective Garda O'Hora with no other involvement. Garda Kirwan opened an exhibits chart which was in the event continued by his successor Detective Garda O'Hora. We might say in passing that there does not appear to be any break in what is known as the chain of evidence in relation to the exhibits he obtained and those taken into Detective Garda O'Hora's custody.

146. Garda Kirwan was cross-examined *inter alia* on the basis that, after termination of interviewing the appellant, he told him, "*You are never going to see your children again and that an Irish woman died over you fighting with Karl and you're going to jail for 20 years*" – all of which he denied. The appellant put it to him that he had also wiped the fingerprints of Karl Finnegan, the appellant and the deceased from the knife EOD1 which he denied. The appellant put it to Garda Kirwan that Mr Finnegan had told him that he

stabbed the deceased and that when he found Mr Finnegan's fingerprints on EOD1, he told Mr Finnegan to change his statement to say that he did not know how the deceased got stabbed. Garda Kirwan denied these assertions. He further denied additional suggestions put to him that he had tampered with EOD1 to show that it had the deceased's blood on it rather than that of Mr Finnegan. He denied these propositions and further denied that he told Ms Broe to change her statement.

Detective Sergeant Patrick Traynor

147. Detective Sergeant Traynor gave evidence *inter alia* of taking possession of various documents comprising court orders pursuant to the Domestic Violence Acts 1996 to 2011, (since repealed and now replaced by the Domestic Violence Act, 2018) including a Protection Order. Amongst such documents were also a summons whereby a Barring Order and a Protection Order were at that time being sought. These were in the appellant's possession when he searched him on arrest.

148. He was cross-examined on the basis that the knife EOD1 had "*stainless steel*" written on it which he denied. It was put to him that he had involvement with various knives and it was put to him that he took a knife from the deceased's home and effectively planted it in the appellant's property to make it look as though it came from the latter. Detective Sergeant Traynor denied this. The appellant also put it to that the witness "*only took footprints just going into the house, and you are hiding the rest of the footprints*". In the event the question was not answered as prosecuting counsel intervened to object before it could be. The matter was not further taken up by the appellant The appellant further suggested that Detective Sergeant Traynor alongside Detective Garda Brendan O'Hora had wiped fingerprints from the knife EOD1 (and that he had wiped the blood

from it and put the deceased's blood on it instead). The appellant asserted that Detective Sergeant Traynor had done this because Karl Finnegan had admitted to him that he had used it to stab the deceased. The witness denied all such propositions put to him. Furthermore the appellant accused Detective Garda Traynor of colluding with Joan Broe, Karl Finnegan and Karen Byrne to give similar evidence to fit the appellant with the crime. Again Detective Sergeant Traynor denied all these assertions.

Detective Garda Brendan O'Hora

149. Detective Garda O'Hora was the Exhibits Officer from the 23rd of September 2012 in respect of the investigation into the offences with which we are here concerned. Reference was made to him, at various points, throughout the trial for the purpose of proving continuity of possession of exhibits and safekeeping thereof.

150. It was first suggested to him in cross-examination that he had told Karl Finnegan to say that he (Karl Finnegan) had banged his head and could not remember anything [being an allegation that he had suborned Karl Finnegan to give false testimony]. He denied this. He was further cross-examined on the basis that he had also procured ("*you've told them to say different things*") false testimony from Joan Broe, Korill Allen and Karen Byrne by seeking changes to their statements or that they would give an alternative narrative to the truth of what occurred. He suggested also that there had been "*collusion*" between the Detective Garda O'Hora himself, other Gardaí and those named witnesses. Detective Garda O'Hora rejected all such propositions put to him.

151. Detective Garda O'Hora accepted that Joan Broe did not mention seeing a knife but that he had put it to the appellant in interview that Joan Broe had attributed the stabbing of the deceased to him, the appellant. The appellant further put the proposition to

Detective Garda O'Hora that he chose Mr Collier to act as his (the appellant's) solicitor, which the witness denied and said that he did not know Mr Collier and that it was the member-in-charge who facilitated the appellant in making contact with a solicitor. It was also put to the witness that he had told the appellant whilst enroute from Cabra Garda Station to Blanchardstown Garda Station: "*We're going to Blanchardstown garda station and you have to answer all the questions and we're going there for the interviews*" which he denied. When it was suggested that Detective Garda O'Hora had decided to charge the appellant before he interviewed him, the witness stated that it was the DPP who made the decision on charges. Detective Garda O'Hora was further accused of hiding footprints from the deceased's house, and his evidence in respect to this was that he was not at the crime scene and never received exhibits comprised of any footprints. The appellant also put to him that he had called the appellant "*rotten*", that he had tried to hit him after an interview, both of which the witness denied. A further suggestion put to him by the appellant was that he had told the appellant in interviews that Karl Finnegan's blood was found on the knife EOD1, this was also denied.

152. In re-examination, Detective Garda O'Hora confirmed that the SD1 knives were produced in interview, he identified exhibit EW7 (a knife found in a locker in an upstairs bedroom of the deceased's house) and confirmed that SD1 and EW7 were shown to the appellant in interview. He further identified two knives EW2 that were found in the kitchen sink in the deceased's house and confirmed that these were produced during garda interviews. Detective Garda O'Hora confirmed that the knives exhibited as EW2 and EW7 were not examined for fingerprints because they had been put to the appellant in interview and were not believed to be of any significance.

153. The appellant questioned Detective Garda O'Hora again thereafter when he put it to him that he had wiped fingerprints off EOD1, that Karl Finnegan had told him at the beginning that it was he who had stabbed the deceased; that he had found the fingerprints of Karl Finnegan, the appellant, and the deceased on EOD1, but had wiped them. He also accused Detective Garda O'Hora of fabricating the fact that EOD1 came from 19 Lohunda Crescent when "*all witnesses in there are saying no knife is missing*" and suggested that he "*took that knife from 16 Allendale Glen and put it beside the SD1 knife block and made it look like it's proper blade, forged steel*". The witness rejected all such suggestions put to him.

PROCEDURAL ISSUES ARISING FROM THE DEFENCE-IN-PERSON

154. On the 31st of March (Day 22 of the trial) the judge canvassed with the appellant whether he wished to give evidence himself or to call any other witnesses as part of the case for the defence. The appellant said he wanted to do both. He stated that he wished to call one Clifford Baron who was ultimately called. The judge then allowed the prosecution to take a list of names from the appellant as to who he wished to call. After an adjournment to facilitate this, senior counsel for the prosecution, Mr Marrinan, communicated with the court that the attempt to do so had proved unsuccessful. He apprised the court of the fact that: -

> "*I attempted to take a list of witnesses from the accused that he wished to have called on Monday and I was abused and I've a thick skin, I can take it, but just to advise the Court the prosecution won't be facilitating the accused in that regard unless he provides a list*."

The appellant asked at that point for a mobile phone belonging to him (which was in the possession of the prison authorities at the prison where he was detained) on which he claimed there were contact details for his proposed (but as yet unnamed) witnesses. The judge advised him that by that stage the prosecution had on three occasions made it known to him that they would facilitate him with procuring witnesses (but he had not provided the names – beyond that of Mr Baron).

155. The matter of the appellant's procurement of witnesses was revisited on the 4th of April 2017 (Day 24 of the trial) where again the appellant stated he could not provide a list of names to the prosecution without his mobile phone and needed access to his mobile phone which was described as being in a locker in the prison. The judge requested a Mr Barry, who was present in the court (and whom we infer was attached to the Prison Services), to make enquiries as to whether the appellant's mobile phone could be retrieved for production in court, with a view to the court facilitating the appellant in accessing the numbers stored thereon that he required. The appellant then went on to say that Mr Collier, his solicitor who had come off the record, had another list of potential witnesses and that he would speak to him about it. The judge then engaged further with the appellant to try to conclude the matter, leading to the following exchange: -

> "*JUDGE: Sorry, Mr Jahiri, I think we're going to have to deal with this very efficiently at this point. I've listened to you at some length. Give me the names of the witnesses you want to call.*
>
> *…*
>
> *MR JAHIRI: Well, Clifford Barnes (sic) is one. I don't know this guy's name, this guy was from Cloverhill Prison, and he's going to say --*

JUDGE: Well, look, forget about that. We just want the names of any witnesses that you can identify by names.

MR JAHIRI: Well, I have to check, Judge, first who do I -- who I should call and who I shouldn't, but first I want to speak to these witnesses, can they come over and are they available.

JUDGE: Well, you're being asked to tell us who are the witnesses by name. Clifford Barnes (sic) we have, who else?

MR JAHIRI: Damien Lynch.

JUDGE: Damien Lynch.

MR JAHIRI: There's -- and I think Gareth or something like that.

JUDGE: So, there are two identified witnesses, Mr Marrinan.

MR JAHIRI: And Gareth, I don't know his second name. Tony was talking to him. He took his statement. And I also want to speak to Tony Collier whether to call some other witnesses or not because I am not sure myself so maybe if I could speak to Tony maybe after this.

JUDGE: Well, that's a matter between you and Mr Collier. As I understand it you'll be able to discuss matters with him before 7 o'clock; is that right?

MR JAHIRI: Today?

JUDGE: Yes.

MR JAHIRI: Okay, so I have to speak then to Tony again today?

JUDGE: Well, that's a matter for you.

...

JUDGE: Mr Jahiri, the point is that in open Court last Friday you were offered a facility whereby if you gave the names of the relevant witnesses to the prosecution

they would use their best endeavours to procure their attendance on your behalf. That facility is still available. You've given two names and if you've -- if you want to add to that list I'm sure the prosecution will assist you. I don't think we can bring this matter any further, Mr Marrinan.

MR MARRINAN: No."

156. On the 6th of April 2017 (Day 26 of the trial) the appellant's witnesses gave their evidence. The appellant was asked if that was the conclusion of his case to which he replied that he had intended to call further witnesses and had his mobile phones handed back to him only that morning. The judge then asked the appellant if he knew the names of the witnesses he intended to call at that point but the appellant said he did not know and would not until he went through his phone. In the absence of the jury, the judge then enquired of the appellant why he still was not in a position to furnish the names of witnesses and the appellant explained he was trying to turn on the phones, the batteries were dead and he needed access to a charger and was considering calling character evidence but was not yet in a position to provide names and would not be until he had spoke to the relevant people to see what they would say or was able to get his phone working. The judge decided the adjourn proceedings until 11am the next day to afford the appellant one final opportunity to produce the names of any other witnesses he intended to call.

157. After the of court sat again at 11am the next day, the matter was canvassed again with the appellant. He said he was waiting on a charger and this was being brought in. The judge then outlined the difficulty in allowing any further time to be given in circumstances where the trial was entering its seventh week and considerable time and

assistance had already been given to the appellant. We set out a portion of that exchange as follows: -

> "*JUDGE: Well, Mr Jahiri, Mr Marrinan fairly makes the point that we're now literally seven weeks into this trial and only yesterday you indicated that you are scrambling to organise character evidence. Why is that, why did you leave it until the eleventh hour to organise your case?*
>
> *MR JAHIRI: I said this few days ago as well, not just yesterday, I've said that few times, few days ago. Also, I won't --*
>
> *JUDGE: But a week ago you were afforded the facility of retaining Mr Collier as a legal adviser who would have been available to you to organise all of these matters, why did you not avail of that facility?*
>
> *MR JAHIRI: Yes. But -- yes, but look what he did, he wouldn't tell you what I spoke to the psychiatrist, he kept that quiet. I called him few times, "Tell him, tell him", that's the reason why I ended up sacking him and my previous solicitors. They refused to follow instructions and these are characters --*
>
> *JUDGE: He was offered to you as a legal adviser, not necessarily as somebody who would present your case, but somebody who would in the background assist you both in relation to giving legal advice and in procuring witnesses and dealing with all other such aspects of the case. That facility was offered to you by the Court and you chose not to take it and you're now yet again seeking to stall the progress of this case on the basis that you're not prepared.*
>
> *MR JAHIRI: I'm not seeking to stall the -- stall the progress, that's why I'm here trying my best to keep going. But I am stuck, I --*

JUDGE: Sorry, we had to adjourn the case yesterday because you weren't in a position to call further evidence and it was indicated to you very clearly that if you weren't ready to proceed with further evidence that we would proceed to closing speeches this morning.

MR JAHIRI: Yes. I can't go ahead with the closing speeches as well, I need --

JUDGE: That's your difficulty, the law merely requires that you be afforded an opportunity to make a closing speech, if you're not in a position to avail of that opportunity, that is your difficulty.

MR JAHIRI: I won't be able, I need about maybe one to two months to prepare for closing speeches.

JUDGE: Well, I think we know the nature of what you're saying to the Court, Mr Jahiri. We're going to proceed, Mr Marrinan, unless you can indicate to me any reason why it is unsafe, legally or otherwise?

MR MARRINAN: No, there is absolutely no reason at this stage why the Court should offer any further indulgence.

JUDGE: Having heard that, Mr --

MR JAHIRI: I'll tell you -- I tell you the reasons, I have them here. Hilary Clarke changed her statements.

JUDGE: We've had all of this Mr Jahiri. This is time wasting. Could we have the jury back, please?

MR JAHIRI: It's not going to work, Judge.

JUDGE: Sorry, just --

MR MARRINAN: Sorry, there's a legal matter that I want to deal with.

JUDGE: Yes, yes, sorry, my apologies.

MR MARRINAN: If Mr Jahiri could sit down, please?

MR JAHIRI: Mr Jahiri, sit down, please?"

The appellant was then told that the closing speeches were starting and he was asked again whether he wished to make one to which he replied "*No, I can't go ahead with the closing speeches*". Mr Marrinan also stated that he did not intend to close for the prosecution and the judge outlined that given there were no closing speeches he would proceed to charge the jury.

158. When the jury were brought out for the judge's charge, there was yet another exchange, in their presence, concerning the appellant's desire to call witnesses; intemperate and inappropriate assertions were made by him which were characterised by prosecuting counsel as an attempt to collapse the trial. The matter concluded with the appellant jumping across from the dock and attacking prosecuting counsel, striking him in the face and injuring him, which caused the appellant to be removed for the remainder of the trial. We think it proper to set out the exchange exactly as it transpired, as recorded in the transcript: -

"*JUDGE: Good morning, Mr Foreman. Mr Jahiri has no further witnesses to call. The position is that although an opportunity has been afforded to Mr Jahiri so to do, he has decided not to make a closing speech. Mr Marrinan, for that reason is not making a closing speech, and therefore we're proceeding now to what is known as the judge's charge. I am now required to give you what is known in law as the judge's charge. The purpose of the charge is to give --*

MR JAHIRI: Juries, I am allowed -- the judge is refusing me to call witnesses, why is he lying for again? This -- this trial is not going ahead.

JUDGE: Sorry, Mr Jahiri, you indicated yesterday --

MR JAHIRI: What do you mean sorry?

JUDGE: Mr Jahiri --

MR JAHIRI: You broke the law.

JUDGE: Mr Jahiri, please.

MR JAHIRI: I don't have to be please, this trial is going nowhere, I'm stopping it now.

JUDGE: The position is that having been --

MR JAHIRI: There's no position of here, stop lying about me.

JUDGE: -- that having been afforded --

MR JAHIRI: You and Mr DPP here.

JUDGE: Mr Jahiri, having been afforded an opportunity --

MR JAHIRI: I don't give a shit about anymore.

JUDGE: -- to call evidence this morning, the case was adjourned to facilitate that. You have no witnesses to call this morning?

MR JAHIRI: I have witnesses I just told you there few minutes ago.

JUDGE: Mr Jahiri, if you have witnesses, call them?

MR JAHIRI: Yes. Call them, get me the phone? They can't get me the phone, you just told me there a few minutes ago. I need the second phone to make the calls.

JUDGE: Mr Jahiri --

MR JAHIRI: I'm in Guantanamo Bay jail and you don't understand that.

JUDGE: If you have witnesses call them.

MR JAHIRI: Call them, get me the phone.

JUDGE: You had seven weeks during this trial to organise your witnesses.

MR JAHIRI: For seven weeks you brought me 10 o'clock in the evening, I ask you hundreds of times, my teeth are sick and everything. You brought me back to Midlands at half ten in the evening and wake me up at 6 o'clock in the morning and then you accuse me messing solicitors --

JUDGE: Mr Jahiri --

MR MARRINAN: Sorry, Judge, the accused is deliberately trying to collapse the case --

MR JAHIRI: I'm not doing it deliberately.

MR MARRINAN: -- at this juncture --

JUDGE: Indeed.

MR MARRINAN: -- by these outbursts. I would ask the Court to have him removed from the court so we can get on with the order of the --

JUDGE: This is shocking, please -- Mr Foreman, if you'd please –

MR JAHIRI: My neck is still sore, you tried to break it, you broke my neck last time for no reason. Fucking DPP, gangster --

JUDGE: Mr Marrinan, I hope you're all right?

MR MARRINAN: Sorry, Judge, I didn't see you there. Apparently not, but it doesn't matter, I'll --

JUDGE: Do you require me to rise so that you can receive medical attention?

MR MARRINAN: No, no, I'm happy, if you can go on, Ms Noctor can deal with it and I can go and get whatever is necessary.

JUDGE: Are you sure?

MR MARRINAN: Yes. But if we could just clear up the blood here?

JUDGE: Certainly. Do you think anything arises from what has just occurred?

MR MARRINAN: No.

JUDGE: That -- otherwise I just propose to proceed with the charge.

MR MARRINAN: Yes, Judge. Perhaps you'd just rise and give me time to --

JUDGE: Certainly.

MS NOCTOR: Judge, before you rise, I wonder in the circumstances of what has transpired, the jury might be given a 20 minute break?

JUDGE: Indeed.

MS NOCTOR: Rather than going straight into the Court's charge.

JUDGE: It's now --

MS NOCTOR: I think in fairness to them.

JUDGE: I think that it is desirable that we should put some space as it were, between what has occurred and the resumption of the trial. So if I sit again at midday.

MS NOCTOR: May it please the Court.

JUDGE: Very good, Mr Marrinan, I hope you'll be better very shortly.

MR MARRINAN: Oh I'm sure I will, thank you.

In absence of jury

JUDGE: Ms Noctor, may I begin by enquiring as to the welfare of Mr Marrinan?

MS NOCTOR: He is okay, Judge.

JUDGE: I'm delighted to hear that. For obvious reasons I'm excluding Mr Jahiri from the balance of the trial and we will proceed in his absence. Are there any further issues that you wish to raise, Ms Noctor?

MS NOCTOR: No, I think there's probably one obvious one, instructing the jury to disregard the events.

JUDGE: Indeed, indeed. I don't think the transcript necessarily recorded what happened, so I think it might be necessary for me to record that in the course of the exchange that occurred before the Court rose, Mr Jahiri assaulted Mr Marrinan by punching him to his face and causing injury whereupon the Court rose.

MS NOCTOR: And I think one might surmise from Mr Jahiri's movement, I think he was endeavouring to remove himself to the back of the court from the direction in which he took.

JUDGE: Indeed, having assaulted Mr Marrinan in the manner described, he then launched himself across the benches that were behind him in an effort to escape as it were, through the back of the court. Very good."

APPELLANT'S EVIDENCE AT TRIAL

159. Prior to this incident, Mr Jahiri had given evidence himself on the 4th, 5th and 6th of April 2017 (Days 24, 25, and 26 of the trial). We will now set out the salient points which arise from his testimony. Before doing so, however, it requires to be stated that a great deal of what he said when giving evidence comprised inadmissible hearsay, unsupported assertions of purported fact, irrelevant material and submissions which were neither evidence nor based on evidence. Furthermore, insofar as allegations of untruthfulness, misconduct or disputed fact have been asserted by him (and there were such especially against Gardai and at least one expert witness), they were not in a number

of respects properly put to the appropriate witness to give them an opportunity to address them.

160. The appellant asserted that when he gave the knife to the Gardaí at Cabra Garda station it was checked for fingerprints and the Gardaí found thereon those of Karl Finnegan, the appellant, the deceased and "*whoever had that knife in 16 Allendale Glen*". He suggested that the Gardaí had "*hidden the rest of the knives*" [which we infer to be an reference to additional knives taken from the deceased's home]. He went on to assert that the Gardaí wiped fingerprints and "*DNA off the knife*" and "*procured a change in his statement from Mr Finnegan*". He further claimed that Gardaí had told Mr Finnegan to say that he could not remember the fight in the house as he had banged his head; we might say at this stage that this proposition was never put to Mr Finnegan by counsel. Later in his testimony he stated that the Gardaí were "*hiding the footprints for the kitchen and the sitting room [of the deceased's home] because that will show exactly that Karl stabbed Anna and I had stabbed Karl with his knife*"; this is a reference to the fact that Mr Finnegan's blood was found throughout the house including footprints in blood but this is, again, plainly a submission.

161. The appellant asserted that he was falsely told by Gardaí in the course of his third interview that Dr Curtis had informed the Gardaí that the knife EOD1 had been used to fatally stab the deceased. He based this assertion on a claim that the statement of Dr Curtis of the 25th of October 2012 does not refer to this, but this is a matter really in the nature of comment. In any event on that basis the appellant stated that Dr Curtis "*doesn't agree with Dan*" – an assertion not untypical of the type of unsupported assertions which he made, throughout the trial.

162. Furthermore the appellant stated that Dr Hilary Clarke told "*different lies*" at his first trial and that the DPP refused to call Garda Jannette O'Neill and Detective Garda James Cunningham whose "*fingerprints were found and DNA on the knife and whose footprints were found in the house… because the guards are hiding the footprints for the kitchen in the sitting room because that will show exactly that Karl stabbed [the deceased]*". Again, there is no evidence to support this proposition; both were in fact called in the second trial, whatever might have been the case in the first trial – which is of no relevance at least in this regard. He asserted that the Gardaí never produced the CCTV for Cabra Garda Station (and this was again, a submission) which he claimed would have supported his contention that he held the knife EOD1 by the handle thus giving rise to fingerprints on it when none were so found. There was no evidential basis for suggesting that anything of this kind would have been shown on CCTV.

163. He questioned whether or not the knife EOD1 as produced by him to the Gardaí was the same as that produced in Court. He suggested that the Gardaí "*made up the story*" that he had brought the knife from his own home.

164. We think that it may be helpful to quote a passage from the transcript so that the case the appellant made at trial as to the event itself can be seen. In that regard his evidence was as follows: -

> "*So I wanted to prove to her that I booked the ticket, and to drop some money down and to see the children. So when I went there, I went to the house, I knocked on the door. I pressed the bell and then I hear Karl shouting, I was at the glass, he was forcing Anna, he was saying, "Anna, Anna," loads of times, and forcing her to open the door. So when then he was saying something, "You're going to jail for five years" and a few other things. So then, because he was forcing Anna and*

he forced Anna to break the relationship and many other things I can tell you after, I ended up the pushing the door. I kicked the door. When I went into the kitchen I went a bit fast, and when I went there, Karl before I went there Anna moved to the left, and when Anna moved to the left then when I entered the kitchen, all I seen is chair in air, the chair was on the air, so he hit me with the chair with his two hands. He had the chair with his two hands, used forced and hit me. So I fell down a bit, and then at that moment the guards said during the interviews, how can a man have two knives and pull a chair off somebody's hit them with the *chair. So what I'm saying here, how can a man, has a knife in his hand and pull a chair off somebody that has it with two hands? It doesn't add up. So, he hit me, I fell down, not completely. I seen him, while was falling down, I seen him, he picked the two knives to the left from the table, and when he picked the two knives Anna stepped in, he pushed her. He pushed her away and she fell to my leg, I think my leg left leg or she it was very fast. It's very hard, unless I maybe describe it with the hands, but then she fell and Karl pulled back. He pulled back to the oven and then at that moment then Anna moved to the left. And then Karl was staring at me at this moment and as I was getting up, I pushed the chair with my foot towards him and at the same time, I hit him in the arm, and when he fell down, he dropped one of the knives he had and I picked that knife, it was to the left, I think. And when I picked that knife, we were trying to then stab each other, because at that moment I had a knife and he had a knife, and Anna was in the sitting room door. She was giving out trying to separate us. Then we wouldn't stop and then Anna moved, she went through the sitting room and not through the hall, Karl said she went through the hall, she didn't, through the sitting room. Then he got me and*

Anna went out, he got me in my hand, he stabbed me, a small cut, it's nothing but then I panic, I stabbed him back two or three times. And when I stabbed him back and when I seen the blood, I got sick, I stopped the fight. And then he fell down again and I stopped the fight. So then he got up again. So when he stopped the fight, I went to get the car because he was bleeding in the house. I went to get the car for Karl. So when I got the car when I when I went out the kitchen, just when I get went to kitchen hall, I dropped the knife on the right hand side so he doesn't see it and he followed me. So when I came out at the front of the house, the main door that you go in, when I went there he was behind me, following me. So when I went I tried to go and get the car, when I went into the garden I hear Anna saying, "help us, help us," and I looked to the left and I seen the neighbour slammed the door on Anna. And when she slammed the door, she collapsed in the garden. I remember she didn't fall like that, but like that, she collapsed like that, something very weird. So, Karl was there at the door when Anna collapsed and I was there behind the red car, Fiat Stilo. So I tried to go over to Anna, but I didn't go there because she wasn't talking or moving, and Karl was bleeding."

165. The appellant referred in evidence also to the fact that he changed solicitors and criticised them for the conduct of his defence. He said that he ultimately decided because of the shortcomings of his successive solicitors to defend the case in-person *inter alia* because "*they agreed a lot of things with the DPP*". He alleged that the bail hearing was not expeditiously sought or pursued, that the DPP "*with some corrupt detectives brought me without a production order from the judge illegally to the High Court*" (for a bail application), that the DPP "*backdated and fabricated most of the disclosure*" and that

there are omissions therefrom. He asserted that contrary to the provisions of the Criminal Procedure Act he was sent for trial before relevant documents were served. This indicates his own failure to understand distinction between witness statements and other documentary evidence and material the subject of a disclosure. Complaints about his history in prison with respect to the provision of medication, supposed difficulties during the trial and the fact that he was charged allegedly on an illegitimate basis were also made and concerning alleged breaches of regulations by the Gardaí of an unspecified kind.

166. The appellant said there were no fights or violence (between him and the deceased) and that they had arguments like most couples would have. He said that he had disagreements with the deceased about friends that she brought around to the house who were involved with drugs. He described a dispute that he had with Lisa Finnegan over a car. He said that having done her a favour by insuring her car and fixing the exhaust when it broke down, she contacted him to call him a scumbag and told him that he would never again see the deceased and the children. He said that he had fixed the car and gave it in turn to the deceased who gave it to Ms Finnegan and that this was how all the trouble started. He said that, after the dispute with Lisa Finnegan, he went into the deceased's house and Mr Finnegan was sitting in the kitchen with a few little bags and a few tablets on the table which he immediately put into his pocket, that the appellant had asked, "*What was going on here*", and that Mr Finnegan had replied, "*Mind your own business or I'll send you back to Kosovo*".

167. He said that Mr Finnegan then said that if he wanted, he could have the appellant "*wiped out*". The appellant said that Mr Finnegan and Lisa Finnegan then organised the HSE; the cousin (Brian Conlon) got involved in the situation and after that it started getting "*worse and worse*". He said that when the cousin got involved, he, along with Ms

Finnegan forced the deceased to go to the refuge and two or three others brought her to Ms Finnegan's house. He said that there was only one incident that involved physical acts. He said that he told the deceased that he did not want the children in the car with Ms Finnegan or another person named Caoimhe because they did drugs. On this occasion the appellant and the deceased started arguing, he had one of the children in his hand when the deceased tried to grab the child with force, the appellant would not let the child go, the deceased hit the appellant in his arm, and the deceased was going mad and hit him very hard a few times in the head. The appellant said that he never saw any punches like that before, the pain was so great that he just put his arms around the deceased's shoulders because she tried to grab a pan and hit him it and he just held her around the shoulders until she stopped. The appellant said that he also slapped her hand a few times. He said that, following that incident, the deceased disappeared for the first time but did not go to the refuge and she went to the home of the cousin or Lisa Finnegan for two or three days. He said that he did not know what was going on then, that the deceased subsequently came back and there were no problems. He said that there was no reason at all for her to end up for the first time in the refuge from where she had contacted the appellant.

168. He said that an agreement had been reached for supervised access so that he could see his children (the "*safety plan*"). On a given occasion he said that the deceased showed him purported text messages to the effect that the deceased's cousin had organised a few people "*to wipe him out*". On that occasion he said that the deceased took an overdose of tablets and he took her to hospital.

169. The appellant said that the deceased did not want to end the relationship and that she took the overdose because everybody was putting pressure on her to break off the relationship with him. He said that they then had a meeting with Karen Byrne who made

threats that she was going to get Gardaí involved and have him arrested and locked up. He said that he thought that Karen Byrne had told the deceased that she would take the children off her as well. He said that soon after, he removed his things from the deceased's house. The supervised visits started, and he got a solicitor. He said that Myles Finnegan (another brother of the deceased who also was deceased by the time of the second trial) and Lisa Finnegan had gotten very dangerous people involved, including a person who was on the run and being hidden by detectives. He explained how he knew high ranking members of the Gardaí and explained the situation to them. The appellant said that he was supposed to meet them on the Sunday or Monday before the incident, but they could not get involved "*because the people that were against me, it's for security reasons*".

170. The appellant said that every time he showed up for access with the children, they would just disappear and he would be left "*sitting there for ages*". He said that the deceased went to a garda station and signed the passport application for one of their children so that he could bring that child to see his dying father in Kosovo. He said that he complied with everything, all the rules and he did not break any rules during those times. He said that after the sixth time of being "*messed up*", he was told to go to the HSE in Finglas for a supervised visit with the children. He said that, before he went there, he had bought the ticket to see his father and he brought a voice recorder with him to record the conversations that took place there. He then gave evidence in relation to what had happened at the Wellmount. He said that he had objected to the presence of Lisa Finnegan but had no choice and that the deceased also tried to "*wipe me out a few attempts*". He said he and Lisa Finnegan then started arguing over a logbook. He said that Karen Byrne walked in and said, "*That's it, you're now finished, you're not allowed see the kids*" as well as "*I am going to make a letter for you as well that even if you go to court in*

November". He said that he could not remember exactly what Ms Byrne said but that she was going to make sure that he would not get access at all.

171. The appellant said that he told Karen Byrne, "*I'm not going to court, forget about court*" and that he said this because he had a ticket for Kosovo with him and he did not know when he would return from there. He then said he wanted to clarify a number of things. First, he said that from the day he came to Ireland he was sending money back home and feeding about ten people abroad and was paying for the running of two houses as well as a garage. He said that the assertions by Brian Conlon that he was taking food money from the deceased was a lie. He said that there was definitely no problem about paying bills and the deceased did very well during the time that they were going out together. He repeated that things only started going bad when "*they*" forced her to break off the relationship.

172. The appellant said that when he made his 999-call he used the word "*knives*" rather than "*knife*". He explained that he only discovered that the deceased had died in the day after going to her house. He further stated that whilst being brought to Blanchardstown District Court, Detective Garda Brendan O'Hora told him: "*...an Irish woman has died over you fighting with Karl and you're going to jail for 20 years and we're going to send you back in a body bag to Kosovo after*" as well as that the appellant needed to see a top psychiatrist and he "*...will never see your kids again*".

173. The appellant's evidence-in-chief commenced on the 4th of April 2017 and concluded on the following day (Days 24 and 25 of the trial). He was cross-examined on that date and until the 6th of April 2017 (Days 25 and 26 of the trial). He asserted that Korill Allen at the instance of the Gardaí had made up his evidence to the effect that the deceased had said, on arrival to the hospital, and in reference to the appellant, "*he did it*"

and he asserted by way of submission that there were "*a few people in there, nobody heard anything like it and no CCTV footage showed the deceased pointing to him*". He sought to rely upon an alleged discrepancy, claiming that the witness had said "*he did that to me*" rather than "*he did it*". However, as prosecuting counsel correctly pointed out, no such discrepancy arose in that at all times the witness whose evidence is set out above said that "*he did it*".

174. The appellant asserted that footprints from the deceased's house would have vindicated his position but that "*all the Gardaí were interested is to make up their lies about their knives*" and that "*…they're not showing the footprints*"; there was no evidence that the Gardaí were suppressing evidence as to the existence of footprints or photographs thereof. He asserted that he had not been permitted to obtain forensic test about the knife. It is inconceivable that this could be correct for he had been represented by competent solicitor and counsel for lengthy periods. We deal with the latter issue further below.

175. He questioned the reliability of the evidence of Helga Duffy and asserted that he had slept in her house because of threats from known criminals and that the identities of such persons (who he alleged had access to garda computers) were hidden by the Gardaí; effectively his contention was that the Finnegan family colluded with such persons.

176. He canvassed an issue as to the accuracy of transcripts of the interviews. The jury had also seen the recordings and counsel made clear that the interviews served in the Book were merely notes and that the material furnished to the jury in that regard had been agreed in the first trial.

177. The cross-examination of the appellant by prosecuting counsel was thorough and comprehensive, focusing on credibility. He was given ample opportunity to respond to

the prosecution case which was put to him in the ordinary way. We do not think that it would be of any assistance to elaborate on it.

WITNESSES FOR THE APPELLANT

Clifford Baron

178. Mr Baron gave evidence in relation to the buying and selling of cars which the appellant premised as having giving rise to his issues with Lisa Finnegan. Mr Baron confirmed being a customer of the appellant's garage and that he had been involved in a trade of vehicles with the appellant and that any issues with the vehicle that arose thereafter were rectified by the appellant. He also confirmed that a vehicle he obtained for the appellant had been without a logbook and when the fact emerged that the logbook had been disposed of or was unavailable, the appellant exchanged money with Mr Baron as he had been an innocent party to the issue involving ownership of the vehicle. The prosecution chose not to cross-examine the witness.

Damien Lynch

179. Mr Lynch also gave evidence for the defence, to the effect that he had known the appellant over a period of many years and that he (i.e. the appellant) had broken English when he first knew him. He also confirmed that he had known the deceased as well and that she and the appellant both worked together and had been in a relationship. Mr Lynch could not comment readily about the relationship between the appellant and the deceased, but he did not have any problems with the appellant, nor did he know of any problems between the appellant and the deceased. He gave evidence that on the 21st of September 2012 he had invited the appellant to come over to his house. He also gave evidence that

he had been in contact with the appellant that night and phoned him as he had been expecting him to call. He said that the appellant told him something to the effect of that he had gotten into a fight with the deceased's brother and that he had dropped the deceased to the hospital. He also remembered some reference to a chair. He stated that the appellant had asked him if he (the witness) would call the hospital to enquire about Mr Finnegan for him. He said that the appellant had told him not to worry about the deceased, that she was "*okay*". Mr Lynch also described the Gardaí visiting his property that night in relation the appellant and it was then that he learned that the deceased had passed away. He did not have any further contact with the appellant, that Gardaí had checked his phone and that he had also provided a statement to them. It was put to him by the appellant that the statement written down by the Gardaí contained statements he (the witness) did not make or if he had objected to the statement taken from him with the words "*I didn't say that, I didn't say that*". Mr Marrinan objected on the basis that the appellant was trying to "*impeach his own witness*". The witness did not confirm the propositions put, confirming on the contrary that the statement was read over to him by the Gardaí, corrections were necessary and made, the corrections being initialled by him and that he had signed the statement. It was also put to him that the Gardaí "…*were trying to get you [the witness] to work with them*". The witness rejected that proposition. Mr Lynch further gave evidence of what he knew about the appellant in his working and personal life (which latter at least was limited) in a sense favourable to the appellant.

JUDGMENT

180. We sought to set out very briefly at the beginning of the judgment (see paras 16-19 for context) the differing version(s) of events on the evening in question and the

appellant's case, we believe, should now be apparent from the evidence. It will be evident that the thrust of his engagement with the prosecution's evidence has been to challenge not merely its accuracy but its veracity and *bona fides*. He has accused the Gardaí of involvement in a conspiracy to manufacture false evidence, to induce witnesses to give such evidence, and to suppress relevant evidence. He has extended his assertion that false evidence has been given to the evidence of Dr Clarke. This is to say nothing of his approach to those who we might describe as "*lay-witnesses*". None of this is justified. His evidence, insofar as what he said when afforded the opportunity to give it (and being sworn for the purpose) after the conclusion of the prosecution's case, does extend to setting out his version of events apart altogether from submissions or assertions of purported fact advanced, in the main, to what we might shortly term his allegations of bad faith.

ISSUES

181. The appellant raised a number of issues of law which we will seek to deal with *seriatim* insofar as is possible. We now set them out, together with our rulings in respect of them, as follows: -

Transcript of the 999 Call

(1) At the risk of repetition we refer, in the present immediate context to this 999 call, it was contended that the jury did not have the benefit of a transcript of the 999 call made by Joan Broe to the emergency services. Insofar as reference is made to what occurred at the first trial – it was played during the course thereof – that is of no relevance. Counsel for the DPP is correct in saying that there was no request by either party to play it or to enter a

transcript of any such recording in evidence, though Ms Broe was cross-examined out of a transcript made by the prosecution of it. The DPP is also correct in saying that during the course of deliberations Mr Collier apprised the judge of the appellant's concern that the jury had not heard it. There was no basis for reopening that issue at that stage since the issue could have been addressed during the evidential phase of the trial. Moreover senior counsel for the appellant cross-examined Ms Broe without seeking to put the recording or the transcript in evidence. The contents of a 999 call can be received in evidence to prove the facts therein asserted as an exception to the rule against hearsay if forming part of the *res gestae*. This was not sought to be done by either party in the present case (see *DPP v Keith Connorton* [2023] IESC 19). For the avoidance of doubt we are satisfied that the DPP is correct in saying that there was no request by the jury in the second trial to play it, whatever may have been said in the first. There was no error on the part of the trial judge in how he dealt with the issue (as referred to above) and we accordingly reject any suggestion that the appellant's trial was unsatisfactory or that his conviction was unsafe because the jury did not receive such evidence.

Failure to seek out and preserve relevant evidence

(2) The appellant contends that Gardaí failed in their obligations to seek out and preserve relevant evidence. He relied primarily upon the line of authority commencing with *Braddish v DPP* [2001] 3 IR 127 with respect to garda

obligations in this context but that line of authority does not support his contention. The supposed omissions are hereinafter set out: -

(i) The CCTV footage from Cabra Garda Station and Blanchardstown Garda Station on the dates on which he was in those stations was not retained, or indeed *sought*, save in the course of the second trial. In particular we understand his complaint, at least in respect of the footage in Cabra Garda Station to amount to the proposition that it would have captured the way in which he was holding EOD1 (by the handle) whereby his fingerprints might, in his contention, have appeared thereon. His case is that such evidence, if available, would support his allegation that, in circumstances where his fingerprints were not in fact found on the item, an inference can be drawn that Gardaí had wiped fingerprints from the knife. It was not in dispute that this evidence was only retained for a short period. Apart from this it is a wholly unreasonable proposition that Gardaí would be required to retain CCTV footage of an individual in or entering a Garda Station for many years even if proceedings were pending against them. They could not have supposed that the footage would be relevant. The position might be different if it were sought in a timely manner – although even then that would not matter unless the potential relevance of the footage was immediately manifest. The appellant was represented by competent solicitors and counsel over many years and understandably they did not seek it – there was no suggestion prior to the trial (that we can find) that such footage might have shown that the appellant was holding the knife by the handle. There is no reasonable basis on which a criticism can

be made of the Gardaí for not preserving the CCTV footage in question, or for suggesting that the trial was in any meaningful way undermined by the unavailability of that CCTV footage.

(ii) The appellant also contended that the Gardaí failed to remove all knives from 16 Allendale Glen in the course of their search and they thereby breached their duty. There is no evidence that they failed in this regard. There is evidence that three knives were found, two in the kitchen sink by Inspector Ellis and a third knife in a bedside locker upstairs. There is evidence from a photograph that a dinner knife was positioned on a plate on the kitchen table but no one could rationally suggest that this was of any significance in the circumstances of the case. It is possible certainly that there may have been other knives in the house but in the absence of evidence as to their potential relevance there can be no foundation for suggesting a failure by the Gardaí.

(iii) It was suggested that the Gardaí ought to have sought out or made available footprints from the crime scene. No clarity was provided as to what might have been the expectation of the appellant in that regard (i.e., was he looking for photographs or impressions or castings of footprints, or some or all of these things). His contention that such "*footprints*", if they existed, would have vindicated him especially in reference to movements of relevant persons within the house, has no evidential foundation. In fact, and we think it is important to deal with the contention here, it was said

that the Gardaí suppressed evidence of the fact that such footprints existed. He contended that there were photographs thereof and there was simply no evidence to support that proposition. Mr Marrinan for the DPP, expressly assured the Court that full disclosure of all relevant materials had taken place. No evidence to the contrary was put forward. There was simply a bald assertion that further undisclosed evidence existed. We are satisfied there is no basis on the evidence that was adduced for suggesting that any such footprints existed, much less that they were suppressed.

(iv) The appellant complains also that he did not have available to him text messages as requested by him. Reference was made to *R.C v DPP* [2009] IESC 32 which concerned a failure on the part of the prosecution to procure telephone records of the complainant. The Supreme Court accepted that the prosecution had a duty to seek the telephone records of both the appellant and the complainant in the circumstances of the case. While the telephone records of the appellant were obtained, those of the complainant were not. The evidence was accordingly lost, and in the circumstances of the case, the Supreme Court considered that the absence of this evidence gave rise to a real risk of an unfair trial. What is clear from the case, however, is that whether any potential unfairness arises in a missing evidence case (assuming that it can be established that there is missing evidence) depends on the circumstances. It is not accepted by the prosecution in this case that there was a failure to recover relevant text messages. As appears from our summary of the interviews above between

the appellant and Gardaí, the appellant was extensively questioned on text messages in the phones of both him and the deceased. The interviews were before the jury. Prosecution counsel assured the Court that all relevant material had been disclosed and made available. Any contention that there was any failure to recover such evidence is without foundation. Moreover, and in any case, the appellant has not identified with any particularity precisely what text messages were said not to have been recovered, what their potential relevance was, and how their absence, if indeed they had not been recovered, might have created an unfairness. In the circumstances we are not disposed to uphold this ground of appeal.

(3) We have already dealt with the issue of charging. Detective Garda Connaughton had given evidence during the trial that he had charged the appellant with murder on the instructions of the DPP, having rearrested him for the purpose of charge, subsequent to his release from detention under the 1984 Act. In this context the appellant seeks to rely upon *O'Brien v Special Criminal Court & Anor* [2008] 4 IR 514 for the purpose of contending that he was in unlawful custody because he was not charged. This decision pertains to the specific jurisdiction of the Special Criminal Court and the obligations when charging individuals before that and cannot avail this appellant. We are satisfied that he was lawfully and properly charged. In the circumstances we are also not disposed to uphold this ground of complaint.

(4) The appellant contended that he was in unlawful custody, but the fact of the matter is that he was before the trial court on an indictment and return for trial which gave it jurisdiction and there is nothing amongst the papers to suggest that he was not remanded from time to time on foot of a valid order. It may be true that he made a complaint to the effect that a bail application on one occasion was not advanced when he was brought to the High Court for this purpose. Even if there was such an omission, it does not impinge upon the lawfulness of his custody or the fairness of the trial. In the circumstances we are not disposed to uphold this ground of complaint.

The appellant, by implication at least, suggests his capacity to defend the case was adversely affected and that, furthermore, his rights to proper medical treatment were breached and that for both reasons the trial was unfair. There was no medical evidence advanced to support either of these propositions. Indeed throughout the trial the judge was solicitous to ensure his welfare. In the circumstances we are not disposed to uphold this ground of complaint.

(5) The appellant contends the DPP failed in her obligation to furnish all or any relevant statements or documents to him before the return for trial. It seems to us from a reading of the transcript that the appellant misconceives the obligations of the prosecutor or the prosecutor's entitlements. Whilst witness statements must be served before a return for trial can take place, there is no inhibition on service of additional statements and exhibits at a later stage up to, and including during the trial, and this is commonplace; this is expressly

provided for by legislation. It is legitimate to infer that this may have occurred in the present case at some points. Insofar as it is material, the relevant statutory provisions are section 4B and section 4C of the Criminal Procedure Act 1967, as amended. The first deals with the obligation on the prosecution to furnish a list of the witnesses and statements of their proposed evidence before the return for trial. The latter makes provision for the service of further statements. Whatever else there cannot be any criticism of the prosecution if service of material occurred at a late stage (and there is in fact no clear evidence that that in fact occurred) in circumstances where it was not suggested during the trial that such occurrence had given rise to difficulty. In the circumstances we are also not disposed to uphold this ground of complaint.

It is not entirely clear to us whether or not the appellant's complaints extend to failure to disclose material. However, there is no evidence that this was the case and we believe that we can rely on prosecuting counsel's assurances to the trial court to the effect that full disclosure was made.

(6) The appellant complained that he was not afforded an opportunity to inspect exhibits or obtain or arrange for forensic tests on exhibits (with special reference to knives) in accordance with section 4D of the Criminal Procedure Act 1967, as amended. The exhibits were available at trial. The judge refused to allow him to handle them; in the light of his conduct, this is not open to criticism and could not in any event have caused any prejudice since

photographs were available and produced in open court. No one on his behalf sought to have exhibits examined by experts other than by scientists attached to Forensic Science Ireland. It was far too late for him to raise it when he did. Similarly he and his lawyers had ample time over a number of years to inspect any exhibit they wished and a complaint cannot be made that there was any element of injustice in the trial when ample opportunity was given. We might add that the same pertains to any forensic testing. In the circumstances we are not disposed to uphold this ground of complaint.

(7) The appellant also contends that the judge ought to have given a corroboration warning to the jury but again that proposition is without merit. In this context the appellant refers to *R v Turnbull* [1977] 1 QB 224 as well as *People (Attorney General) v Casey (No. 2)* [1963] IR 33, both of which refer to identification evidence and are of no relevance. He refers to a number of further authorities, namely, *DPP v Roger Ryan* [2010] IECCA 29, *DPP v Mulligan* [2009] IECCA 24, and *DPP v Ferris* [2008] 1 IR 1 which he says pertain to corroboration warnings also. They are equally of no relevance. In the circumstances we are also not disposed to uphold this ground of complaint.

(8) The appellant further contends that the judge failed in his obligations to him since he was defending-in-person on a number of points which we deal with as follows: -

(i) He contends that the judge failed to advise him of his rights by reference to section 23 of the Criminal Justice Act 1984; that section, to put the matter shortly, abolishes the right of the accused to give an unsworn statement but preserves his right to give evidence in the ordinary way and also to make a speech to the jury. He was comprehensively informed of his rights in the latter respect and gave evidence. Furthermore towards the close of the prosecution case (whereby he was given full notice of his position), the prosecutor furnished to him a document setting out his rights, explaining section 23 and also referring to section 24 of the same Act (which latter, again to put the matter shortly, makes provision for the order of speeches).

(ii) The appellant also relies on the authority of *DPP v Butler* [2017] IECA 198 where a conviction was quashed on the sole basis that the judge failed to advise a person who was defending-in-person, having discharged his lawyers, that in the absence of sworn evidence of a revised or altered version of events which he was seeking to advance, such version could not be considered by the jury in the course of their deliberations as to his guilt or innocence. That issue did not arise in the present case. The appellant in any event knew of his right and the matter was canvassed by the judge with him.

(iii) In respect of the closing speech, the judge expressly referred to the right of the accused to give a closing speech when the matter was raised

by prosecuting counsel on the day before he gave evidence. He explained to the appellant that he was confined in such a speech to addressing or commenting on the evidence. When the appellant's evidence had concluded the next day, the topic was revisited. Mr Marrinan, as he had previously indicated, said he would not be making a closing speech and the appellant said it would take "*one to two months to prepare for closing speeches*" and accordingly would not be able to proceed to do so. The judge, and we think rightly, decided to proceed as he was entitled to do in his management of the trial. In respect of the appellant's reliance on section 24 of the Criminal Justice Act 1984, it does not appear to have any bearing on the manner in which the trial was conducted.

(iv) The appellant contends that the judge failed to advise him of the questions he might be able to ask. The trial judge was under no obligation to make the appellant's case for him or to advise him as to how he should question witnesses or what he should canvas with them. In fact the judge gave the appellant much leeway and tolerated extensive cross-examinations which were irrelevant or repetitive. The judge appropriately interrupted him on occasion in attempting to keep him to the point. There was no question of the judge needing to advise him in any way in the context of the present trial.

In the circumstances we are not disposed to uphold any of the complaints at (8) above.

(9) The appellant raised an issue relating to the composition of the jury. It appears that one of the jurors was a neighbour of Mr O'Higgins SC., – it appears some ten years before. Mr O'Higgins was then senior counsel for the appellant and any matter thereby arising was resolved in favour of the retention of the juror. In fact, the appellant does not seem to have pressed this point, explaining his concern, so far as he has any now, on the basis that during the first trial there was an issue with a juror who was in fact discharged and that rendered him "*hypersensitive*" (our term) to such an issue.

(10) The appellant has made reference to section 8 of the Criminal Evidence Act 1992, pertaining to the admission of documentary evidence to prove facts stated therein. We cannot see why this is referred to by him since no evidence was adduced in documentary form pursuant to the Act mentioned or any of its provisions nor indeed, it must be said, does he give any context to the reference. We refer to it merely for the sake of completeness.

(11) The appellant has made complaint that an opportunity was refused to call senior counsel who had appeared for him in the first trial; it is not at all clear to us on the transcript to what extent, if at all, this matter was canvassed. Lest there be any doubt about it, it would have been entirely inappropriate for the trial judge to facilitate this course.

Ability to call witnesses

(12) The appellant contends that "…*the trial judge with the DPP deliberately errored (sic) in law by denying me to call [the opportunity] to call Ahmed [Khalifa] to give evidence because the trial judge and the DPP knew that… Ahmed said he'd never seen EOD1 before. Therefore, Ahmed would have said he had never seen the meat cleaver and serrated knife [produced] in court*". In fact that witness's evidence was read pursuant to section 21 of the 1984 Act on the 31st of March 2017 (Day 22 of the trial) as part of the prosecution case (and indeed it was pointed out that this was for the benefit of the appellant). The appellant had been excluded from the court at that stage and when he returned on the 5th of April 2017 (Day 25 of the trial) he requested the presence of Mr Khalifa. It was pointed out by Mr Marrinan that the statement in question had been read by agreement pursuant to section 21 of the 1984 Act and that there had been no request for his presence at the second trial. The witness in question was in fact abroad and unavailable. The stipulation under section 21(2)(d) if no objection is taken to the receipt of a statement of evidence, pursuant to the same section, within 21 days of service, then a party cannot thereafter object to its receipt. The first such objection was only made on the day. The prosecution was therefore entitled to have the statement read. Insofar as it might be relevant, the position was similar with respect to the evidence of Nedzad Manozuka, the second resident at 19 Lohunda Crescent. There is accordingly no basis for any complaint as made about the absence of these witnesses by the appellant, and we further reject the appeal in so far as it is based on this complaint.

(13) The appellant criticises the fairness of the trial on a further basis. He was obviously aware that he could call witnesses. The matter was canvassed with him on the 31st of March 2017 (Day 22 of the trial). He did not have access to his mobile phone following his remand in custody. He had had a solicitor at various times even during the present trial. The judge asked him whether or not he proposed to give or call evidence. He put the matter thus to the judge: "*how can I call witnesses with no mobile phone?*". Counsel for the prosecution volunteered to procure the attendance of witnesses nominated by him insofar as it may have been in their power to do so. He nominated one Clifford Barron (who he referred to, we infer, erroneously as Clifford Barnes) who had in any event been available and was called. The appellant did not actually volunteer any other names – from the context references to Christian names mentioned by him could not be seen to amount to doing so.

182. The appellant has referred to many authorities of limited or no relevance and in any event of little assistance in addition to those referred to above. These extend to an Australian authority entitled *X and Y v Australia* [1978] 12 DR 160 to support the trite proposition that he must be given adequate time and facilities for the preparation of a defence. That is the law of Ireland and the entire trial proceeded on that basis. There was no breach of his right in that respect here, either in the context of the trial under consideration or, indeed at any stage.

183. He refers to *DPP v Kenny* [1990] 2 IR 110, *DPP v Byrne* [1989] ILRM 613 and *The People (DPP) v JC* [2017] 1 IR 417 pertaining to issues of admissibility of evidence but these are of no relevance to the complaints which he makes. We can see nothing in

the transcript suggestive of inadmissibility of evidence on constitutional grounds, or that evidence was wrongly admitted on account of having been obtained in breach of his constitutional rights.

184. He refers to *Ryan v Attorney General* [1965] IR 294 concerning the right to bodily integrity, which again we cannot see could have any relevance. He refers to *State (C.) v Frawley* [1976] IR 365 which refers to the treatment of prisoners in custody. There is nothing in the papers before us to remotely suggest that there was any period of unlawful custody. In any event he is now held under an order of the Central Criminal Court following conviction which has not been challenged.

185. There is no question on the evidence here of interference with interview notes by the Gardaí, or of alteration by them. The interviews were recorded and transcripts thereof were ultimately prepared. In this connection, even though the matter does not arise on the facts, he relies upon a number of authorities, which to put the matter shortly, amount to this; that a court will intervene to quash convictions where it is shown that such material has been altered, tampered with, or re-written. There is no basis at all to suggest that this happened in the case. Nothing of the sort arises on the evidence in this case.

Direction to Acquit

186. The appellant contends that the judge ought to have stopped the trial and directed the jury to acquit. This is primarily having regard to the state of the evidence insofar as a legal complexion can be placed upon what he says. In substance he is contending that the evidence was so unreliable that a jury could not properly convict upon it. That unreliability in his contention is because of lies, fabrications, and subornation of witnesses and evidence by the Gardaí and issues going to the credibility. His observations and

submissions on the evidence are just that. The evidence was undoubtedly sufficient to allow the case to go before a jury. The issues he raised by way of defence were classic jury questions. In the circumstances we are not disposed to uphold this ground of complaint.

187. It is possible to put an alternative complexion upon the appellant's case; namely that because of failures by the Gardaí, he could not receive, and indeed did not receive, a fair trial such that on that basis the trial ought to have been stopped regardless of the evidence. This is by reference to *DPP v POC* [2000] 3 IR 87. We have addressed above the alleged wrongful acts or omissions of which he complains and we cannot see that there was any element of unfairness in allowing the matter to go to the jury. There is an overlap between the factors to which we have referred as giving rise to a potential unfair trial (in the appellant's contention) and his allegations of what we might shortly describe as garda malfeasance. We need not repeat in this context his allegations or contentions where that topic is concerned. However, to put the matter shortly, he now contends that the verdict should be quashed on the basis that malfeasance has now become manifest and that it is within the jurisdiction of an appellate court to intervene where such has occurred. The latter proposition is an unexceptional one. He grounds his contention, however, not on anything new which has emerged since the trial but on the basis of what occurred there. We have rejected every one of his individual complaints. Thus any such intervention on this basis cannot possibly arise in the present case.

FINAL DETERMINATION

188. Having considered all matters raised by the appellant, we accordingly reject all grounds of appeal insofar as they have been articulated, namely, on the basis that the

matters raised are unsupported by the evidence, alternatively are themselves either matters of evidence which were for the jury to consider, alternatively insofar as issues of law were raised because of them, where we see no error.

189. We therefore dismiss this appeal.