

THE HIGH COURT

RECORD NO 2019 1212 S

BETWEEN

SEAN CARLYLE

APPLICANT

AND

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

RESPONDENT

JUDGMENT OF MR. JUSTICE EAGAR DELIVERED ON THE 19th DAY OF NOVEMBER 2019

1. This is a judgment on an application for bail by Sean Carlyle and this judgment is given on the 19th November 2019.
2. The applicant was charged with murder and brought before the District Court. As the District Court had no jurisdiction to entertain a bail application the matter is now being heard for the first time before this Court. Sergeant Farrell gave evidence that the applicant, Sean Carlyle is seeking bail in respect of one charge of murder. He mentioned that the court had heard evidence of the applicant's co – accused application for bail for the same offence. Sergeant Farrell stated that it is alleged on the 24th August 2019 at approximately 23:04, a male was found seriously injured near Killinarden House, Tallaght. Gardai were the first emergency responders to attend the scene and on seeing the condition of the injured male, and knowing there was no ambulance available, transported the male directly to Tallaght Hospital. He was in a serious condition and on the 26th of August at 19:20, he succumbed to his injuries and was pronounced dead at Tallaght Hospital. The deceased was identified as Vincent Parsons.
3. As a result of the death of Mr. Parsons, the Garda investigation was upgraded to a murder investigation. The applicant was identified as a suspect and arrested for the murder of Mr. Parsons and detained pursuant to s. 4 of the Criminal Justice Act 1984 at Tallaght Garda Station. The applicant was first arrested on the 8th September before being released and re – arrested again on the 8th October 2019 when new evidence came to light.
4. Inquiries were made during the course of the investigation regarding the whereabouts of Mr. Parsons earlier in the evening of the 25th August and who he had been with. It had been established that Mr. Parsons was socialising at the Killinarden House Tallaght that evening, attending a stag party of his future brother-in-law. It was further established that Mr. Parsons had an argument with the co – accused. Furthermore, it was established that a black van bearing the logo "Flowers.ie" was parked in the parking lot of Killinarden House. It was ascertained that a van of that description had previously been driven by the applicant but was not owned by him. The van belongs to the applicant's father.
5. A number of exhibits were found in the van when it was examined on the 26th August 2019, including a gentleman's watch with a gold strap which was found in the passenger door. This watch had an inscription that read "To Dad, love Jade, Xmas '11". This watch belonged to Mr. Parsons. It was subsequently identified by Mr. Parsons' wife Claire and his brother. Jade is Mr. Parsons' daughter.

6. CCTV footage obtained during the investigation shows that Mr. Parsons thought it was necessary to leave the pub without telling any of his family or friends. Further CCTV footage showed that 30 seconds later, the co – accused left the pub and the applicant followed directly after. The applicant and the co – accused got into the van bearing the “Flowers.ie” logo. The applicant is seen getting into the driver’s side. The co – accused is seen getting into the passenger side of the van.
7. CCTV footage captured the van leaving the parking lot of Killinarden House towards the area where Mr. Parsons was found. CCTV footage also captured the van returning from the scene and in the direction of the applicant’s house. It is the belief of the Gardai that this murder was committed by the applicant and his associate who is the co – accused in this crime.
8. On the 25th August 2019, Gardai located clothing worn by the applicant following a search of his home. These included a blue Nike-Air t-shirt and a pair of black shorts. They were subsequently forwarded to the forensic science laboratory for analysis. The results of the analysis concluded that a bloodstain found on the right leg of the shorts matched DNA belonging to the deceased. A DNA profile of the applicant was found on two areas of bloodstaining on the back of his blue Nike t – shirt.
9. During the search Gardai observed an injury to the applicant’s right hand. On questioning the applicant in regard to the injury, he responded that the cut had occurred during boxing. Gardai believe that both the applicant and the co – accused assaulted the deceased, kicking and punching him which cost Mr. Parsons his life. There is also CCTV footage of the applicant returning to the pub after in different clothing.
10. In relation to the *O’Callaghan* objection the applicant had one bench warrant which was issued on the 21st September 2015 and executed on the 25th September 2015.
11. Sergeant Farrell had concerns that the applicant, if granted bail, would not stand trial. Given the nature of the offence with which the applicant was charged, Sergeant Farrell believes that the applicant may leave the jurisdiction on account of the strength of the evidence against him and the lengthy sentence which could be imposed upon him on conviction.
12. The applicant has a total of 29 convictions, four of which were committed whilst on bail. Of those 29, two were dealt with on indictment and also while on bail. A breakdown of his convictions is as follows: One for violent disorder, one for production of an article in course of a dispute. They were dealt with in the Dublin Circuit Criminal Court and the applicant received a three – year sentence with the final twelve months suspended. There were two offences under the Public Order Act and 22 road traffic convictions and three for dangerous driving.
13. Prior to the s. 2 objection, Sergeant Farrell said that the murder is the most serious charge which carries a sentence of life imprisonment on conviction. There is overwhelmingly strong evidence regarding his role in the murder of Mr. Parsons. There is

CCTV evidence showing the applicant following the deceased from the pub, and where he was subsequently found by the Gardai seriously injured. The Garda investigation resulted in the search of the applicant's house where clothing belonging to the applicant was seized during the search. The clothing was subject to forensic analysis and DNA matching the deceased was found on the shorts that were seized. There was also blood found belonging to the applicant and that suggests to Sergeant Farrell that the applicant inflicted a vicious attack on the now deceased man. Shortly after the assault, the applicant was found by Gardai to have cuts on his hands which he attributed to boxing. It is his belief that these injuries were inflicted on his hands during the assault on Mr. Parsons.

14. The details surrounding his conviction in 2016 were that a dispute had broken out at Kusanta Snooker Club in Killinarden Way, which is directly adjacent to where Mr. Parsons was killed. On the 22nd October 2013 an altercation broke out between a group of three males and two injured parties, the suspects violently assaulted the injured parties. One of the injured parties was stabbed on the left hand side of his body with a snooker cue.
15. The applicant clearly has a predisposition to violence and is now charged with murder. Given that the offence was committed whilst on bail, Sergeant Farrell had huge concerns that the applicant would commit further serious offences while on bail. The applicant is in a position to offer a surety of €15,000, but Sergeant Farrell said that the sum of money offered or any other conditions would alleviate his concerns.

Cross – examination of Sergeant Farrell

16. In relation to the search of the applicant's house on the 25th August, Sergeant Farrell stated that it was standard procedure to inform people of the taking of any items. However, he also stated that he was not present and that his role in the investigation was limited to the bail aspect.
17. Sergeant Farrell said the applicant did not make himself available until his co – accused had been released from custody when asked about an arrangement for his detention.
18. On being asked whether Sergeant Farrell had seen the photographs of the cuts on the applicant's hand, Sergeant Farrell confirmed that he had not seen them.
19. Sergeant Farrell confirmed that on the 8th October 2019, the applicant was detained on foot of an arrangement through his solicitor, Michael Hennessey.
20. Counsel was instructed that the detention of the accused was made on foot of an arrangement organised by Mr. Hennessy. Sergeant Farrell advised that Det. Gda. Harrison was in a better position to answer that question. It is confirmed that the applicant's co – accused was arrested on the 28th August 2019.
21. It was suggested to Sergeant Farrell by counsel for the applicant that it was made clear to the applicant at the time of his release on the 8th September that he would be re – arrested once new evidence came to light. The re - arrest occurred on the 8th October 2019.

22. Sergeant Farrell was not aware that the accused spent time at home after his release and he had also spent some time with his girlfriend at her house, according to counsel.
23. Sergeant Farrell confirmed that alcohol was a feature in the offence in which he received a custodial sentence of three-years. However, Sergeant Farrell was of the belief that violence was the significant factor of the offence.
24. Sergeant Farrell confirmed that the first conviction was in 2015. Counsel asked Sergeant Farrell how the accused could have been on bail in October 2013, Sergeant Farrell responded that there were charges which he had not yet been convicted of. Sergeant Farrell confirmed that the sentence for the serious offences was imposed on the 2nd June 2016.
25. It was suggested that the applicant was on temporary release in August 2017, but Sergeant Farrell was not aware of this. Sergeant Farrell accepted that the applicant was released in October 2017, shortly after the temporary release.
26. Counsel suggested that after the applicant's release he started going to the gym often, cooking and eating healthily and stopped drinking heavily. Sergeant Farrell accepted that he certainly had no convictions after his release.
27. It was put to Sergeant Farrell that whilst in prison, the applicant had done courses such as mindfulness, anger management and gym instruction. However, Sergeant Farrell had not seen any documentation supporting this. Sergeant Farrell also said that he does not think going to the gym does not support him in circumstances where Sergeant Farrell alleges that he used serious violence which resulted in the death of a man. Sergeant Farrell confirmed that the most recent conviction was in relation to insurance, licence and tax on the 6th September 2017. Sergeant Farrell said that the applicant's application for bail from his co – accused was that there was no blood found on the co – accused's clothes. Sergeant Farrell accepted that the sum of money on offer, €15,000, was a substantial amount of money for the applicant and his mother.

Evidence of Detective Garda Harrison

28. Detective Garda Harrison was an investigative officer in this case and he confirmed the search of the applicant's home took place at 6 a.m. on the 28th August 2019.
29. Detective Garda Harrison gave evidence that the applicant was cautioned and was questioned in relation to a cut on his knuckle. The applicant responded that it occurred during boxing. Detective Garda Harrison asked if he had been wearing gloves, to which the applicant responded that he had been wearing wraps.
30. Detective Garda Harrison confirmed that he had originally attempted to arrest the applicant on the 29th August 2019. He had called to the applicant's house, 8 Donomore, Tallaght, Dublin, but the applicant was not home. The applicant's mother noted that she did not know where he was. Detective Garda Harrison subsequently left a card with the applicant's mother. Detective Garda Harrison said he had visited his home at least five times and he was not there.

31. Detective Garda Harrison confirmed that he had arrested the applicant on the 8th September 2019 for the first time.
32. The applicant's co – accused was re – arrested on the 29th August and released the next day.
33. Detective Garda Harrison confirmed that the arrest was made by appointment by the applicant's solicitor. Forensic evidence had not yet been analysed and the applicant was released on the 8th September 2019 without charge. The second arrest was made on the 8th October at the applicant's house at 8:15 a.m. The DNA profile of Mr. Parsons was matched to a blood stain found on the applicant's shorts. Having received the results of the forensic analysis, Detective Garda Harrison arrested the applicant on the 8th October.
34. Detective Garda Harrison confirmed that the applicant was told prior to his second arrest in clear terms that the investigation would go on and that there would be a subsequent arrest. The subsequent arrest was not made by appointment. Nothing of evidential value arose from the arrest of the applicant on the 8th October.
35. Detective Garda Harrison has received information from an individual within the applicant's "camp" or "peer group" that he would abscond, or would not turn up for his trial if he was admitted to bail. He stated that it would not be safe for this individual to turn up to give evidence.
36. Detective Garda Harrison firmly believed that if the applicant is admitted to bail he would leave the country. Detective Garda Harrison had been attached to Tallaght since 1999 and had had been assigned to the Killinarden area.
37. It had been agreed by counsel that the issue of the belief of Detective Garda Harrison would be the subject of some legal argument but that in principle the evidence was to be given before the court as to whether or not it was admissible was a matter for the court.
38. The applicant's mother Judy Carlyle, gave evidence. She is a cleaner in a health centre where she works three days a week and is the mother of the applicant. Mrs. Carlyle has a daughter who had intellectual disabilities and she gave evidence that the applicant was brilliant with her daughter.
39. Mrs. Carlyle confirmed that the applicant was living at home with her in 2017. She also stated the used to drink a lot but he was young at the time. She stated he is a totally different man since his release in 2017. She confirmed that he was working for a period of twelve months roofing, but that ended because there was no work.
40. She confirmed that she had visited the applicant in prison and thought that it was brilliant that the applicant was partaking in courses such as mindfulness etc. These visits took place in 2016 and early 2017. She confirmed that Mr. Carlyle was in a happy relationship and that he would spend time at his girlfriend's house. She confirmed that she was aware of conditions that may be imposed on the applicant and that if bail was granted she would lose any money put forward. His mother gave evidence that he would turn up for trial and

not leave the jurisdiction. In cross – examination by Ms. O’Leary, Ms. Carlyle remembers that the Gardai called to the house on the 28th August and that a card was left with her to give to the applicant, she gave evidence that she had given him the card when he returned home but she did not recall what date that was. She confirmed she did not see Mr. Carlyle at all during that period of time.

41. Ms. Carlyle confirmed that after Mr. Carlyle’s release from custody in September he lived at home but stated she had not seen him or asked him where he was.
42. Sean Carlyle gave evidence. He confirmed that he had been in contact with Mr. Hennessey before the appointment had been made with the Gardai by the solicitor, and he confirmed that during the questioning and after the release that it was made clear to him that he would be arrested again by the Gardai. He confirmed that DNA evidence was one of the reasons he would be brought back for questioning. He confirmed that he lived at his family address during the period of about a month after September and that he had also stayed with his girlfriend. He confirmed that alcohol was a feature in the previous offence. He gave evidence that he had cut down on drinking after his release from prison. Mr. Carlyle confirmed that he did gym instruction, sports nutrition, anger management, mindfulness and mediation, and a Red Cross course. He responded that he intends to face trial when asked about the accusation made by an individual of his peer group that he would not attend trial. He confirmed that he was aware of any conditions that may be imposed on him if bail is granted and he is aware that if any of those conditions were breached, the money would be lost. In cross – examination Mr. Carlyle confirmed that he was present for the search of his property on the 25th August. He stated that he had no contact with his mother until the second arrest between the 26th August and the 8th October. He confirmed that he was not at home on the 28th August when the Gardai called to his house. He confirmed that he had received the card from his mother prior to organising to hand himself over to the Gardai. He stated that the cards were left on top of the mantelpiece. He confirmed that he had no contact with his mother between the 26th August and the 8th October. This however, the court understands to mean up to the day of his first arrest on the 8th September. Mr. Carlyle gave evidence that he went to Belfast on or about the 26th August for five days. He said he did not contact his solicitor from Belfast.
43. He said he bought a new phone (as the Gardai confiscated his phone) to contact his solicitor. He said he had not had contact with his co – accused upon his release. He said that he had an alcohol addiction previously but did not have an issue drinking. He later gave evidence that he was never said he was an alcoholic, he said he did undergo a mindfulness course because he was in prison and he had anger issues at the time. Mr. Carlyle gave evidence that he went to the gym every day.
44. Mr. Hennessey, solicitor, gave evidence. Mr. Hennessey confirmed that he had contacted Detective Garda Harrison on the 4th September and indicated that the best time would be Sunday the 8th September. He confirmed that he met Mr. Carlyle at 8 a.m. at his office on the 8th September and walked down to the Garda station. He confirmed that he made

it clear that blood was on the clothing seized and it was understood by everyone that re – arrest would occur. He gave evidence that during the first detention Mr. Hennessy was in contact with Mrs. Carlyle during the breaks of the detention of his client.

45. Mr. Hennessy stated that he did expect a phone-call prior to the second arrest but was unsurprised when he was arrested without notice early on the morning of the 8th October.
46. Mr. Hennessy's understanding was that he was living at the family home between the 8th September and the 8th October. In cross – examination Mr. Hennessy confirmed Mrs. Carlyle was aware that her son was in custody during the first arrest. He confirmed that he had not been in contact with Mrs. Carlyle prior to the 8th October.

Submissions

47. Ms. O'Leary outlined the objections of the Director of Public Prosecutions to bail. She outlined the ten factors She outlined the ten factors listed by Murnaghan J. in *O'Callaghan v. the Director of Public Prosecutions* [1966] IR 501, which were accepted by Walsh J. in the Supreme Court: The seriousness of the charge, the nature of the evidence in support of the charge and the likely sentence to be imposed on conviction. She also identified failure by the applicant to answer bail on a previous occasion. She said in relation to the strength of the evidence, the CCTV footage which identified what happened in the public house, the subsequent leaving of the pub by Mr. Parsons and being followed by Mr. Carlyle, the applicant, and his co – accused. DNA evidence which connects the blood on the shorts to Mr. Parsons. She also pointed out what Detective Garda. Harrison was told by a member of his peer group and pointed to the judgement of Hogan J. in the case of *Clarke v. Governor of Cloverhill Prison* [2011] IEHC 199. The issue in that case arose as to whether the District Court was acting within jurisdiction in admitting certain hearsay evidence in the course of an application to revoke bail. In that case, the Gardai were approached by a confidential source who was well – known to them as a reliable informant.
48. Counsel for the applicant, by way of submission stated that there is a fatal flaw in the case they put forward. He submits that confusion must have arose about where Mr Carlyle was staying after he was released. He submits that unambiguous evidence was given by his mother, Julie Carlyle, that the applicant had been staying at the family home, subject to spending time with his girlfriend. Mr Carlyle gave evidence that he was arrested from the family home in the early hours of the morning in October. He also gave evidence of the second arrest which the prosecution has latched on to, but what Mr Carlyle was referring to, is the first arrest. However, he submits this must be an error as his first contact with the Gardaí was the time of the search and the second arrest referred to by Mr Carlyle was actually the first arrest. Counsel submits that this is the only reasonable view of the evidence. He submits that if Mr Carlyle was a flight risk, he would have taken flight after being released from detention in September.
49. Counsel submits that the applicant going to Belfast cannot be seen as a risk of him taking flight. He submits that Mr Carlyle gave evidence that he did not realise he was a suspect

at the time and there was no evidence given that he was informed that he was a suspect at the search of his home and therefore had no reason to believe he was taking flight. The concern that the applicant is a flight risk is not consistent with the evidence.

50. In regard to the evidence of an individual from the applicant's peer-group, Counsel submits that it is accepted that hearsay evidence may be admissible. However, there must be a weight attached to this evidence. In order to be an assessment of weight, there must be some evidence which one can assess. He submits that there is no such evidence capable of being assessed. He submits that it is clear that this is an opinion expressed by someone in the applicant's peer-group.
51. He made submissions in relation to the evidence of Detective Garda Harrison and said that this was clearly not a person whose has been a reliable source in the past. The court was left with the situation whereby the very substantial surety was being offered and that the court should not put any weight on the evidence of Detective Garda Harrison.

Decision of the Court

52. In this case the court is satisfied that bail should be refused to Mr. Carlyle.

53. Walsh J. in *O'Callaghan* outlined some of the issues which the court should take into account in relation to the unlikelihood of the accused appearing for trial and this being the key element of the *O'Callaghan* decision. The court is satisfied that this is a murder trial which is the most serious charge. The nature of the evidence in support of the charge was strong and points to the accused's guilt and in those circumstances the sentence that is likely to be imposed is a sentence of life imprisonment. The court also notes that on one occasion in the previous past, he failed to appear to answer bail. The court also notes the evidence of Detective Garda Harrison and the court relies on the decision of Hogan J. in *Clarke v. Governor of Cloverhill Prison* [2011] IEHC 199, which was one of a number of judgments handed to the court. In that case, Hogan J. said as follows: -

"We may now turn to the principal issue, namely the admission of hearsay evidence by the District Judge. It is clear from the Supreme Court's decision in Director of Public Prosecutions v. McLoughlin [2009] IESC 65, 1 that such evidence can be admitted in the course of a bail application only sparingly and even then only when, in the words of Hardiman J., "a specific, recognised, ground for its admission has been properly established by ordinary evidence.".

Hardiman J. emphasised that: -

"The reception of such evidence tends to frustrate the right of effective cross-examination".

54. Hogan J. said: -

"The present case would seem to be indistinguishable in principle from the decision of the Supreme Court in McKeon v. Director of Public Prosecutions (Unreported, Supreme Court, 12th October, 1995) . . . when Costello P. held that in view of the

established principle of informer privilege, such hearsay evidence was admissible in principle”.

55. Bearing in mind that Ms. O’Leary indicated that the name could not be given as it would put his life in danger; and bearing in mind the nature of the charge which is before the court and the fact that Mr. Carlyle had already left the jurisdiction, to go to Belfast and hide out, albeit returning from Belfast, the court is satisfied to admit the evidence as being evidence which it would admit and the court would put a certain amount of weight on it, and the jurisprudential authorities support this view.
56. The court also does not accept the evidence of Mr. Carlyle that he had not telephoned his solicitor from Belfast and the court notes the evidence of Ms. Carlyle which stated that she had not been in touch with her son until his first arrest on the 8th September. The court believes that she had been in touch with her son and that she had passed on the details of Detective Garda Harrison’s attendance at her house on a number of occasions.
57. In all the circumstances, the court is satisfied to refuse bail on the basis that the accused is unlikely to appear for his trial.
58. In respect of s. 2 of the Bail Act, the court is satisfied that having regard to the very serious conviction of the accused relating to an offence in 2013 for which he was sentenced in June 2016 to three years’ imprisonment with one year suspended, the court takes into account the very serious nature of the offence for which he already been convicted in 2016 arising out of a very serious incident in 2013. The court is satisfied that the refusal of bail is reasonably considered necessary to prevent the commission of a serious offence by that person. The court takes into account the nature and degree of seriousness of the offence which the accused person is charged and the likely sentence to be imposed on conviction. The court also takes into account the nature and degree of seriousness of the offence apprehended and the sentence likely to be imposed on conviction.
59. The court is satisfied that the sentence apprehended is likely to be one of violence although the jurisprudence does not require the court to identify any particular charge. The court is very satisfied that the nature and strength of the evidence in support of the charge. The court takes into account the convictions of the accused person for the serious offence which was committed on bail but also takes into account the previous convictions of the accused person. In all the circumstances the court is satisfied also to refuse bail under s. 2 of the Bail Act 1997.