



THE COURT OF APPEAL

Record No: 288/2018

**Edwards J.
Kennedy J.
Donnelly J.**

Between/

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

RESPONDENT

V

OSBORN IRABOR

APPELLANT

JUDGMENT of the Court delivered on the 19th day of October 2021 by Mr Justice Edwards

Introduction

1. The appellant was convicted by a jury on the 24th of October 2018 of the offence of careless driving causing death following a two-day trial. He was subsequently sentenced on the 12th of November 2018 to a penalty involving disqualification from driving for a period of four years.
2. The appellant now appeals against his conviction.

The circumstances of the case

3. The facts of this case are uncontroversial, and this appeal is mainly concerned with issues concerning the manner in which the trial was conducted and issues of law.
4. The incident underlying the charge of careless driving causing death, the subject of this appeal, occurred on the 17th of November 2014 at Burlington Road in Dublin 4. At the time the appellant was employed as a driver with Dublin Bus and on the date in question was driving vehicle registration number 03 D 20313 on the No.38 bus route, which goes from the Burlington Road area of Dublin 4 to Damastown in Dublin 15. At approximately 9.45pm the bus was approaching the last bus stop, i.e., the terminus, on Burlington Road. There were no passengers in the bus. The bus came to the T-junction leading from Burlington Mews onto Burlington Road, proceeded to turn right at the junction and as this manoeuvre was being conducted, the bus collided with a pedal cyclist, i.e., Ms Mary White (date of birth 27th May 1959), who was travelling along Burlington Road, coming from the Mespil Road direction and proceeding in the direction of Leeson Street Upper. Ms. White suffered serious injuries as a result of the collision and subsequently died.

5. During the trial a number of witnesses were called on behalf of the prosecution. Garda Michael McHugh gave evidence to the effect that on the date in question he was on mountain bike duty. He testified that at around 9:30pm, whilst cycling down Burlington Road from Leeson Street Upper, he heard a man shouting and observed a Dublin Bus parked in the middle of the road. He saw the appellant *"in a distressed state and he had his hands on his head"* and then observed an unresponsive woman, later established to be Ms White, on the ground. Garda McHugh said that Ms White was conveyed to hospital and that he then proceeded to breath-test the appellant, which test revealed that the appellant had no alcohol in his system. Garda McHugh told the jury that he later attended at St Vincent's Hospital and took possession of a green jacket and a reflective jacket that Ms White had been wearing.
6. A Mr Brendan Lodola, station officer in Donnybrook Fire Station, gave evidence that on the 17th of November 2014 he was on duty and assigned to Delta 12 which was a fire appliance. Fire Brigade assistance was requested in respect of an incident on Burlington Road, and he attended. A team of fire brigade paramedics also attended. He explained that he arrived at the scene at a little before 10.20pm and observed a Dublin Bus stopped at a junction, and a lady on the ground beside a push bike, unconscious. Mr. Lodola indicated where the lady was situated by reference to photographs. He said that fire brigade paramedics attended to the injured lady at the scene, and his role was to supervise the involvement of fire brigade personnel at the scene. He requested an advanced paramedic car and that an ambulance arrived shortly afterwards. He stated that the lady was placed on a spinal board and was taken to St. Vincent's Hospital, where she was received in the Emergency Department and was admitted in a comatose state.
7. Efforts to treat and revive Ms White were unsuccessful and she was pronounced dead at 10.15am on the 19th of November 2014, having succumbed to her injuries. Dr Niall Swan, a Consultant Pathologist at St Vincent's Hospital, who conducted a post mortem examination gave evidence at the trial that Ms. White had died as a result of *"massive craniocerebral trauma due to or as a consequence of a traumatic head injury."*
8. Garda Patrick O'Brien gave evidence that when he arrived at the scene of the incident on the evening in question he commenced directing traffic away. He explained that he cordoned off the area and at 10:25pm started preserving the scene. He indicated that he gathered a number of exhibits including a cycling helmet and a red rear bicycle light.
9. Garda Alan Quinn, a PSV inspector, also gave evidence to the jury. He had examined the Dublin Bus in question and concluded that the vehicle was *"in roadworthy condition"* prior to the collision. He noted damage to the front bumper surrounding the off side front fog light. He told the jury that there were *"no defects that were a contributory factor in this collision."* When asked about his inspection of the pedal cycle, he said that following an examination he noted that the front tyre was deflated due to impact damage to the rim; however, the tyre was in serviceable condition prior to the accident. He also noted that a white front light was fitted to the bicycle that was in working order. He said there was *"no mechanical problem with the bike."*

10. The jury heard that CCTV footage was collected during the investigation, and this was shown during the trial. Footage which was recorded by a camera within the driver's cab of the Dublin Bus in question was played to the jury and became a prosecution exhibit; this footage did not capture the collision.
11. Sergeant Paul Kearney, who is a Forensic Collision Investigator, gave evidence in relation to his examination of the scene and his conclusions arising therefrom. He stated that upon arrival at the scene he observed the bus, *"in the centre of the road and pedal cycle to the left or to the right of the driver's position and there was a cycling helmet on the ground and also a hat and glasses just in front."* When asked about the nature of the junction Sergeant Kearney told the jury : -

"It is a T junction. The main junction itself is a T junction. The Burlington Road extends from the canal down at a slight angle heading sought towards Leeson Street junction. The T portion extends from the Burlington Road towards Waterloo Road there. It's a short distance away. It is sometimes referred to as Burlington Mews."

12. Sergeant Kearney then described the road markings at the junction. He accepted that the junction ends in a broken white line and went on to state: -

"That suggests a yield more so than stop junction. There is a solid white line going down the centre of that section [of] Burlington Mews indicating that vehicles are to stay to the left of it."

13. Sergeant Kearney indicated that upon examination of the scene he was able to deduce the direction of travel of the vehicles. He said, *"the angle in which the bus suggests that it came from the Burlington Mews section and it cut across that centre white line at some portion there, approximately five meters from the yield line maybe a small bit less than that."* He opined that Ms. White *"was coming down from Burlington Road from the canal down the road and approximately in the centre of the road roughly I would suggest."*

14. When asked about what he deduced from the post-rest positions of the vehicles at the scene, Sergeant Kearney said that it was his opinion that the bus *"cut the corner"*. He said the bus *"didn't approach the yield line and take an appropriate right-hand turn there. It cut the corner basically and ignored the yellow line, that junction there, that portion or junction there."*

15. Sergeant Kearney testified that the area was *"well lit up"*. Although one light standard was not functioning he said, *"there was a good number of lights in the surrounding area. The plaza as well had its own lighting there outside which was working as well and then – it was relatively clear. It wasn't a bad night apart from obviously the wet road surface."*

16. As to the possible location of the impact, Sergeant Kearney opined that the impact had occurred, *"approximately about a metre back from where the position of the bus is."* Regarding the degree of physical contact at the moment of collision, his opinion was that

the front wheel of the bicycle deformed on impact when it struck the bus. He described the collision as a "kind of head on straight collision" and added that there was "an angle".

17. In outlining the conclusions of his forensic collision investigation, Sergeant Kearney stated the following :-

"My primary conclusion was that Ms White was available to be seen and she was -- she had the appropriate lighting on her bike. She had a reflective jacket. She had a helmet. She was cycling on the correct side of the road and she was available to be seen by anybody on the road I would suggest. There was no evidence of any other vehicle or other individual involved and the weather conditions as I said were dry and calm and the road surface was wet and I believe the lighting was quite good in the area."

18. During the course of the trial a voluntary cautioned memorandum of interview with the accused on the 12th of December 2014 was read into the record. In interview the accused was asked, *inter alia*, to relate what he could recall about the accident. The record of this centrally relevant portion of the interview contained the following exchanges:

Q. *In relation to the accident can you outline what you can recall about it?*

A. *What I remember was that before I turned into the road I looked to my right, then on my left and my right again. I didn't see anything. That was when I entered the road.*

Q. *Once you began your manoeuvre into the road what happened then?*

A. *I don't really recall what happened.*

Q. *When was the first time you realised you had been in an accident? When did you first see the bike?*

A. *It was when the bicycle crashed into the bus.*

Q. *What did you see?*

A. *I just saw the bicycle.*

Q. *Was it on your left or right?*

A. *On my right. I cannot really tell.*

Q. *How about the cyclist?*

A. *I didn't see this person until the impact. It was so close that I tried to stop.*

Q. *When did you see her? Whereabouts was she?*

A. *I can't remember exactly.*

Q. *What happened after the accident?*

A. *Not that I remember exactly.*

Q. *To refresh your memory, do you remember going to check on the cyclist to see if she was okay?*

A. *I don't remember exactly what I did then. The only thing I remember I did was to press a radio button on the bus to make contact with the depot.*

19. Following the close of the prosecution case Mr Colin Glynn, a partner in Denis Wood Associates Consulting Forensic Engineers, gave evidence on behalf of the defence. Mr. Glynn outlined that he had assessed the scene and had carried out a "turning analysis" for a bus reflecting the dimensions of the Dublin Bus in question. He said on foot of that analysis he had determined what the "ideal turning manoeuvre" was. Mr. Glynn said that based on his assessment, he concluded that "*a bus will, or a portion of the bus will cut across the centre line at the junction.*" When cross-examined he conceded that the Dublin Bus in question had not executed the ideal turning manoeuvre. Mr. Glynn also opined that a non-functioning streetlight in the immediate area "*would reduce visibility*". He also opined that the A-pillar and the wing mirror on the bus would have had the "potential to obstruct" a bus driver's view.

The Grounds of Appeal

20. The appellant contends that his trial was unsatisfactory on the following grounds:

- 1) The trial judge inadequately charged the jury on the relevant law in relation to careless driving and how that law should be applied having regard to the particular facts of the appellant's trial.
- 2) The trial judge failed to properly or adequately re-charge the jury when they sought his assistance during the course of their deliberations and he further erred in law in failing to re-charge them in relation to the legal elements of careless driving and in particular the concepts of due care and attention and risk and how they should apply that law to the appellants particular case and the circumstances of the accident.
- 3) The conviction of the appellant is unsatisfactory because there was not sufficient evidence before the jury to prove beyond reasonable doubt that at the time of the accident, the appellant was driving his vehicle without due care and attention.
- 4) The conviction of the appellant is unsatisfactory because there was not sufficient evidence before the jury to prove beyond reasonable doubt that the appellant was guilty of an appreciable falling below the standard of care and attention expected of a reasonably competent driver.
- 5) The trial judge failed to direct the jury that if they believed the explanation advanced on behalf of the appellant that the deceased was in a blind spot coming

from an unlit area and that the appellant therefore did not see her coming, that it was for the prosecution to disprove this explanation and that the appellant should be acquitted if the explanation left a real doubt.

- 6) The prosecution witness, Sergeant Paul Kearney, tendered evidence beyond his expertise and demonstrated bias towards the appellant's case and allowed his sympathies for the deceased dictate his views on the circumstances of the incident.
 - 7) The evidence of prosecution witness Sergeant Paul Kearney that the appellant ignored the yield line in circumstances where the appellant did not see the oncoming cyclist misrepresented the legal obligations of the appellant under the Road Traffic Acts and Regulations.
 - 8) The conviction of the appellant is unsatisfactory by reason of the following: -
 - (i) The fact that the public light from the direction the deceased was approaching and nearest to the site of the accident was not functioning.
 - (ii) The expert opinion that the manoeuvre carried out by the appellant was not unsafe.
 - (iii) The bicycle was in a blind spot caused by the wing mirror of the vehicle and therefore the appellant was not able to see the approach of the deceased.
 - (iv) The helmet worn by the deceased was not capable of being securely fastened leading to her receiving serious head injuries that led to her death.
 - (v) The absence of adequate CCTV footage to show the full circumstances of the accident.
 - 9) The trial judge failed to adequately or properly present the defence case to the jury during the course of his charge, and, further and/ or in the alternative, the trial judge failed to present the defence case in a manner which was fair to the appellant in all the circumstances.
 - 10) The verdict was against the evidence and the weight of the evidence having regard to the circumstances of the case and having regard to the onus of proof required to be discharged by the prosecution. The manner in which the evidence was adduced before the jury and the trial judge does not, in the circumstances, support a safe conviction.
21. In written legal submissions the appellant has grouped Grounds 1, 3, 4, 5 and 9 together. He dealt with Ground 2 on its own, and then also dealt with Grounds 6, 7, 8, and 10 as a group. That approach does not seem to us to have been entirely logical as grounds 3 & 4 which are included in the first group, and which relate to alleged insufficiency of evidence to prove certain essential ingredients of the offence of careless driving, overlap with ground 10, which is dealt with in the third group, and which alleges that the verdict was "against the evidence and the weight of the evidence."
22. Ground 10 amounts to a claim that the verdict was perverse. Grounds 6, 7 & 8 variously allege issues concerning a witness allegedly exceeding his expertise and alleged witness

bias, alleged misrepresentation by a witness, and that five specific pieces of evidence (listed in Ground 8) were, implicitly having regard to the verdict, either not taken into account or were insufficiently taken into account. We accept the logic of seeking to deal with Grounds 6, 7 & 8 alongside Ground 10 but would suggest that in addition, Grounds 3 & 4 would be better dealt with in this group. We suggest this because the issues canvassed in Grounds 3 & 4, namely insufficiency of evidence to establish essential ingredients of the offence charged, do not seem to be sufficiently connected to the other grounds in the first group, i.e., Grounds 1, 5 & 9; and they are unstateable on a stand-alone basis in circumstances where no application was made by the defence at trial for a direction in reliance on the first leg of Lord Lane's celebrated statement of the principles applicable to the granting of a direction in *R v. Galbraith* [1981] 73 Cr. App. R. 124. It will be recalled that under the first of the so-called Galbraith principles a trial judge should withdraw the case from the jury upon application by the defence if the prosecution case, viewed from its high-water mark, does not contain sufficient evidence to allow a jury properly charged to potentially convict the accused. There was no application for a direction in this case on the grounds of evidential insufficiency (or indeed on any basis), a circumstance that can only be interpreted as being an acceptance by the defence that the state of the evidence at the close of the prosecution's case was sufficient to allow a jury, properly charged, to possibly convict the appellant on the basis of that evidence if they were minded to accept it. A direction not having been applied for, the appellant cannot suggest now that there was insufficient evidence capable of supporting a conviction. It nevertheless remains open for him to suggest that the ultimate verdict was perverse having regard to the totality of the evidence adduced (including evidence adduced on behalf of the defence) and the weight of the evidence. It is for this reason that we think grounds 3 & 4 are best dealt with in the group which contains Ground 10.

23. We also think that Ground 2, did not strictly speaking, require to be dealt with separately in circumstances where it is concerned with how the jury were re-charged in response to questions from the jury, an issue which again relates to how the jury were instructed and which can conveniently be dealt with along with other such issues.
24. Accordingly, it is our intention to group Grounds 1, 2, 5 and 9 together (which all relate to the judge's instructions to the jury on the law both in his charge and re-charge), and to then deal with the remaining counts being Grounds 3, 4, 5, 6, 7, 8 & 10 (all relating to evidential issues of one type or another, including that the verdict was against the evidence and the weight of the evidence) as a further group.

Grounds of Appeal No's 1, 2, 5 and 9

25. These grounds of appeal revolve around three basic complaints. The first is that the trial judge did not properly or adequately instruct the jury with respect to the law on careless driving (Grounds 1, & 2); that the trial judge failed to direct the jury, that if they believed the explanation advanced on behalf of the appellant that the deceased was in a blind spot coming from an unlit area and that the appellant therefore did not see her coming, that it was for the prosecution to disprove this explanation (Ground 5); and that the trial judge failed to adequately summarize the defence case during his charge or

failed to do so in a manner that was fair to the appellant (Ground 9). We will now examine these complaints in more detail.

The trial judge's instructions to the jury on the law

26. It is convenient at the outset to set forth what instructions the trial judge gave to the jury concerning the ingredients of the offence of careless driving causing death. It is considered desirable to quote them in full, notwithstanding that they are reasonably lengthy. He stated:

"The specific offence charge in this case then, if I move onto that, is an offence under section 52 of the Road Traffic Act 1961. And the offences are formulated by the Dáil and by the Oireachtas and they become part of the law of the land, and they impose duties on everyone living in the country to comply with the law and not to commit offences. And the case here is whether or not an offence has been committed under section 52. And what's charged in the indictment for the offence under section 52, which is commonly known as careless driving but it's actually the offence of -- really it's probably better described as the offence of driving without due care and attention, because what's been charged in this case is that the accused person on the 17th day of November 2014 at Burlington Road, Dublin 4 in the County of the City of Dublin, a public place, drove a vehicle registration number 03 D-20313 without due care and attention, thereby causing the death of another person, namely Mary White. That's the offence that has to be proven beyond all reasonable doubt.

Now, at the start of the case, the defence made a series of admissions that some of those elements didn't have to be proven. It wasn't being contested but that the accused person was driving the bus. It wasn't being contested that the accident happened at the location specified in the indictment. It wasn't being contested that Mary White was the person who was cycling the bicycle, and it wasn't being contested but that the collision that occurred was the cause of her death. So those matters were all -- the defence said those matters weren't being contested. Nonetheless, you did hear evidence of that because you still have to be satisfied beyond all reasonable doubt that this is so. But I think those issues aren't going to cause you any difficulty in proving that. And what this case really -- I'm satisfied there wasn't a specific -- I don't think there was concession that this was a public place, but you have heard evidence about the description of the locality and the public roadway, and I don't think it's going to cause you any great difficulty to suppose beyond all reasonable doubt that this occurred at a public place. And anyway, that's a matter for you, if you felt there was a doubt about that, so be it. But that's I think the core of this case and where your deliberations are going to focus on is driving without due care and attention. And, primarily, to decide what driving without due care and attention is, is a matter for you; that's why the jury are here. You decide what without due care and attention is, but it does occur within a framework and I do have to give some indication of what the law about the offence of driving without due care and attention.

One of the issues that arises at a criminal trial generally is that when someone is charged of a criminal offence, they have to intend to commit the criminal offence. So if I swung my arms out, you know, just a gesture, and I accidentally bumped my hand against the person standing behind me I didn't see, I wouldn't be guilty of the offence of assault even though my hand hit them, because I didn't intend to do it. The offences to deal with driving on the roadway that causes a risk to others don't operate quite in the same way, because these aren't offences that are committed intentionally. If you drove a car in such a way that caused the death of someone with the intent of causing the death of that person, that would be charged as murder and would be a completely different matter. What we're concerned here is when someone drives in a way without intending to cause harm to another but drives in such a way that there's a risk to another person, what criminal offences arise from that. And what the legal framework set up is that there's a scale of offences where your driving causes risk to others, and of these, section 52, the offence of driving without due care and attention is the least -- I don't want to say it's the least serious because it's an offence that can have terrible consequences, but it's the one that requires the least degree of lack of care by the person who's charged with the offence. So, if you drove a car that was completely and wholly likely to cause very serious harm to people, and you did that with a callous disregard as to whether or not you were going to cause harm to people and you cause deaths, that might constitute the offence of manslaughter. No question of that whatsoever here; there's nothing like that in this case at all.

The second level after that, and it isn't charged in this case at all, it's not part of the case, the prosecution don't charge that, is the offence of dangerous driving. And the offence of dangerous driving is if the driver drove in a way that a reasonably prudent driver would recognise as creating a direct, immediate and serious harm to a member of the public, and that's what dangerous driving is. And that's not charged here. The prosecution aren't saying that the accused person drove in a way that a reasonably prudent driver would recognise as causing a direct, immediate and serious harm to a member of the public. They aren't saying that. But the prosecution are saying is that Mr Irabor drove without due care and attention. Now, the degree of risk posed by driving without due care and attention isn't anything like the degree of risk posed by manslaughter or posed by dangerous driving. It's less in the continuum. And the test that really seems to be applied in deciding this is the driving obviously caused a risk because a death did result. The driving caused a risk. There is no question that the accused person had to have an intent to cause a risk; that is, intent isn't part of it at all. The person just had to have an intent to drive. So, with the way that the accused person drove, did it fall below the standard expected of a reasonable and prudent driver in the circumstances? And it didn't. So, therefore, was it driving without due care and attention because it fell below the standard expected from a reasonable prudent

driver in the circumstances? And it's for you to decide that. It's for you to decide what the standard is.

There is a fourth offence which is driving without consideration, that doesn't arise in circumstances of risk, and you needn't be concerned with that. And you needn't be concerned with the manslaughter or the dangerous driving. I'm just saying that this within a continuum, and here you have to decide did the driving fall below the standard expected from a reasonable and prudent driver in the circumstances, and that's what you have to determine and so, therefore, was it then driving without due care and attention. And that is the offence that's charged and it's really for you to decide that with the experience you have of driving on the road."

27. Later in his charge the trial judge briefly re-visited the issue of the ingredients of the offence, further remarking:

"Now, that's all I propose to say about the specific law that applies to this offence. It's the intent to cause the injury isn't part of the case. You don't have to be satisfied of that, but you do have to be satisfied beyond all reasonable doubt if you are to come to a conviction that there was a driving without due care and attention and the standard of driving felt below what a reasonable prudent driver would drive in the circumstances."

28. It is important to record that neither prosecution nor defence raised any requisitions in respect of the trial judge's charge. Seemingly none of the five lawyers involved who had listened to the charge perceived any deficiency in the manner in which the jury were instructed or in the substance of the instructions provided. The transcript records the following positive assertions as being made immediately upon conclusion of the charge:

PROSECUTING COUNSEL: Judge, I have no requisitions.

DEFENCE COUNSEL: I have no requisitions, Judge

29. Following the retirement of the jury, and deliberation by them for a period of time, the jury came back with two questions:

"FOREMAN: I have two questions, yes.

JUDGE: Yes.

FOREMAN: Do you want me to read them out?

JUDGE: Yes, please.

FOREMAN: So, the first one is how do rate the level of risk where it becomes a lack of due care and attention?

JUDGE: Yes?

FOREMAN: And the second one then is can you elaborate what due care and attention means in law and in layman's terms?"

30. The jury were asked to retire again to allow the judge to discuss the questions raised with counsel. A reasonably lengthy discussion between the bench and counsel then ensued, which culminated in the following exchanges:

"JUDGE: Well, I suppose the jury's question is based on I suppose the charge I gave which was based I think on Ms Justice O'Malley's analysis that it's the level of risk which is the dividing line between careless and dangerous. That's the way that I read the O'Shea, saying that the actual distinction between them is the level of risk goes to the members of the public, and that dangerous does require the direct, immediate, and serious risk to members of the public whereas careless driving doesn't. But it's always unhelpful when obviously the risk is proven to be very great because of the consequences but, well, that wouldn't be perceived at the time. I'm inclined to say the only guidance I can give the jury is to say that the core ingredient of the offence is a lack of care and attention that a reasonably prudent driver would give when driving in a public place having regard to the circumstances as they actually exist. It may be described as appreciable falling below the standard of care and attention expected of a reasonably competent driver creating a risk of harm to others that the reasonably competent driver would recognise and avoid, but there is no need for the driver to advert -- there is no requirement in law that the driver advert to the risk.

DEFENCE COUNSEL: Thank you, Judge.

JUDGE: Yes, and I will say that that may not be find that helpful but ultimately it's a matter for them to decide what the standard is, and that's their function.

DEFENCE COUNSEL: Yes."

31. As can be seen, the proposal to re-charge in that way was ostensibly acquiesced by defence counsel who expressed thanks to the trial judge and raised no objection to what was proposed by way of recharge. The jury was then brought back, and they were re-charged as follows:

"JUDGE: Okay. Very good. I don't know how much assistance I'm going to be able to give you because the ultimate answer is, it's for you to decide what a reasonable prudent driver would regard as being the standards that should apply and what care and attention should be obeyed. But I can give a bit of elaboration. I'm going to deal with the two questions as the same really. Just, really what the offence is. And the guidance the Courts have given and I can give you is that the core ingredient of the offence is a lack of care and attention that a reasonably prudent driver would give when driving in a public place having regard to the circumstances as they actually exist. So then beyond that, the Courts have said 'It may be described as an appreciable failing below the standard of care and attention

expected of a reasonably competent driver creating a risk of harm to others that a reasonably competent driver would recognise and avoid.’ But there's no requirement that the accused person actually adverted to that risk. The accused person doesn't have to have thought about the risk and then not driven in that way. It's whether or not a reasonably competent driver thinking about it would realise that there was a risk. Now, it's not a direct immediate and serious risk as required for dangerous driving, but it does have to be a risk to a member of the public. And I don't know if I can answer your questions any further than that. It really is a matter for you. That's why you have been brought in. Okay? So, very good.”

32. Once again, no requisitions were raised by either side arising out of the re-charge.

The statutory provision at issue.

33. The offence is provided for in s.52 of the Road Traffic Act 1961 (“the Act of 1961”) as substituted by s.4(1) of the Road Traffic (No. 2) Act 2011. Section 52 as substituted provides:

“52(1) A person shall not drive a vehicle in a public place without due care and attention.

(2) A person who contravenes subsection (1) commits an offence and —

- (a) In case the contravention causes death or serious bodily harm to another person, he or she is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding € 10,000 or to both, and
- (b) in any other case, he or she is liable on summary conviction to a class A fine.

(3) Where a member of the Garda Síochána is of opinion that a person has committed an offence under this section and that the contravention has caused death or serious bodily harm to another person, he or she may arrest the first-mentioned person without warrant.”

Relevant jurisprudence

34. The leading authority on the offence of careless driving contrary to s.52 of the Act of 1961, as substituted, is the decision of the Supreme Court in *The People (Director of Public Prosecutions) v. O’Shea* [2017] 3 I.R. 684. In that case, during the appellant’s trial before the Circuit Criminal Court, the jury had been concerned with determining whether the accused was guilty or not guilty of an offence of careless driving causing death contrary to s.52 of the Act of 1961. The issue before the Supreme Court was whether the trial judge in that case had been correct to instruct the jury that the offence under s.52 was one of strict liability which did not require the prosecutor to prove either intention or recklessness on the part of the accused. Following his conviction, the appellant had appealed to the Court of Appeal which held that the prosecution was required to prove intention or recklessness to establish the offence. The Supreme Court subsequently accepted an onward appeal from the decision of the Court of Appeal.

35. It was held by the Supreme Court, in allowing the appeal and ordering a re-trial, that the core ingredient of the offence of careless driving in s. 52 of the Road Traffic Act 1961, as substituted, was a lack of the care and attention that a reasonably prudent driver would give when driving in a public place, having regard to the circumstances as they actually existed. The wording of s. 52 made it impossible to read in a requirement to prove intention or recklessness. The Court went on to hold that the degree of negligence required to be found guilty of the offence of careless driving was lower than that involved in dangerous driving, since the driving did not, for the purposes of the offence, have to create the direct, immediate and serious risk that characterised dangerous driving.
36. Some quotations from the principal judgment, i.e., that of O'Malley J. may serve to illuminate further the Supreme Court's views on the matter at issue. All four other members of the court indicated concurrence with her judgment. Although Clarke J. delivered a separate concurring judgment, he stated he was doing so in circumstances where he agreed entirely with O'Malley J. and merely wished to make some supplementary observations relating to (i) the possibility of the existence of an intermediate category between strict liability offences and those requiring mens rea; and (ii) on the proper approach to sentencing in a case such as that before the court.
37. In her judgment, at para 67, O'Malley J. locates the offence of careless driving on a continuum of offences that may arise out of bad driving, ranging from gross negligence manslaughter at the most serious end to inconsiderate driving at the least serious end. She observed, at para 72, that careless driving comes below dangerous driving on that continuum, and that the section made it an offence to drive "*without due care and attention*". Having identified that the core ingredient of the offence was a lack of care and attention that a reasonably prudent driver would give when driving in a public place, having regard to the circumstances as they actually existed, and that it was impossible to read a requirement to prove intention or recklessness into the section, O'Malley J. added, "*It is probably not desirable to attempt to define the matter further, since everything will depend on the factual circumstances.*"
38. The learned Supreme Court judge went on to observe:

"[73] This does not mean that a "blameless" driver is liable to be convicted and punished. In the first place, a person who drives without due care and attention in a public place is not properly described as "blameless" if harm is caused as a consequence of such driving. On the other hand, a driver may be involved in an accident, and may even have caused that accident, and yet be held blameless if he or she met the standard of the reasonably competent or prudent driver in the circumstances. It is also essential to stress that the fact that a death or serious bodily harm results does not mean that a conviction for careless driving is the same as a conviction for dangerous driving causing the same consequence. The risk created by the careless driver is less than that created by the dangerous driver, and the careless driver is therefore less blameworthy in respect of the result. The question of the appropriate sentence remains a matter for the court, and while it is

clear that the consequence of the offence must be taken into consideration, it does not determine the punishment to the exclusion of other relevant factors."

39. Before arriving at her conclusions, O'Malley J. had considered, and reviews in her judgment, the leading cases on the different categories of offences that might be charged in respect of bad driving on the continuum that she had identified. Her review had included, at paras 59 and 60, in respect of the category of careless driving, the decision of the former Court of Criminal Appeal in *The People (Director of Public Prosecutions) v. O'Dwyer* [2005] 3 I.R. 134, where Denham J., giving judgment for that court had said:

"31 The concept of careless driving covers a wide spectrum of culpability ranging from the less serious to the more serious. It covers a mere momentary inattention, a more obvious carelessness, a more positive carelessness, bad cases of very careless driving falling below the standard of the reasonably competent driver and cases of repeat offending. However, since even a mere momentary inattention in the driving of a mechanically propelled vehicle can give rise to a wholly unexpected death, the court has always to define the degree of carelessness and therefore culpability of the driving."

40. Having quoted this passage, O'Malley J. remarked:

"[60] It is therefore apparent that careless driving does not require proof of the "direct, immediate and serious risk" to the public necessary to a charge of dangerous driving, but may involve far less culpable driving. In my view it may be described as an appreciable falling below the standard of care and attention expected of a reasonably competent driver, creating a risk of harm to others that the reasonably competent driver would recognise and avoid."

Criticisms made of the charge

41. In the submissions made to us on behalf of the appellant the trial judge's charge is criticised in so far as it concerned instructions to them as to the ingredients of the offence. Specific complaint is made about the portion of the charge in which the trial judge stated:

"But the prosecution are saying is that Mr Irabor drove without due care and attention. Now, the degree of risk posed by driving without due care and attention isn't anything like the degree of risk posed by manslaughter or posed by dangerous driving. It's less in the continuum. And the test that really seems to be applied in deciding this is the driving obviously caused a risk because a death did result. The driving caused a risk."

42. It was submitted that this instruction does not represent the law in relation to careless driving and does not set out what level of culpable driving was required to allow the jury form the view that a criminal offence of careless driving had been committed, and

critically, it is said, makes no mention of an appreciable falling below the requisite standard (our emphasis).

43. Complaint is also made about the portion of the charge in which the trial judge said:

"There is no question that the accused person had to have an intent to cause a risk; that is, intent isn't part of it at all. The person just had to have an intent to drive. So, with the way that the accused person drove, did it fall below the standard expected of a reasonable and prudent driver in the circumstances? And it didn't. So, therefore, was it driving without due care and attention because it fell below the standard expected from a reasonable prudent driver in the circumstances? And it's for you to decide that. It's for you to decide what the standard is."

44. It was submitted on behalf of the appellant, with reference to the passage just quoted, that it is not clear what the trial judge meant by the phrase "And it didn't" within this part of his charge. The point already made by the appellant is re-iterated, on the basis that the trial judge asked in the passage just quoted whether "the way that the accused person drove" fell below "the standard expected of a reasonable and prudent driver in the circumstances" without directing them that it must be an "appreciable" falling below the standard. It was complained that he gave no guidance in relation to the meaning of "a reasonable and prudent driver" and did not deal with the issue of "circumstances". It was further submitted that he erred in telling them that it was for the jury to decide the standard, which the appellant maintains was a matter for a trial judge to direct the jury on, having regard to the statutory definition and the case law arising therefrom.
45. The appellant has asserted in written submissions on this appeal that the charge merely sets out the statutory provision without providing the jury with appropriate explanations. It is said that "[a]lthough this might come close to a correct summation of the general law on careless driving, it does not deal with the level of culpability required as exiged by the specific ingredients of the offence as specified in the section. It is therefore submitted that the Learned Trial Judge accordingly failed to give sufficient guidance in relation to what level of culpability was required to amount to careless driving, and in particular whether there was an appreciable falling below the standard of care and attention expected of a reasonably competent driver and whether the Appellant's driving created a risk of harm to others that, on an objective analysis by a prudent and competent driver, he should have recognised and avoided."
46. This complaint is linked to criticism of the re-charge which asserts in substance that it largely re-iterated matters contained in the original charge but did not provide necessary or desirable additional guidance or explanations for the jury. The appellant says that it is noteworthy that the jury asked for guidance of what due care and attention was in law and in layman's terms. This, it was submitted, was not provided to them. The final direction was "it really is a matter for you", and it was submitted that this could not have assisted the jury in bringing their common sense to the concepts of "appreciable", "competent", "prudent", "due care" and "due attention." It was urged upon us that to

negotiate a trial of an offence pursuant to section 52, these ingredients must be clearly explained to the jury.

The DPP's submissions in response

47. The respondent contests the contention that the trial judge erred in the manner in which he directed the jury on the law in relation to careless driving in his charge. On the contrary, it is submitted that the trial judge gave a very thorough and detailed direction to the jury on the relevant law, which direction reflected the law as stated by O'Malley J. in her judgment in *The People (Director of Public Prosecutions) v. O'Shea*.
48. It was submitted that in describing the offence of careless driving in his charge, the trial judge effectively reiterated what O'Malley J. had said in *O'Shea*. In addressing the jury the trial judge explained the part intention plays in an offence of careless driving, and in doing so he made reference to, and distinguished the other types of offences involving bad driving, explaining the level of risk involved in those other types of offences for the purpose of contrasting them with the level of risk required in a case of careless driving and to illustrate where careless driving lay on the continuum of such offences, in a similar vein to how O'Malley J. had done so in the *O'Shea* case.
49. The point was made that while the word "appreciable" was not used in the instructions provided in the initial charge given to the jury, the trial judge in re-charging the jury had characterised careless driving as involving "*an appreciable falling below the standard of care and attention expected of a reasonably competent driver creating a risk of harm to others that the reasonably competent driver would recognise and avoid.*"
50. The respondent expressly contests that the trial judge did not adequately address the jury on the issue of circumstances. It was submitted that the jury were repeatedly told that the driving in question had to be viewed within the rubric of the circumstances of the case- "*did it fall below the standard expected of a reasonable and prudent driver in the circumstances?*" The respondent sought to remind us that before addressing the jury on the legal parameters of the offence of careless driving, the jury were reminded of the admissions and concessions made by the defence during the trial and those agreed facts were then articulated. Later on in the charge, the trial judge had synthesised the evidence given by most of the witnesses and in doing so rehearsed the facts presented during the trial and the circumstances surrounding the appellant's driving.
51. It was submitted that, contrary to what is alleged, the trial judge adequately dealt with the meaning of competent or prudent driver by referring to what a "*reasonable driver*" would do. The trial judge also told the jury that they would have to assess matters "with the experience you have of driving on the road." The respondent's position is that the trial judge gave sufficient and correct guidance to the jury on the definition of careless driving, a proposition in which counsel for the appellant ostensibly concurred during the trial when no requisitions were raised either following the initial charge or following the re-charge.

Decision on the instructions issue

52. We are not disposed to uphold the complaints that have been made concerning the instructions given to the jury. The respondent is right in saying that the statutory definition was provided, namely that it involved driving without due care and attention, followed by an elaboration upon it that mirrored what O'Malley J. had said was the legal position concerning the ingredients to be proven beyond reasonable doubt to establish the offence of careless driving causing death. While it is true that the words /phrases "appreciable", "competent", "prudent", "due care" and "due attention" were not individually defined, these words did not involve legal terms of art and therefore did not require to be individually defined. It was, however, properly identified to the jury as to where careless driving fell on the continuum of potential offences that might be charged in respect of bad driving, namely that it fell below dangerous driving and above driving without due consideration. The jury received a proper explication of how dangerous driving differed from careless driving, particularly in respect of the former, requiring proof of driving in a manner which a reasonably prudent man, having regard to all the circumstances, would recognise as involving a direct, immediate and serious risk to the public, whereas the latter, while it still involved a risk to the public, involved a much lesser degree of risk, the trial judge putting it in these terms:

"Now, the degree of risk posed by driving without due care and attention isn't anything like the degree of risk posed by ...dangerous driving. It's less in the continuum. And the test that really seems to be applied in deciding this is the driving obviously caused a risk because a death did result. The driving caused a risk. There is no question that the accused person had to have an intent to cause a risk; that is, intent isn't part of it at all. The person just had to have an intent to drive. So, with the way that the accused person drove, did it fall below the standard expected of a reasonable and prudent driver in the circumstances? And it didn't. So, therefore, was it driving without due care and attention because it fell below the standard expected from a reasonable prudent driver in the circumstances? And it's for you to decide that. It's for you to decide what the standard is.

There is a fourth offence which is driving without consideration, that doesn't arise in circumstances of risk, and you needn't be concerned with that. And you needn't be concerned with the manslaughter or the dangerous driving. I'm just saying that this within a continuum, and here you have to decide did the driving fall below the standard expected from a reasonable and prudent driver in the circumstances, and that's what you have to determine and so, therefore, was it then driving without due care and attention. And that is the offence that's charged and it's really for you to decide that with the experience you have of driving on the road."

53. While this initial instruction did not make clear that there had to be an appreciable falling below the standard expected by a reasonable and prudent driver, that was made clear in the re-charge. Moreover, we do not think that the reference to "And it didn't" could have given rise to any lasting confusion or that it could have influenced the jury adversely. The trial judge was clearly not seeking to usurp the function of the jury or crossing into the

arena of indicating a view on a contentious aspect of the evidence. The whole flavour and tenor of the charge was that the judge was approaching his task carefully and conscientiously and endeavouring to properly and fairly instruct the jury in the light of, and in a manner consistent with, the *O'Shea* jurisprudence. Taken in context it is clear what the trial judge was seeking to convey, albeit that it was somewhat infelicitously expressed, i.e., that while the driving in this case "didn't" involve an intent to cause a risk, it nonetheless had caused a risk (that much was obvious because a death had resulted); and the issue for the jury was, "did the driving fall [appreciably] below the standard expected from a reasonable and prudent driver in the circumstances." The trial judge repeatedly emphasised that that issue remained to be determined by the jury, variously putting it in the following ways:

"So, therefore, was it driving without due care and attention because it fell below the standard expected from a reasonable prudent driver in the circumstances? And it's for you to decide that. It's for you to decide what the standard is."

And again,

"...here you have to decide did the driving fall below the standard expected from a reasonable and prudent driver in the circumstances, and that's what you have to determine and so, therefore, was it then driving without due care and attention. And that is the offence that's charged and it's really for you to decide that with the experience you have of driving on the road."

And again,

"...the intent to cause the injury isn't part of the case. You don't have to be satisfied of that, but you do have to be satisfied beyond all reasonable doubt if you are to come to a conviction that there was a driving without due care and attention and the standard of driving felt below what a reasonable prudent driver would drive in the circumstances."

And yet again in the course of the re-charge:

"... it's for you to decide what a reasonable prudent driver would regard as being the standards that should apply and what care and attention should be obeyed."

And that,

"...the guidance the Courts have given and I can give you is that the core ingredient of the offence is a lack of care and attention that a reasonably prudent driver would give when driving in a public place having regard to the circumstances as they actually exist. So then beyond that, the Courts have said 'It may be described as an appreciable failing below the standard of care and attention expected of a reasonably competent driver creating a risk of harm to others that a reasonably competent driver would recognise and avoid.' But there's no requirement that the accused person actually adverted to that risk. The accused person doesn't have to

have thought about the risk and then not driven in that way. It's whether or not a reasonably competent driver thinking about it would realise that there was a risk. Now, it's not a direct immediate and serious risk as required for dangerous driving, but it does have to be a risk to a member of the public. And I don't know if I can answer your questions any further than that. It really is a matter for you. That's why you have been brought in."

54. We are of the view, that it having been so emphatically and repeatedly emphasised to the jury that the issues (i) as what was the standard to be applied to the reasonably prudent driver; and (ii) as whether there had been an appreciable falling below that standard in the circumstances of the case so as to constitute driving without due care and attention; were matters to be determined by them, the jury could have been under no misapprehension as to their task or as to what was expected of them. Moreover, while the infelicitous phrasing of the instruction at one point involving interpolation of the short phrase "And it didn't", might have created momentary ambiguity or uncertainty as to what the judge was in fact saying, we are completely satisfied that the numerous re-iterations of what was expected of the jury and what their task involved would have rapidly dispelled any such momentary uncertainty or ambiguity.
55. In our view when the charge and re-charge are considered in their totality one is left in no doubt that the jury were properly and adequately instructed on the law. Although we have not reviewed the trial judge's summation of the evidence because it was lengthy and detailed, the fact that it was lengthy and detailed illustrates that the jury were thoroughly reminded of the circumstances of the case. It was made abundantly clear to them that the applicable standard which they had to apply was that expected from a reasonably prudent driver "in the circumstances" of the case.
56. It was not a misdirection for the trial judge to instruct the jury that it was for them to determine what that standard was. There is nothing in the statute or in the jurisprudence to suggest that the standard of care and attention demanded of a reasonably prudent driver in a particular set of circumstances represents a matter of law on which the jury requires express judicial instruction. Rather, they are required to bring to bear their collective wisdom and experience of life to determine that issue as one of fact. That such might be expected of them is not at all unique in the criminal law. For example, in a sexual assault case, it is left to a jury to determine whether the trespass to the person said to constitute a sexual assault was committed in circumstances of indecency according to the standards of the times. The jury determines what are the standards of the times, and whether what occurred was indecent by reference to those standards.
57. In conclusion, we are satisfied that the jury was properly instructed, and received adequate explanation, as to the legal ingredients of the offence of careless driving (causing death) and we reject all complaints suggesting the contrary.

Alleged failure to properly instruct the jury on the burden of proof

58. In Ground 5 the appellant complains that the trial judge failed to direct the jury that if they believed the explanation advanced on behalf of the appellant, that the deceased was in a blind spot coming from an unlit area and that the appellant therefore did not see her coming, that it was for the prosecution to disprove this explanation and that the appellant should be acquitted if the explanation left a real doubt.
59. In elaboration on this complaint, it was alleged in submissions that the trial judge in instructing the jury did not deal adequately or at all with the legal principles concerning the benefit of the doubt or with the "two views" rule, and how they should be applied in the circumstances of this case, having regard to conflicts in the evidence given by the experts called on behalf of the prosecution and defence respectively.
60. These complaints are manifestly without foundation in our assessment. The trial judge dealt at some length, and in our view sufficiently, both with "the benefit of the doubt" and also, in the context of the drawing of inferences, with the "two views" rule. We accept that he did not do so with specific reference to the "blind spot" issue. However, in our view once he had correctly instructed the jury on the appropriate legal principles to apply in assessing the evidence on any relevant issue, that was sufficient. Significantly, the trial judge was not requisitioned to instruct the jury on how the principles outlined by him concerning the burden of proof, the so-called "benefit of the doubt" and the "two views" might be applied in practice on the "blind spot" issue. If there was concern following the charge concerning the adequacy of the trial judge's instructions, or the need to better contextualise them, there was an opportunity at that point to raise that concern. However, no concern was raised, and no requisition was made, suggesting that those who had listened to the charge considered that it was both clear and sufficient.
61. In charging the jury with respect to the burden and standard of proof, the judge instructed them that the prosecution bore that burden and that the standard was proof beyond reasonable doubt. In doing so, he elaborated as follows with respect to what is sometimes called "the benefit of the doubt":
- "...if you think the accused is probably guilty but you have a reasonable doubt about that, well then the prosecution haven't discharged the onus of proof because you aren't satisfied beyond all reasonable doubt. And that's sometimes described as the benefit of the doubt but I don't really like the term benefit of the doubt because it isn't really a benefit that's given to someone who may have committed an offence. Rather it's a protection given to every citizen in the country that the State can't bring charges against someone and say "oh yes, they're probably guilty, there's a reasonable chance they're innocent but they're probably guilty, we're entitled to punish them." That would be a terrible situation. And if you or any members of your family were ever facing a charge, you wouldn't want to be measured under that standard. So it's not that it's a benefit of the doubt, it's that it's an obligation of the prosecution to prove the case beyond all reasonable doubt."*
62. With respect to the matter of inferences, and the "two views" rule, he later went on to tell the jury:

"... you can only come to an inference and only draw an inference as to what happened if you're satisfied of that beyond all reasonable doubt and what that means is, if there was another possibility, if you think it through and try to analyse it and think well what other possibilities that are consistent with this set of facts. Well, if there was another possibility that was consistent with these set of facts, you could only go with the version more consistent with guilt if you are satisfied beyond all reasonable doubt that the other version isn't so. So, you are allowed to draw inferences, you are allowed to say, 'I believe because of the facts this is what happened,' but only if you have analysed it and said there is no other reasonable possibility."

63. It is clear to us from the passages just quoted that the jury were properly and adequately instructed both on the issue of the so-called "benefit of the doubt" and on the "two views" rule. We do not consider that further instructions were required as to how these already clear instructions might be specifically applied in the context of the "blind spot" issue.
64. We therefore reject Ground of Appeal No. 5.

Whether the charge was fair and properly summarised the defence case?

65. In submissions the appellant accepts that the trial judge did summarise the evidence, but it is contended by him (per Ground of Appeal No. 9) that the trial judge did not succinctly set out the fundamentals of the prosecution and defence cases, and in particular the clear conflicts that existed between the prosecution and defence cases. It is again somewhat surprising that this submission is advanced in circumstances where the defence raised no requisitions following the charge and did not seek to complain at the time that they perceived the judge's charge to be unfair in the manner now alleged.
66. The appellant now belatedly complains that the trial judge did not succinctly set out the fundamentals of the prosecution and defence cases, and in particular the conflicts that existed between the prosecution and defence cases.
67. The respondent vehemently contests that the charge was unfair in the manner alleged. The respondent has pointed out in submissions that in his charge the trial judge reminded the jury of the various witnesses who were called and outlined a brief summary of the nature of the evidence given by those witnesses. The primary evidential conflict in the case emanated from the differing views of the expert witnesses, i.e. Sergeant Paul Kearney, the Forensic Collision Investigator called by the prosecution and Colin Glynn of Denis Woods Associates Consulting Forensic Engineers, an engineer, and only witness called by the defence. The trial judge devoted a larger part of the evidence summary section of his charge to the evidence given by these witnesses.
68. In summarising their evidence, the trial judge focused on the conflicts between their testimony, thus highlighting the clear differences between the prosecution and defence cases. The relevant section of the charge reads as follows-

"Then Sergeant Kearney gave evidence as an expert, as opposed to being someone who's just putting his observations before you, which were the observations he made by taking photographs and the observations he made with his robotic mapping station. He gave the reference number of that and the brand number of that in order to plot out exactly the layout. That was the evidence he gave in the morning and that was the evidence of his observation. In the afternoon he gave his evidence of really as an expert and so, for example, he did give his conclusion. His conclusions were that Ms White was travelling southbound down Burlington Road, that the bus driven by the accused person cut the corner, perhaps maybe five meters down I think, five meters or maybe somewhat less down from the junction, crossed over the white line five meters down from the junction and that the bus and Ms White's bicycle came into collision in a head-on collision but not a direct head-on collision. They didn't come exactly facing in the same direction. He said he thought it was 30 or 40 degree angle that the collision happened. His view of the accident was that the wheel struck the bike, came into contact with the bus first, they are both moving, the front of the bus came into contact with the front of the bicycle first, that it buckled and that the bicycle twisted and turned up and the handlebars hit about a meter up on the bus having twisted, gone up a bit. And then the bus knocked the bicycle back and the bus came to a stop within two meters beyond the point of impact, and that was the core of his evidence. He was of the view that it was possible to take the turn from Burlington Mews onto Burlington Road without cutting the corner.

And once again, by way of comment, anything I say about the evidence is comment. By way of comment it was certainly put by the defence and by Mr Glynn that there would always be some crossing of the white line if a bus was turning and it was also put that buses regularly cut the corner in a more pronounced manner (sic) but there was no contest on Sergeant Kearney's view that the crossing of the white line and the cutting of the corner happened a distance back from the end of the junction, from the end of the roadway. It didn't happen on the dotted white line. The bus was moving across the solid white line up to five meters back from the junction and from the position of the bus after the impact, the conclusion of Sergeant Kearney was the bus cut the corner.

He then also gave evidence about the rules of the road..."

"That was the end of the prosecution evidence and the evidence called by the defence yesterday afternoon was the evidence of Colin Glynn. You have his evidence, and then you have the photographs and maps that he prepared and I'll let you consider those and consider what weight you want to put on it. He certainly was of the view that there was a dark area created by the lamp standard that wasn't functioning. He was cross-examined about that and it was put there were other lights in the area. He said they wouldn't compensate for that. He gave that evidence. He also gave evidence about the turn. He did accept in cross-examination that the bus wasn't making the idealised manoeuvre that would have the back

wheels crossing over the white line at some point but it was rather travelling well inside that. And that was clear from his map because on his map the idealised bus is in blue. Its movement is shown in blue. And on his map there was a red bus which was the actual position of the bus, and it's well inside that line. And that was the evidence. He did give the evidence, sorry, as well that there was a blind spot and the gardaí agreed to that. It's a matter for you [as] to what weight you put on that and consider that, and there are blind spots on vehicles. It's a matter for you to consider how that should be taken into account.

And then, just, by way of comment, just shortly the evidence beyond that and I just want to see if I said anything- - sorry, Mr Glynn's photographs also show his observations and show that it's a common enough feature for buses to cut the corner. The defence say that because some buses cut the corner and there isn't an accident, it can't be relevant to this accident. That's a matter for you to consider."

69. This extract typifies what seems to us to have been a fair and adequate summary of the evidence and that it made clear what the respective contentions of the experts for the prosecution and for the defence were; and, where an expert's view was being contested, what was put in cross-examination by way of contest. We have said many times that while it is part of the trial judge's function to summarise the evidence, and the prosecution and defence cases respectively, it is not the trial judge's function to make a second speech for the defence (or for the prosecution). The judge cannot be expected to get down into the arena, and it is neither appropriate nor reasonable to expect that a judge should seek to influence in a particular way how the jury should view the evidence (expert or otherwise) adduced by either side. That is the jury's function and were the trial judge to do so it would usurp the function of the jury. In our view the trial judge in this case fully respected the boundary between his function and that of the jury. He fulfilled his role properly by summarising the relevant evidence as a reminder to the jury, and he was careful to draw their attention, with reference to the evidence, to the essential propositions being advanced on both sides without seeking to influence them one way or the other.
70. This was a relatively short case. In the circumstances the jury arguably required only a brief summation of the evidence and of the key contentions of the parties, as they could have been expected to readily recall the detail of evidence they had only recently heard, and indeed the speeches made by counsel. Notwithstanding this, the trial judge provided them with quite a detailed and thorough summary of the evidence and drew their attention to the central contentions of the prosecution and the defence respectively with respect to that evidence. We are satisfied that there was nothing unfair in how the trial judge summarised the evidence and we reject the suggestion that the jury were not adequately apprised and reminded of the key contentions in the prosecution and defence cases respectively, and particularly in the defence case, the appellant having raised the issue. We are reinforced in our view that there was no unfairness by the fact that no requisition was raised after the trial judge had completed his charge. If anybody listening

to the judge's charge had perceived it to be unbalanced or unfair that was the time to complain about it. The fact that no complaint was made at the time is telling in our view.

71. We have no hesitation in therefore rejecting the complaints advanced in Ground No. 9.

Grounds of Appeal No's 3, 4, 6, 7, 8 & 10.

72. All of these grounds relate to evidential issues, and that is problematic in circumstances where it was for the jury to decide what evidence they would accept and what evidence they would reject. The jury's view of the facts is unassailable on appeal before this court, providing there was at least some evidence to support their verdict.

73. We have already observed that Grounds 3 & 4, which suggest insufficiency of evidence in various respects, are unstateable on a standalone basis where no direction was applied for on the grounds of insufficiency of evidence at the end of the prosecution's case. They can only be considered now in the context of a claim that the verdict was against the evidence (including the defence evidence) and the weight of the evidence, i.e., it was perverse. We will come back to this in considering Ground 10.

74. As regards Grounds 6 & 7, the complaint here is that the prosecution's forensic collision investigator tendered evidence beyond his expertise, that he was biased towards the appellant's case, and that he misrepresented to the jury the legal obligations of the appellant under the Road Traffic Acts and Regulations. These were all points capable of being addressed in the trial at first instance (i) by cross-examination of the prosecution's expert, and in circumstances where the defence elected to go into evidence (ii) by testimony in rebuttal from the appellant's expert, Mr McGlynn, and (iii) in defence counsel's speech to the jury. There is no complaint that the admission of Sgt Kearney's evidence was objected to and that the trial judge wrongfully admitted it. There was no application for a discharge of the jury on the basis that evidence had been wrongly or unfairly admitted. Ultimately, the matters now complained of, even if true, were all jury points. However, the defence closing speech did not allege that Sgt Kearney had exceeded his expertise, did not allege that he was biased, and did not allege he had misrepresented the legal obligations of the appellant. On the contrary defence counsel, when addressing inter alia the need for the jury to approach the case impartially, expressly said to the jury:

"I don't for one second suggest that my client has not up to this point had a fair trial, and I fully anticipate that by the conclusion of the trial, one way or the other, whatever the result is for him, that he will have received a fair trial."

75. This brings us to Ground of Appeal No. 8 in which the appellant now alleges that his trial was unsatisfactory. The ground in question lists five matters of evidence said to have given rise to an unsatisfactory trial, and although it is not pleaded in terms, it is implicit in how this ground is pleaded that these were matters favourable to the defence that were either, not sufficiently taken into account or not taken into account at all. The evidence now pointed to would certainly have provided the defence with jury points, and those points were in fact made in the defence closing speech. The evidence went to the jury,

who we are satisfied were properly charged, and notwithstanding those points having been made, and the case advanced by defence counsel on behalf of his client, the jury were nevertheless satisfied to convict. That being so, we do not see how, short of contending that the verdict was perverse, the appellant can now be heard to complain that the jury didn't take any, or any sufficient account of the defence case and the jury points made by his counsel. As to what evidence it was appropriate for the jury to accept, and as to what evidence they ought to have rejected, these were matters exclusively for the jury. This Court has no entitlement to interfere with the verdict providing there was at least some evidence to support it.

76. We finally come then to Ground of Appeal No. 10. We reject without hesitation any suggestion that the verdict was perverse on the basis that it was contrary to the evidence and the weight of the evidence. On the contrary, this was far from a marginal case. There was a collision between a bus and a cyclist which had caused the death of the cyclist. There was clear prosecution evidence that the bus had appeared to cut the corner when turning right at the T junction in question thereby bringing it into the path of the cyclist; that notwithstanding one non-operational street light, the overall lighting at the junction was good; that the cyclist had a working front facing light and reflector on her bicycle; that the cyclist was also wearing a hi-vis jacket; that the cyclist when struck had been on her own side of the road, albeit close to the centre of the road; that the cyclist had been cycling towards the junction ostensibly with the intention of proceeding straight on; and that the defendant by his own admission had not seen the cyclist until the moment of collision. Yes, it was a matter for the jury as to whether the appellant's driving exhibited a lack of care and attention falling appreciably below that which would be expected from a reasonably prudent driver in the circumstances which obtained. Yes, there were jury points capable of being made by the defence in the hope of raising a reasonable doubt in that respect. However, equally there was evidence on which a jury properly charged could be satisfied beyond reasonable doubt as to the guilt of the accused. The appellant and his legal team may disagree with the verdict, but we are satisfied that it was one that was open to the jury in circumstances where there was evidence capable of supporting it.
77. In the circumstances we reject Grounds of Appeal No's 3, 4, 6, 7, 8 & 10.

Conclusion.

78. The appellant's appeal against his conviction is dismissed.