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IN THE COUNTY COURT FOR NORTHERN IRELAND

DIVISION OF FERMANAGH AND TYRONE

KATHLEEN ARKINSON AND STEPHEN WALSH

Plaintiffs

V

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendants

Her Honour Judge McCaffrey

1. This case relates to claims brought by the Plaintiffs against the Defendant for personal injury, loss and damage, aggravated and exemplary damages, distress and inconvenience arising out of the defendant's alleged :

    a. Trespass to property;

    b. False imprisonment

    c. Unlawful arrest and subsequent false imprisonment of the second plaintiff, Mr Walsh; and

    d. Assault, battery and trespass to the person in respect of both plaintiffs.

2. The background to this case is the disappearance of Arlene Arkinson,the 15 year old sister of the first plaintiff, on 14 August 1994 after she had travelled to Bundoran with a friend, the friend's mother and her partner, Robert Howard, who for some time was the prime suspect in the disappearance of

Arlene Arkinson. She has never been found, nor has her body been discovered. The disappearance of Arlene Arkinson has undoubtedly caused great distress to her family. Ms Kathleen Arkinson, the first plaintiff, is Arlene Arkinson's sister and Stephen Walsh the second plaintiff, was then her partner. They lived, with their four children aged from 11 months to 8 years at 26 Drumnabey Park, Spamount, near Castlederg. The search of that property by the police in connection with the suspected murder of Arlene and the subsequent arrest and questioning of Mr Walsh by the then RUC in April 1996 form the subject matter of this claim.

3. While proceedings in these claims were commenced by Writ of Summons in March 1998 and pleadings were then exchanged up to and including the service of the defence in January 2000, pleadings did not actually close until May 2010 when the reply was served. The proceedings were then remitted to the County Court in March 2011, but did not come on for hearing until November 2017. While other court proceedings may have been a factor in the delay in hearing, I am not clear why there should have been a delay of some 19 years from the issue of proceedings to the hearing. Neither party made any criticism of the other in this regard but it is fair to say that delay is generally undesirable, as it may have an impact on the hearing.

4. Because of the long delay in the matter coming to hearing, some of the police witnesses are now retired and a number of them were unable to attend due to serious long term medical conditions. These were Ch. Supt Eric Anderson, Det.Insp. Nelson and Const. Harper, for all of whom medical evidence as to their ill health was adduced. Their witness statements, many dating from the time of these events and their contemporaneous notebook entries, were admitted under Art.5 of the Civil Evidence (NI) Order 1997. I will return to the weight to be given to these statement and notebook entries later.

5. I heard oral evidence from both plaintiffs and from a number of defence witnesses.The defence also relied on statements from their witnesses, who had made contemporaneous notebook entries and statements relating to the events shortly afterwards. There were also some statements made some time later.

a. The Facts

6. Because there was a considerable amount of conflicting evidence in this matter, I take the opportunity to set out the findings of fact which are fundamental to the decision in this case. In February 1996, Det. Ch. Supt. Brian Mc Vicker was appointed as Senior Investigating Officer in the Arlene

Arkinson murder inquiry. In April 1996, he was briefed by Det. Insp. Nelson about a call to the confidential police phone line, giving information about the death of Arlene Arkinson. The caller alleged that Arlene had been having a sexual relationship with the second plaintiff, Mr Walsh and that police should search the garage of Mr Walsh and Ms K Arkinson's home. Following this, a media appeal was made for the caller to contact police again and a second call was received. Arrangements were made for Ch. Supt. McVicker, Det.Insp Nelson and Const Bennet to meet with party A, who had called police on the second occasion and who agreed to facilitate a meeting with party B. That meeting took place on 22 April 1996. Party B told the police that he/she had overheard a conversation by a person or persons who were unidentified and known only as party C. The identities of these individuals have never been disclosed. The import of that conversation was that at the time of Arlene's disappearance, Kathleen Arkinson had found her in bed with Stephen Walsh, an argument had developed and Arlene had either been pushed or fallen down the stairs and died as a result. It was suggested the police should search the garage floor.

7. The plaintiffs' case was that this information about allegations of a sexual relationship between Mr Walsh and Arlene Arkinson had already been investigated in 1994 by social services prior to Arlene's disappearance. It was put to Mr McVicker that the police had interviewed two social workers, Michelle McKernan and Mary Gormley, who had worked with Arlene in 1994 before she disappeared. Ms Gormley's statement, which was not formally proved but was referred to by Counsel for Mr Walsh, makes reference to a phone call from Ms K Arkinson to Michelle McKernan, alleging that Arlene had been sleeping with "Fatty" Walsh. Ms Gormley had a meeting with Kathleen Arkinson, who then said that it was a misunderstanding and Arlene said the same when Ms Gormley met her the next day. It was put to Ch Supt McVicker that the matter had already been investigated by Social Services and it was found there was no substance to the allegations. He considered that the information he had received was different and needed to be acted on.

8. Following the meeting with A and B, Det Ch.Supt McVicker was of the view that the party B was sincere and the information was genuine. After consulting with other senior officers, Det Insp. Nelson applied for a warrant to search the property at 26 Drumnabey Park under Arts.10 and 17 of the Police and Criminal Evidence (NI) Order 1989 and issued by a Justice of the Peace on 23 April 1996. This confirms that the Justice of the Peace at the time

was content that there were reasonable grounds for issuing the search warrant.

9. On 24 April 1996 at about 5 am, a number of police officers were briefed in relation to the proposed search of the premises. During that briefing Det Ch. Supt. McVicker told those present that it was not intended to arrest anyone at this time. At 6.25 am that morning, police arrived at 26 Drumnabey Park to search the premises. Insp Quinn noted in his statement that his crew stayed back to allow the CID officers present- McVicker, Nelson and Consts. Harper and Bennett – to approach the house and speak to the occupants. Ms Arkinson's evidence was that she was woken by the noise at the door and she could see from the bedroom window that there were a lot of police there. Const. Harper – who did not give evidence at the hearing-said in his statement that he attempted to explain to Ms Arkinson the reason for them being there, but Ms Arkinson was abusive to them. Const Allington, who gave evidence at the hearing, confirmed that he had heard a uniformed officer, he was not sure who, say to Ms Arkinson that they had a warrant to search the house. She then- by her own admission- threw a glass ashtray and a vase out the window. Her evidence was that she had not thrown them at anyone, but both Insp. Quinn and Det. Insp Nelson noted that they were thrown at the CID officers and these items narrowly missed Const. Harper. She repeatedly told the police they were not getting in and used foul language, telling them they were bastards and fuckers. According to Const Allington's evidence, She also shouted, "You fucking bastards, you can't catch murderers, but you come here." The police officers asked Ms Arkinson to come down to the front door so they could speak to her, but she refused and kept shouting abuse at them.

10. Ms Arkinson denied that she had been abusive and said that if the police had asked, they would have been given access to the house to search it anytime. She denied the police entry to the house however and her behaviour on the morning of the search, on her own evidence, belies her assertion that the police could have searched the house at any time. She said there had previously had a good relationship with Consts, Bennett and Harper. Const. Harper then saw Ms Arkinson in the downstairs hallway and she shouted that she had a knife and would stick it in the first person through the door. A number of police witnesses referred to seeing what appeared to be a metallic object being tapped against the glass panel beside the front door. Given her refusal to open the door, Insp Quinn approached the house and spoke to Ms. A twice through the letter box. He told her they would have to force the door

open and she should stand back. Const Allington was then called forward to use a sledge hammer to open the door, which he did.

11. Ms. Arkinson denied that she had had a knife in her possession. Insp. Quinn however gave evidence that he was one of the first officers into the house and heard someone say she had a knife. He then saw Const Allington attempting to restrain Ms Arkinson and Mr Walsh coming from the direction of the kitchen. The Inspector tried to prevent Mr Walsh from hitting Const Allington but could not do so because Ms Arkinson and the Constable were in between them. Mr Walsh was removed from the house by police. He maintained that he had been rugby tackled by police officers, but evidence of the police officers concerned was that he was taken outside and that at no point was he on the ground.

12. Insp Quinn then saw Const Cowan scuffling with Ms Arkinson… Insp Quinn then saw Const Cowan scuffling with Ms Arkinson. His statement says, " I assisted him and saw a knife fall from her left hand to the living room floor. I retrieved this knife and retained it in my possession." On 3 May 1996, when items removed during the search were being returned to Mr Walsh and Ms Arkinson, under the supervision of a Christopher McCrea, Const Allington's evidence was that he returned the kitchen knife which had been seized by Insp Quinn to Mr Walsh. He also said that Mr Walsh had signed a receipt for the knife in his notebook, but Mr Walsh denied this and said his signature was a forgery. I found the evidence of Ms Arkinson and Mr Walsh unconvincing and exaggerated on this and a number of other matters. I accept on the balance of probabilities that the police made Ms Arkinson aware that they had a warrant to search the house and that they were unable to gain entry to the house on request. I find that Ms Arkinson was abusive to them and refused them entry, which included throwing items at the police. I accept that she also threatened that she had a knife and would stick it in the first person through the door. I also find as a fact that when the police entered the house, Ms Akinson did have a knife in her hand, it was retrieved from the scene by Insp. Quinn and subsequently returned to Mr Walsh by Const Allington. Having heard all the evidence, I accept that Mr Walsh was removed from the house briefly by police because he was attempting to hit a police officer and to intervene when a police officer was trying to restrain Ms Arkinson.I do not accept that he was rugby tackled or that the force used to remove him in the circumstances was unreasonable.

13. Det. Ch. Supt McVicker came in and spoke to both Ms Arkinson and Mr Walsh, made them aware of his identity and why the police had come to the house. There was also evidence given that the copy of the warrant was given to her and Ms Arkinson was asked to sign a document. Initially she said she had not received a copy document, then said she remembered a yellow piece of paper on the stairs. She also said she had been asked to sign a piece of paper, but was unclear as to whether that was before or after her doctor has been. She made somewhat unclear assertions that that she had been told if she signed this form for manslaughter all she would get would be five years. This was not put to Det Ch Supt McVicker in cross-examination and I do not consider that there is any substance to these rather garbled allegations.

14. Following the police entry to the house, Ms Arkinson was taken into the living room. She had been handcuffed because of the scuffles in the entrance hall and at this time she was hysterical and still shouting at police. Police officers tried to calm her down and confirmed that the handcuffs would be removed if she calmed down. Mr Walsh was also brought into the living room to help calm down Ms Arkinson and she was able to see and reassure some of their children, who had been woken by the commotion. She did calm down and one handcuff was removed. There was a conflict of evidence as to whether the police had wanted to remove both cuffs and Ms Arkinson refused both cuffs being removed, telling then to wait till the doctor came. She said she had one cuff on when the doctor came.

15. Dr Richard Bailie attended at 7 am that morning having been called out to attend to Ms Arkinson. He administered a sedative to relax Ms Arkinson. His report makes no mention of the patient being hand cuffed. On this basis, I find that Ms Arkinson was handcuffed for a short period of time after the police gained entry to her house sometime after 6.30 am until 7.00 am when the doctor arrived. I also find as a fact that she was restrained in this way because she was aggressive and abusive to the police and had made threats that she would take a knife to the first person through the door. Given that a knife was recovered from Ms Arkinson, the police were prudent to take this threat seriously. She was also hysterical and aggressive in her manner. In light of this, the use of handcuffs for a short period of time – probably no more than 10-15 minutes- was in my view a reasonable use of restraint.

16. The police search of the premises then continued. Ms Arkinson said that they had been told they should not leave the premises and part of this claim is for

false arrest. In the course of the hearing it was confirmed that Ms Arkinson and Mr Walsh left the house around 10.50 am to go to Castlederg and Strabane on 25 April 1996 (the second day of the search) and on the following day, 26 April, Mr Walsh was arrested on suspicion of murder, to which I will return. It was also confirmed that they gave various press and TV interviews on 25 and 26 April. On the afternoon and evening of 24 April they had visits from various family members and also from their solicitor. It was confirmed by counsel that the allegations of false imprisonment therefore related only to the period from about 6.30am on 24 April until about 10.50am on25 April, when Ms Arkinson and Mr Walsh left the property by car to go shopping.

17. Ms Arkinson's evidence was that she was not allowed to leave the house on the first day of the search and that she was told she was "under house arrest". Det. Chief Supt McVicker was adamant that this simply could not have happened. Ms Arkinson also said that she gave her benefit book to Const Harper and that he took it to the post office and got her money and that he then went and got her nappies and cigarettes. Const Haprer was not present at court through illness and so was not able to comment on this evidence. I find this evidence implausible for a number of reasons. First, it seems highly unlikely that Ms Arkinson would entrust her benefit book to someone at whom she had been shouting abuse a short time before. Secondly, it seems a completely inappropriate thing for a police officer to do and thirdly, the police officers at the scene were on duty and had work to do rather than running errands for Ms Arkinson. I do not accept either that Ms Arkinson was told she was under house arrest : there is no good reason why she would be told this, she was either under arrest, or she was not.

18. It was put to Ms Arkinson that some of her brothers and sisters from Omagh were allowed access to the house on the first evening of the search. She said that it was definitely not on the first night of the search that people were allowed in and she was then referred to the police log which showed the record of all of those who had arrived at the house from approximately 8.00 pm in the evening onwards on 24 April, including a number of members of her family and Mr Fahy, her solicitor. It was put to Ms Arkinson that she had been able to go and speak to members of the press who were at the cordon around the house. She initially said that she had not been able to speak to them on the first day. Then when it was put to her that she had not been prevented from speaking to them at any time she was unclear and said that she couldn't recall. Mr Walsh's evidence was that he was first told that he was not allowed to leave when he tried to go out the front door on the morning of

24th April because Ms Arkinson went first to send the children to school. He said that he had been told that if he tried to leave he would be arrested, but did not say by whom. He agreed that on the evening of the first day of the search when the police stopped work, various family members were allowed in and that John Fahy had also visited. He asserted, however, that CID had "left instructions" with the uniformed police officers that they were not allowed out, that only family members were allowed in. He did not say where this information came from. It was Mr Walsh's case that they had been advised that if they tried to leave the house they would be arrested on the first day. It was put to both him and Ms Arkinson that they were not prevented from leaving the house or from contacting their solicitor at any time and that, in fact, what the police had advised them was that they should not go far away in case anything arose at the property. Both of them denied this. When it was put to Mr Walsh that their solicitor could have taken some action if there had been any suggestion that they had been falsely imprisoned at the property, he replied that the police controlled their house phone on that first day. This was not put to any police witness in cross-examination.

19. As far as the police evidence on this matter was concerned Det. Supt. McVicker said that when he briefed the police officers before the search started that he made it clear that there should be no arrests without his authority. When it was put to Det. Chief Supt. McVicker that Mr Walsh and Ms Arkinson were not restricted but were advised not to go too far, his reply was that they were not under arrest and could go anywhere they wished.

20. Det. Sgt. McClure, in his Witness Statement, said that he had received an instruction from Chief Insp. McKernan that if Mr Walsh and Ms Arkinson attempted to leave the property that evening, that they should be arrested. Chief Supt. McVicker responded that he had given specific directions that no-one was to be arrested unless he gave the order and, in his words, Det. Sgt. McClure had got that "totally wrong". He also noted that Ms Arkinson had left the house on the first day to meet the press and questioned whether the police would have allowed her to do that if they were going to arrest her.

21. Det. Sgt. McClure said that he had a vague recollection of being briefed, given that the matter was 21 years ago. He recalled that the scene was to be secured, which was standard procedure and he was asked what he recalled about the possible arrests of Mr Walsh and Ms Arkinson if they went to leave the area. His response was exactly that if Kathleen Arkinson and Stephen Walsh went to leave the area, they were to be arrested on suspicion of the murder of Arlene Arkinson. He elaborated on that by saying that he was

aware that there was new information which gave reasonable grounds to suspect that Mr Walsh may possibly be involved in the murder of Arlene Arkinson and that the reason for the search was to locate her body. He said, therefore, that if Mr Walsh and Ms Arkinson went to leave the area there would be concern about their flight and hence they were to be arrested to prevent that. When he was asked what Mr Walsh and Ms Arkinson were to be told, his reply was that he didn't believe they were to be told anything. Under cross-examination he did not agree that the area beyond the police cordon was defined as "the area concerned" and he then went on to say that they were to be arrested if it was apparent that they were going to leave the area of the house and that they were "going further".

22. Det. Sgt. McClure's evidence was that he had been given this instruction by Det. Insp. McKernan. Det. Insp. McKernan's evidence was that his notes of the evening of 24th April referred to the conversation he had with Det. Insp. Nelson on 24th and 25th. Insp. McKernan was also referred to his notes of a conversation which he had had with Const. McWilliams on the evening of 24th later that evening when he was at home. He said that he had been contacted by Const. McWilliams in relation to some unruly activity involving family members which had occurred at Kathleen Arkinson's home and he made a decision that no arrest should take place. It was Insp. McKernan's evidence that he had not given any direction to Det. Sgt. McClure to arrest Ms Arkinson or Mr Walsh if they tried to leave the premises. He asserted that that was borne out by the fact that when he was consulted later by Const. McWilliams, he made the decision not to arrest. He noted that his statement was made in September 1996 and that if he had had a note of any briefing given to Det. Sgt. McClure it would have been in his statement. When it was put to Det. Insp. McKernan that Ms Arkinson had not been able to leave the property on 24th his response was that she had left to speak to the press. While Det Sergt McClure was rather vague on the issue of what action by Ms Arkinson or Mr Walsh might prompt an arrest, it seems to me on balance that the weight of the evidence supports the view that there was no clear intention to restrict the movement of or falsely imprison the plaintiffs on 24 April 1996 through until the morning of 25 April 1996. This is certainly the evidence of Ch. Supt. McVicker and Det. Insp McKernan, who were the most senior officers involved and who were in effect, giving the orders.

23. I accept that Ms Arkinson went to speak to members of the press on the first day of the search, according to the evidence which was given and gave television interviews on subsequent days. It is also clear that the home was

visited by the couple's solicitor and by various members of their families as those individuals were logged in and out on the police record.

24. In relation to the arrest of Mr Walsh on 26th April, Chief Supt. McVicker's evidence was that he had a discussion with Chief Supt. Anderson and Chief Insp.McKernan on the evening of 25th April in relation to the situation, the fact that no evidence had been uncovered by the search to date. They considered that Stephen Walsh should be arrested and questioned about his alleged sexual relationship with Arlene Arkinson and her disappearance. It was decided not to arrest Ms Kathleen Arkinson as the information supplied in relation to her had not been substantiated. This evidence was challenged by counsel for Mr Walsh, questioning why Mr Walsh was arrested when Ms Arkinson was not. Mr Walsh's case was that genuine enquiries into the basic information provided to Det. Chief Supt. McVicker were not completed nor were they completed by Insp. McKernan or Const. Boyd, the Arresting Officer. Secondly, the plaintiff contended that the Arresting Officer did not possess information that would satisfy him as to the relevant grounds for arrest and thirdly, that the exercise of the arrest was unreasonable under the **Wednesbury** principles.

25. The evidence given by Const. Boyd, who was the Arresting Officer, was that he was briefed by Insp. McKernan in a car along with Reserve Const. Duncan and Reserve Const. Rowe before going to arrest Mr Walsh. He referred to his police notebook which was completed at the time. In that notebook he recorded that he was briefed at approximately 8.30 am on 25th April by Chief Insp. McKernan that information had been received from a reliable source regarding the complicity by Stephen Walsh in the murder of Arlene Arkinson.

26. As a result of the briefing from Ch Insp McKernan, Const. Boyd then attended at 26 Drumnabey Park, Castlederg and with Const. Rowe and Const. Duncan he went to arrest Stephen Walsh. Mr Walsh was cautioned in accordance with Article 3 of the Criminal Evidence (Northern Ireland) Order 1998 and Mr Walsh made no reply. Ms Arkinson was present in the house and she then ran up the stairs into the bedroom and according to Const. Boyd's statement she was shouting and screaming. At this point there was a scuffle and Const. Boyd managed to place a handcuff on Mr Walsh's left wrist. Mr Walsh alleged that the bed clothes were pulled off him by the police, that he was not given the opportunity to put his shoes on or to go to the bathroom.He also alleged that handcuffs were put on him straight away. Const. Boyd said in his evidence that Mr Walsh was given the opportunity to use the bathroom and that the police were not aggressive or heavy handed in

the arrest. It was only when Mr Walsh came out of the bathroom and was shouting and tried to force his way past Const. Boyd that he then placed the handcuff on his left wrist. At that point Mr Walsh calmed down and said that if the other handcuff was not put on he would go without any bother. Mr Walsh's evidence was that he had been brought down and that there was a guard of officers who shielded him and escorted him to the vehicle. Mr Boyd's evidence was that he, Const. Rowe and Const. Duncan had escorted Mr Walsh to the vehicle. He also said that Mr Walsh was not handcuffed during the journey to Strabane RUC Station where he was handed over to Sgt. Faulkner, the Custody Sergeant.The evidence given by Const Boyd and Ch Insp McKernan accords with notebook entries and statements made at the time and therefore in my view is to be preferred to rather general and exaggerated evidence given by Mr Walsh and Ms Arkinson on the issue.

27. On arrival at Strabane Police Station at approximately 9.30 am the circumstances of the arrest were explained to the Custody Sergeant, Sgt. Faulkner, who then authorised detention. The detention was renewed on a number of occasions throughout the succeeding 36 hours approximately. Mr Walsh was handed over to the Custody Sgt., Sergeant Faulkner, at Strabane RUC Station. He confirmed that the relevant returns had been completed and signed and that on that basis he had authorised the lawful detention of Mr Walsh. He read out the circumstances of the arrest. He confirmed that he had satisfied himself that there were grounds for the arrest and that the only person he had spoken to about this was Const. Boyd. He confirmed also that he was not aware of the detailed grounds for the arrest but that as Custody Sergeant he would not be told of the source or content of any intelligence received by police nor would any other officer who did not need to know the information as part of his duty. He said that he was aware of information received by police from a reliable source, that police had carried out enquiries to check the information and that a decision was made by more senior officers to arrest Mr Walsh on foot of intelligence. When he was asked whether he was operating on the presumption that someone in CID had made enquiries regarding the accuracy of the information, his reply was that enquiries had been carried out by police officers regarding the information received prior to Mr Walsh's arrest. Sgt. Faulkner later said that he was satisfied by what the Arresting Officer had told him, bearing in mind that there was an ongoing operation in Castlederg for the previous day and a half at Mr Walsh's house. It was put to Sgt. Faulkner that there were no reasonable grounds for the arrest and detention and he responded that he had satisfied himself for the arrest and authorised detention accordingly. He confirmed also that he had

briefed Sgt. McGrath who took over from him regarding the detention and custody of Mr Walsh.

28. Mr Walsh was detained for 31 hours and 46 minutes and was questioned on a number of occasions during that time. Records of the questioning of Mr Walsh were produced although not opened to me in any detail. Mr Walsh denied any involvement in the abduction of Arlene Arkinson or her murder and he was released without charge.

b. The Relevant Law

29. I wish to thank counsel for the time and care they took with their written and oral submissions in this case. I set out below a summary of the relevant law which was argued before me.

30. The lawfulness of the search

Art 10 of PACE gives power to a Justice of the Peace to issue a warrant authorising a constable to enter and search the premises. Police obtained a warrant in this case and rely upon that as substantiating the lawful basis for their search of the Plaintiffs' home at Drumnabey Park.

Art. 10 provides as follows :

Art.10 is therefore based on the premise that the Justice of the Peace who issues the warrant must be satisfied that there were reasonable grounds for the warrant.

31. PACE code of Practice B (2008) states that before making an application,

"when the information appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought."

As described in Civil Actions Against The Police (Clayton & Tomlinson, Third Edition):

"when a search is conducted under the authority of a search warrant, an action for trespass to land or good will lie if:

a. Any of the "application" provisions" of [Article 17] are not complied with;

b. Any of the "execution" provisions of [Article 18] are not complied with and in particular if a "generalised search" is conducted under a warrant authorising search for specific items;

c. The searching officers do not have the warrant with them at the time of the search; and

d. The searching officers execute the warrant on the wrong premises."

[NI provisions substituted for English provisions]

32. It was submitted by the defendant that this Court does not have the jurisdiction to look behind the making of a judicial document such as the warrant, and that the only correct avenue for challenging the lawfulness of the warrant would be by an application for judicial review against the decision of the Justice of the Peace. No application had been made by the Plaintiffs to quash the warrant, and no declaration has been sought by them that the warrant was invalid or unlawful.

33. The search warrant grants Police the legal right to enter onto the Plaintiffs' property, so long as that search is in accordance with the warrant and Articles 17 and 18 of PACE. Failure to adhere to Articles 17 and 18 does not make the warrant itself invalid, but makes the search unlawful.

c. False Imprisonment

34. False imprisonment is defined as 'the unlawful imposition of constraint on another's freedom of movement from a particular place.' (Collins v Wilcock [1984] 1 WLR 1172 at 1178.) The tort is established on proof of firstly, the fact of imprisonment and secondly, the lack of a lawful authority or basis for that imprisonment. Once imprisonment is established, the burden of proof is on the Defendant to demonstrate that it is justified. Detention short of actual arrest can amount to an unlawful deprivation of liberty; for example, if a person is told that they are obliged to remain in an area to assist the police (Warner v Riddiford (1858) 140 ER 1052.)

35. The Plaintiff's state of mind is irrelevant in false imprisonment and it is not required that it be established that the Plaintiff was aware of his detention

(Clerk and Lindsell on Tort, 21st edn at 15.25) In Murray v Ministry of Defence [1988] 1 WLR 692, Griffiths LJ cites Atkins LJ in Meering v Grahame-White Aviation Co Ltd with approval at [8]:

> *It is quite unnecessary to go on to show that in fact the man knew that he was imprisoned. If a man can be imprisoned by having the key turned upon him without his knowledge, so he can be imprisoned if, instead of a lock and key or bolts and bars, he is prevented from, in fact, exercising his liberty by guards and warders or policemen. They serve the same purpose. Therefore it appears to me to be a question of fact. It is true that in all cases of imprisonment so far as the law of civil liability is concerned that 'stone walls do not a prison make,' in the sense that they are not the only form of imprisonment, but any restraint within defined bounds which is a restraint in fact may be an imprisonment.*

36. Griffiths LJ continues at [9] to state that it *'is not difficult to envisage cases in which harm may result from unlawful imprisonment even though the victim is unaware of it.'* False imprisonment is actionable per se as the law attaches supreme importance to the liberty of an individual and any wrongful interference with that liberty requires redress in damages.

37. In relation to the absence of lawful authority, it is *'irrelevant whether or not the defendant honestly and reasonably believed that he had the necessary authority to detain the claimant, if, in fact, no such authority existed.'* (Clerk and Lindsell at 15-26). **USE 15-26 for detention after** To be liable for false imprisonment, the Defendant must possess the necessary intention and ability to detain the Plaintiff.

d. UNLAWFUL ARREST AND DETENTION/FALSE IMPRISONMENT

38. Under Article 26(6) of PACE, as it then was:

    a. *"(6) Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence."*

Conspiracy to murder is an arrestable offence under Article 26(1).

Note that the test has changed since 2007 in that necessity to arrest is now a prerequisite. Necessity for arrest was not required for a lawful arrest prior to

2007.The test for reasonable grounds is set out in the decision of the House of Lords decision of O'Hara v Chief Constable of the RUC.

39. As summarised by Lord Hope in O'Hara v Chief Constable of the RUC [1996] NI 8:

    a. *"My Lords, the test which s 12(1) of the 1984 Act has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.*

    b. *This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances." [at [298]]*

40. It is submitted that the Courts have emphasised that the objective standard imposed is not a high one. Lord Steyn in O'Hara stated:

    a. *"Certain general propositions about the powers of constables under a section such as s 12(1) can now be summarised. (1) In order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case. Ex hypothesi one is considering a preliminary stage of the*

*investigation and information from an informer or a tip-off from a member of the public may be enough (see **Shaaban Bin Hussien v Chong Fook Kam** [1970] AC 942 at 949). (2) Hearsay information may therefore afford a constable reasonable grounds to arrest. Such information may come from other officers (see **Hussien's case**). (3) The information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes the arrest. (4) The executive discretion to arrest or not as Lord Diplock described it in **Holgate-Mohammed v Duke** (at 446) vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers."*

41. In **Hussein v Chong Fook Kam** [1970] AC 942, the Privy Council made clear that, in order to have "reasonable grounds to suspect", the arresting officer does not have to have sufficient information for a prima facie case. Lord Devlin stated that [at [948]:

    a. *"suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: "I suspect but I cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is at the end. When such proof is obtained, the police case is complete; it is ready for trial and passes on to its next stage."*

42. Further, Lord Devlin held (at [949]) that whereas prima facie proof consists of admissible evidence, suspicion can be based upon matters which could not be put in evidence at all.

43. In terms of to what extent police are obliged to make further inquiries, in **Castorina v Chief Constable of Surrey** [1988] NLJ 180, Purchas LJ stated that:

    a. *"courses of inquiry which may or may not be taken by an investigating police officer before arrest are not relevant to the consideration whether, on the information available to him at the time of the arrest he had reasonable cause for suspicion"*

44. In **Brady v Chief Constable of RUC** [1991] 2 NIJB 22, which was relied upon by the House of Lords in **O'Hara**, Carswell J made this comment on the evidence (at 25–26):

    a. *'If it were material, I should hold that each reasonably suspected that [the plaintiff] had been involved in planning the murder. Since it is the arresting officer's suspicion which alone is relevant, however, I consider that the belief of those other officers does not operate to strengthen or weaken the genuineness or reasonableness of the former's suspicion except in so far as it*

may tend to confirm or contradict his account of what he was told at the briefing. Constable McGonigle was told by a senior officer at an arrest briefing that the plaintiff had been involved in Konig's murder. I accept that the constable believed what he was told and I hold that he entertained a genuine suspicion that the plaintiff had played some part in the murder. I also hold that it was reasonable for Constable McGonigle to form that suspicion in the circumstances. An arrest operation had been planned, in which a number of persons were to be arrested. A senior officer held a briefing session for the uniformed officers who were to carry out the arrests, in the course of which he told them the reasons for arresting each person. When he told Constable McGonigle that the plaintiff was to be arrested because he was involved in Konig's murder, it was in my opinion reasonable for the constable to accept that and to suspect the plaintiff of being concerned in a terrorist murder.'

45. Blackstone's Criminal Practice 2018 states:

    a. *In forming a reasonable suspicion a constable may rely on hearsay, provided that it is reasonable and that he believes it (Clarke v Chief Constable of North Wales Police [2000] All ER (D) 477). Thus a constable may arrest a person as a result of radio information, or even an anonymous telephone call, provided that the person arrested corresponds to the description in the message (King v Gardner (1979) 71 Cr App R 13; DPP v Wilson [1991] RTR 284); he may act on the word of an informant, although such a source should be treated with considerable reserve (James v Chief Constable of South Wales [1991] 6 CL 80).*

46. Civil Actions Against The Police (Clayton & Tomlinson, Third Edition) is clear that there is a distinction between "suspicion" and "belief":

    a. *"It has been suggested that "suspicion" may arise from conjecture, whereas "belief" can only exist where one if firmly persuaded of the truth of a particular fact and that a reasonable person may suspect something although he would withhold his belief until further evidence appears which finally convinces him."*

47. An arrest without warrant is provided for in Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989:

    i. *Arrest without warrant: constables*

        (1) A constable may arrest without a warrant –

    ii. *…*

iii. *(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it…*

iv. *(4) But the power of summary arrest conferred by paragraph …(3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in paragraph (5) it is necessary to arrest the person in question.*

v. *(5) The reasons are –*

vi. *…*

vii. *(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question; …*

48. What is required is reasonable suspicion of guilt relating to the offence that the second Plaintiff was arrested for (complicity in murder) and not prima facie proof of guilt. A reasonable suspicion *'presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.' (Stepuleac v Moldova* [2007] 8207/06)

49. An honest, sincere or bona fides belief is not sufficient; suspicion has to be objectively reasonable in the context of all circumstances of the case.

The reasonableness of the suspicion on which an arrest is effected forms a vital and crucial element of the safeguard against arbitrary arrest and detention. One of the pillars of liberty in domestic law is the principle that *'every imprisonment is prima facie unlawful and that it is for a person directing imprisonment to justify his act.' (Liversidge v Anderson* [1942] AC 206 at [245])

50. In face of counter-indications prior to an arrest, it was held in *Mabey v The Chief Constable of Hampshire* [1995] Lexis Citation 1978 that the arrest was unlawful as it was objectively unreasonable. Legatt J at page 4 states:

i. The relevance of the time of arrest is that it is at that time that the arresting officer had to have reasonable grounds for suspecting that Mr. Mabey had committed the offence. The earlier the arrest was made, the less would have been the information that he would have upon which to base his suspicion. But importantly in the circumstances of this case, ***the fewer would have been the counter-indications of which objective account should also have been taken.*** *Both the officers state that the arrest had been*

made on the doorstep. It was an important matter. The jury disbelieved them. ***The arrest was not in fact made until after the fruitless search had been conducted.*** *The stolen boxer shorts were not found in the flat to which the thief was supposed to have taken then them… (emphasis added)*

51. The Master of the Rolls case of *Raissi v Commissioner of Police of the Metropolis* [2009] QB 564 at [577H] states that:

    i. *The proposition that it is sufficient for the arresting officer to infer that his superiors must have had reasonable grounds for suspicion before instructing him to arrest the suspect is inconsistent with the reasoning in the O'Hara case.* ***We can well understand that that could be the law and indeed, that some may think it should be the law in view of the nature of modern police operations. However, as the law stands, for the reasons given by Lord Steyn at page 295E-H of O'Hara and summarised at [14] above, it is not the law.*** *(emphasis added*)

52. The recent Northern Irish Court of Appeal case of *Salmon v Chief Constable of the Police Service* [2013] NIQB 10, Weatherup J cites European guidelines referencing the case of Stepuleac v Moldova with approval at paragraph 28:

    i. *A reasonable suspicion that a criminal offence has been committed presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence.*

    ii. *Therefore a failure by the authorities to make a genuine enquiry into the basic facts of a case in order to verify whether a complaint was well founded disclosed a violation of Article 5(1)(c).*

Detention of Mr Walsh

53. Under Article 38 of the Police and Criminal Evidence (Northern Ireland) Order 1989, the custody sergeant has the following duties prior to charge:

    i. **Duties of custody officer before charge**

    ii. 38.—(1) Where—

(a) a person is arrested for an offence—

52. without a warrant; or

    i. (ii) under a warrant not endorsed for bail,

ii. (b) a person returns to a police station to answer to bail after having been arrested for an offence,

iii. the custody officer at each police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

iv. (2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

v. (3) **If the custody officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.** (emphasis added)

54. The defence submitted that it was accepted by Sergeant Faulkner, and is stated in the Custody Record, that he did not have sufficient evidence to charge Mr Walsh. However, he considered he had reasonable grounds for believing that Mr Walsh's detention without being charged was necessary to secure or preserve evidence relating to the offence for which he was charged. The defence submitted that on what was known by Sergeant Faulkner, and by the custody officers following him, they had such reasonable grounds.

DECISION

55. I am grateful to counsel for their submissions in relation to the legal arguments in relation to these matters. There are few comments which it is relevant to make to preface my decision in this matter. Because of the delay in this case coming to hearing, much of the caselaw opened to me is fairly recent and would not have been available at the date when the events in this case happened. That is why I have sought the Codes of Practice which were current at the time and which reflect both law and practice in 1996, rather than 2017.

56. Also because of the delay in the matter coming to hearing, memories of events are not as fresh as they would have been had the case been heard sooner. The

court looks for best evidence and for corroboration of evidence given orally where it is available. In this case, most of the written documentation in the case has come from the defence side, which is not unexpected, given that the police would be expected to document their actions, as they may be required in criminal proceedings if such proceedings follow. The statements of witnesses who were unable to attend due to illness were admitted and have been taken into account, given that they were made in virtually all cases reasonably soon after the events which occurred when memories could be expected to be reasonably fresh and were based on notebook entries which were made contemporaneously. I have also taken into account that those statements could not be challenged in cross-examination and compared that evidence with that of other witnesses in the case. There were virtually no contemporaneous records from the plaintiffs' side, only their oral evidence, which was not persuasive or convincing on certain issues, for the reasons I have set out above.

a. Legality of the search

57. The issue in relation to the search of the premises is whether I am satisfied that this was a legal search and if it was, then the issue becomes one of reasonableness and proportionality as far as the parties are concerned. The main thrust of the argument made by the plaintiffs in this case is that the police did not have sufficient information to justify a search of the premises on the basis that there were not "reasonable grounds" for the warrant to be issued. Mr Foster referred me to PACE Code of Practice B issued in 2008 which states that before making an application "where the information appears to justify an application [for a warrant] the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought" (3.1).

58. Det. Ch. Supt. McVicker's evidence was challenged on the basis that the search was based on what party B had told him at a meeting and that he had based the grounds of the search on a conversation that party B had overheard from C. He could not remember whether party B had been part of the conversation but said that he believed party B had overheard the conversation. He said that party A had said that person B was sincere and reliable and that following his meeting with them he also believed that party B was genuine. It was suggested in submissions that while a person can be sincere and reliable and provide a true recollection of what they heard, that

does not necessarily mean that the information which was heard was true and credible. It was suggested that further enquiries should have been carried out into the information received. In particular it was suggested that enquiries should have been made of Social Services in relation to their consideration of the allegation of a sexual relationship between Arlene Arkinson and Stephen Walsh, this information having been available since 1994. Ms Gillen, on behalf of Mr Walsh, put it to Det. Chief Supt. McVicker that the matter had, in fact, already been investigated by Social Services but it was his view that there was information which he needed to investigate further. It is, in my view, overstating the case to say that Social Services had investigated the matter. Ms Gormley's statement makes it clear that although Kathleen Arkinson originally made the complaint to Social Services in relation to a sexual relationship between Arlene and her partner Mr Walsh, she then told Social Services that there had been a misunderstanding. Arlene told Social Services the same thing the following day. There is no suggestion that the matter was taken any further and it does not seem to me that this enquiry could properly be called an investigation of any kind. The social workers accepted at face value the comments made by Kathleen Arkinson and Arlene Arkinson that it was "a misunderstanding" and they did not look into the matter any further.

59. The defence case is that a warrant was sought under Article 10 of the Police and Criminal Evidence (Northern Ireland) Order 1989 and the warrant was issued by a Justice of the Peace on the basis of a complaint and application lodged by Det. Insp. Nelson. The defence submit that the County Court does not have jurisdiction to look behind the making of a judicial document such as a warrant and that the only appropriate avenue for challenging the lawfulness of the warrant would be by way of an application for Judicial Review against the decision of the Justice of the Peace. No such application was made by the plaintiffs to challenge the warrant and no declaration was sought by them that the warrant was unlawful or invalid. The defence contend that the search warrant granted the police the legal right to enter on the plaintiffs property so long as the search was carried out in accordance with the warrant and Article 17 and 18 of PACE. The defendant submitted that the Article 17 safeguards were complied with by the complainant seeking a search warrant as completed by Det. Insp. Nelson and that the warrant was properly executed as per the Article 18 safeguards.

60. I am satisfied that the police advised Mr Walsh and Ms Arkinson on arrival at the property that they had a warrant to search the property. While Ms Arkinson was unclear as to whether a warrant had been executed she did

recall a piece of paper and also recalled a piece of paper being put in front of her. There was no suggestion that the warrant itself was unlawful and effectively it is now being challenged on the basis that the police did not have reasonable grounds to obtain a warrant and that therefore it should not have been issued.

61. It seems to me that given that a warrant was issued by a Justice of the Peace on the basis of the complaint and the application made by Det. Insp. Nelson and that the Justice of the Peace was satisfied that it was appropriate to issue a warrant at that time, the warrant was never challenged at the time and it is not now appropriate for me to make a judgment that the search was unlawful. It was made on foot of a warrant which was issued by a Justice of the Peace in accordance with the proper procedures under PACE.

62. If, however, I am incorrect in relation to that matter I have also considered whether or not there were reasonable grounds for the warrant to be issued.

63. Detective Ch Supt McVicker made the point that anonymous information had been obtained via a telephone call to a confidential police line. The police then made an appeal for the caller to approach them, the police were approached and a meeting was held between police officers and two individuals at which information was relayed by party B to the CID. Det. Chief Supt. McVicker gave evidence that using his experience as a detective and having worked with confidential informants, he judged the credibility of the persons at the CID met and considered that the individuals concerned were telling him the truth. It is fair to observe that while those individuals may well have been sincere, it is possible that the information they passed on was incorrect. That does not in any way impugn their good faith in passing on the information.

64. However the case is made by the plaintiffs that the police officers, prior to making application for a warrant, should have taken reasonable steps to check that the information was accurate, recent and not provided either maliciously or irresponsibly and they also refer to Paragraph 3.1 of the PACE Code of Practice B which applied at the time suggesting that corroboration should have been obtained. The wording of the Code of Practice is:

65. "an application may not be made on the basis of information from an anonymous source if corroboration has not been sought".

66. In this case Det. Ch. Supt. McVicker and two of his colleagues went to meet the informant. They were therefore able to be satisfied that this person actually existed and met him or her through the facilitation of a third party

who it appears was known to the police. Party B, however, asked for confidentiality and was afforded confidentiality, because they were concerned that they did not wish to be identified as an informant. Det. Chief Supt. McVicker confirmed that he did not know the person. It is fair to say that steps were taken therefore to clarify the extent of the information that was obtained and it was not accepted at face value on the strength of an anonymous telephone call. I therefore accept that further steps had been taken to try to check that the information was accurate, recent and not provided maliciously or irresponsibly. The question remains as to whether corroboration should have been sought. It is not clear whether or not corroboration was possible in this matter. The Code of Practice does not make it mandatory that corroboration should be obtained, simply that steps should be taken to investigate the information as thoroughly as possible. In this case I am satisfied that that was done as far as was feasible in the circumstances.

67. It was put to Det. Ch. Supt. McVicker that the prime suspect in relation to the disappearance of Arlene Arkinson at the time was Robert Howard and he agreed with that. Mr Howard, at the time, was on bail accused of a similar abduction of a young woman, for which he subsequently stood trial. The information which had been received, however, in relation to Mr Walsh and Ms Arkinson and possible involvement in Arlene Arkinson's disappearance was a matter which had to be investigated by the police. In the circumstances I consider that the information received by Det. Chief Supt. McVicker and his colleagues as a result of their meeting with parties A and B provided reasonable grounds for them to seek a warrant for the search of the plaintiffs' premises.

68. Given my finding that the search of the premises was lawful, the question then turns to whether or not the police used reasonable force in carrying out their search and whether the defendant committed assault and battery and trespass to the person in relation to the plaintiffs.

69. The plaintiffs' assertion is that they would willingly have allowed a search of the premises if the police had come seeking to search the premises. However, upon the arrival of the police at 26 Drumnabey Park, Spamount on the morning of the 24th April, it was clear that they were not welcome. Ms Arkinson admitted that she had been abusive in the language that she had used to police and that she had thrown two items out the window, although she denied they had been thrown at police officers. This was in contradiction to the evidence given by the police in that at least one of the items thrown narrowly missed one of the police officers concerned. When the police

attempted to speak to Ms Arkinson, she shouted abuse at them using foul language and I do not, therefore, accept that she would willingly have facilitated the police coming to search her premises. In fact it seems to me that the opposite is the case. Given that Insp. Quinn and a number of other officers attempted to speak to Ms Arkinson and asked her to come down and talk to them through the front door, which she refused to do, the police then had no option but to try to force entry into the premises which they did by use of a sledge hammer.

70. At this point Ms Arkinson had been seen moving behind the glass panels next to the front door and tapping the window with a metal object. When the police entered the premises she was abusive to them and it was noted that she had a knife in her hand. The knife was recovered from the scene by Insp. Quinn and later returned to Mr Walsh by Const. Allington. I am satisfied that Ms Arkinson was abusive and subsequently hysterical at the scene and that Mr Walsh was also aggressive and confrontational towards the police and had to be removed from the premises. I do not accept his evidence that he was "rugby tackled" and I accept that the police took him outside to try and calm the situation. He was subsequently asked to help in calming Ms Arkinson which he did.The doctor then attended and administered medication which assisted in calming her down as well. I accept that Ms Arkinson was handcuffed for a short period of time, certainly less than half an hour and probably a much shorter period. The handcuffs were applied because she had been abusive and aggressive towards the police and had previously been seen to have a knife. When she was spoken to and calmed down, the handcuffs were removed and but she said that she wished to have a handcuff remaining on when the doctor arrived at 7.00 am. In all the circumstances therefore I find that the force used by the police both in entering the premises and in restraining both Ms Arkinson and Mr Walsh was reasonable in all the circumstances and I find that the plaintiffs' claims for unreasonable force, for assault and battery and trespass to the person are ill-founded and accordingly are dismissed.

71. It was agreed between the parties that various items were removed from the premises in two skips during the search and that when these were returned to the plaintiffs, they were found to have been damaged because of the manner in which they had been stored. It has been agreed between the parties that each of the plaintiffs should be awarded the sum of £1500.00 in respect of items which were lost in relation to the question of storage and I so order.

72. The two outstanding claims relate to the matter of alleged false imprisonment of the plaintiffs and of the alleged unlawful arrest and detention of Mr Walsh.

b. False Imprisonment

73. It was submitted on behalf of the plaintiffs that their movements were restricted by the defendant to detain them unlawfully from approximately 6.30 am on the morning of 24th April 1996 until 10.50 am on 25th April 1996 which amounted to false imprisonment. As is clear from the legal position set out above, false imprisonment is complete deprivation of liberty for any time, however short, without lawful cause. The tort is established on proof of the fact of imprisonment and absence of lawful authority to justify that imprisonment. The tort consists of the unlawful imposition of constraint on another's freedom of movement from a particular place. The plaintiffs made the case that they were informed that if they left the area they would be arrested and the plaintiffs' case was that this was supported by the evidence of Det. Sgt. McClure (as he then was) and documentary evidence of Const. McWilliams in relation to the briefing. It is, of course, relevant to note that Const. McWilliams' notes in relation to this matter show that he had been briefed on this matter by Det. Sgt. McClure. Det. Insp. McKernan categorically denied giving any direction to arrest at any time or that he had briefed Det. Sgt. McClure that the plaintiffs were to be arrested if they attempted to leave the area. Det. Chief Supt. McVicker was clear that when he briefed the police officers before they commenced their search, he had specifically said that no-one was to be arrested unless a specific direction was given. On balance I find that the weight of the evidence indicates that there was no intention to restrict the movement of the plaintiffs and that their movements were not so restricted.

74. There was a rather confused account given by Ms Arkinson of the first day of the search when she suggested that she needed nappies for the children and that one of the police officers had taken her benefit book to get it encashed and brought her back nappies and cigarettes. This does not seem plausible to me and it was not put to any of the police officers who gave evidence. It was also put to Ms Arkinson that it was suggested to her by the police officers that she and Mr Walsh may want to stay around the house in case anything arose as a result of the search but she disagreed with this. It was also put to her that they had been advised that they should not leave the area, given the proximity of their address to the border with the Republic of Ireland, but both she and Mr Walsh disagreed with this and there was no direct evidence to this effect from any of the defence witnesses.It is also relevant to note that, at

least at the start of the search, Ms Arkinson was extremely upset ,indeed was described as hysterical by some other witnesses. There was evidence given that Ms Arkinson did, in fact, leave the house to go to the police cordon to speak to the press on the first day of the search. She was not clear about this. It is also clear that a number of family members visited the house on the first evening of the search and were noted on the police log. The plaintiffs' solicitor also attended to visit them and does not appear to have raised any issue in relation to false imprisonment at that point. It seems to me that if the plaintiffs had raised any concern in relation to this matter with their solicitor, that he would have taken steps to bring the matter to the attention of the police at the earliest opportunity.

75. I found the plaintiffs' evidence in relation to this matter unclear and in some respects contradictory. While I appreciate that the caselaw does not require the plaintiffs to be told that their movements were being restricted in any way, there must be an intention on the part of the defendant to limit their movement established for the tort to be proven. I am not satisfied that there was clear evidence of such an intention on the part of the defendant, given that both Ch Supt McVicker and Det Insp McKernan were clear that there was no intention to arrest anyone. Accordingly I find that the claim for false imprisonment has not been established by the plaintiffs' evidence on the balance of probabilities and accordingly the claim is dismissed.

Arrest and Detention of Mr Walsh

76. It remains for me to consider the issue of the arrest of Mr Walsh on 26 April 1996. Counsel have invited me to find that there were no grounds for the arrest of Mr Walsh for complicity to murder , given that the remains of Arlene Arkinson had not been found in the back garden at Drumnabey Park that in light of that , he should not have been arrested. She also submitted that Const Boyd, the arresting officer did not have reasonable grounds for arresting Mr Walsh.

77. As I have set out above, the evidence was that Const Boyd was briefed by Ch Insp McKernan along with some others that information had been received from a reliable source regarding the complicity by Stephen Walsh in the murder of Arlene Arkinson. He was also aware that search had been ongoing at the property in Castlederg for the previous two days. On this basis he believed that he had grounds to reasonable grounds to arrest Mr Walsh. I appreciate that counsel argues that, given no body had been found and that the police knew this when Mr Walsh was arrested, they should not have

arrested him, or at least, should not have arrested him for complicity to murder. Ms Gillen conceded that there was still information suggesting he had had an unlawful sexual relationship with Arlene Arkinson, although she suggested it was still not sufficient to ground an arrest,

78. Considering the test set out in O'Hara v Chief Constable referred to at para. 39 and 40 above and also considering the case law set out in Brady v Chief Constable, set out at para 44 above, I consider that there were objective grounds to arrest Mr Walsh for complicity to murder. Suspicion does not mean prima facie evidence. I am satisfied that even though the search of the house, garage and back garden had revealed nothing, this does not mean to say that the original information to the effect that there had been an argument between the plaintiffs and Ms Arkinson, as a result of which she had been pushed or fallen down the stairs and been killed, did not still needed to be investigated. It had been alleged that Mr Walsh had been involved in this and so it seems to me that there were reasonable grounds to suspect his involvement and therefore to arrest and question him. The fact that Ms Kathleen Arkinson was not arrested at the same time is in a sense a distraction: it does not mean to say that there were not reasonable grounds to arrest Mr Walsh.

79. I also consider that it was legitimate for Const Boyd to rely on the briefing he had been given by his senior officer, who had in turn been briefed by a superior officer who had spoken directly to the source of the information. On that basis I consider that Const Boyd entertained a reasonable suspicion that Mr Walsh had been in some way complicit in Arlene Arkinson's death and that it was reasonable for him to form that suspicion in the circumstances. It follows from this that the arrest of Mr Walsh was lawful, under Art. 26 of PACE 1989.

80. I turn finally to the issue of the detention of Mr Walsh. Having considered the statute and the evidence of Const Faulkner on the matter, I am satisfied that the correct procedures were followed and that he was satisfied himself on the basis of what Const Boyd told him that there were grounds for detention of the second plaintiff. I accept that Const Faulkner would not have had detailed information on the grounds for arrest, that information was not shared with anyone who did not need to know as part of their job and there were legitimate reasons for this. Accordingly, I am satisfied that Mr Walsh's detention was lawful and that the custody officers confirmed this on an ongoing basis during the detention.

81.It follows from this that the second plaintiff's claim for false arrest and unlawful detention is dismissed.

82.I therefore make decrees in favour of each of the Plaintiffs for the sum of £1500 in relation to damage sustained to their property by virtue of its storage by the police and interest at judgment rate from 26 April 1996 together with costs on amount decreed including counsel's fees.