Northern Ireland Unreported Judgments

Oscar v Chief Constable of the Royal Ulster Constabulary

COURT OF APPEAL

KELLY LJ, HIGGINS J, HUTTON LCJ

23 NOVEMBER 1992

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KELLY LJ

I agree with the conclusions reached by the Lord Chief Justice.

I do not however hold his reservations about the correctness of that part of the judgment in Pettigrew which dealt with the final medical examination of an arrested person. The court in Pettigrew (of which I was a member) acknowledged that it was reasonable to have the arrested person medically examined, but during the period of his detention. O'Donnell LJ in his judgment at p 102 said:

"It follows, in my opinion, that it is perfectly reasonable, during the continuance of detention and before a decision to release has been taken, for the police to seek to have the arrested person medically examined at times during the course of interviews. In many cases it will primarily be in the interests of the police, in anticipation of an issue whether ill-treatment by interviewing detectives has occurred . . .

It will also, at times, be in the interests of an arrested person who has been assaulted during the interviews. It gives him the opportunity to complain of ill-treatment to the doctor and to show signs of it, if they are apparent."

This view was consistent with the decision of Dallison v Caffrey [1965] 1 QC 348 where the Court of Appeal in England held that what an arrested person may be required to do by the police during his detention after lawful arrest is to be measured by the standard of reasonableness (see Lord Denning MR at p 367B-D and Diplock LJ at p 374B).

Pettigrew was of course concerned with what an arrested person was required to do by the police after a decision by the interviewing detectives and the police inspector had been made to end her detention and after this decision had been communicated to her notwithstanding this, she was kept under restraint in a cell at Castlereagh while the police inspector summoned a doctor in Holywood to come to Castlereagh to examine her and until he arrived at Castlereagh half an hour later.

In these circumstances, the reasonableness of the continued detention does not arise. As O'Donnell LJ said at p 101:

"Once a decision has been made to release, the detainee is enlisted to be released . . . Whether it is desirable or whether it is even reasonable is not the issue. The issue is whether it is lawful. Reasonableness is the

test to measure the conduct of the police vis a vis the arrested person throughout his detention while he is detained in custody. Once, however, his detention comes to an end - and it must come to an end at the time when senior police officers who have the decision, reach it - any holding thereafter can only be justified on the ground of lawfulness and not reasonableness or convenience."

The Lord Chief Justice has said, in his judgment in the instant case:

"It seems to me that the reality is that when the officer in charge of the investigation decides that a suspect can be released, he does not make the decision: 'we will now release the suspect from police custody, and after his release we will keep him in Castlereagh Police Office in order to carry out a further medical examination'. Rather I think he decides that the suspect will be released out of police custody once he had undergone the final medical examination."

Whether this be so or not, it did not match the facts in Pettigrew. It was clear, in that case, from the evidence of Inspector Finn set out at pages 99-101 of O'Donnell LJ's judgment that the decision to release the suspect out of police custody was made and communicated without regard to any medical examination. It was Inspector Finn, and not the interviewing detectives and the inspector who had conversed with them about release who then decided to take steps to bring a doctor to the police office to examine the suspect and to keep her under constraint until his arrival.

I consider that in this context of arrest and detention by police officers it is important to remember, as Lord Diplock quoted in Holgate-Mohammed v Duke [1984] 1 AC 437, 445E that "one of the primary purposes of detention upon arrest" is to use the period of detention "to dispel or confirm the reasonable suspicion by questioning the suspect or seeking further evidence with his assistance" and also what he said at p 443G:

"When the police have reached the conclusion that prima facie proof of the arrested persons guilt is unlikely to be discovered by further inquiries of him or of other potential witnesses, it is their duty to release him from custody unconditionally: Wiltshire v Barrett [1966] 1 QB 312."

The nature of the decision to release or otherwise will of course depend on the facts from case to case. But it seems to me that generally speaking, the decision by the police to have a final medical examination can only be reached after a decision has been made to release the suspect. It is implicit in a decision to have a final medical examination that a decision to release has already been made. And without other evidence, I consider it would be difficult to justify a detention thereafter.

It would be more technically correct and neither inconvenient nor unreasonable for the police to address the suspect, once the decision to release him has been made, along these lines:

"We have decided to release you and you are free to go now. But we would prefer, in your interests as well as ours, that you undergo a final medical examination which we can arrange to be carried out in a very short time. Are you willing to wait until this has been done?"

It seems to me that such a formula, no matter what its outcome, would also preserve the interests of both parties.

I accept that release may be delayed for a reasonable period to carry out formalities closely connected with and which facilitate release such as are instanced by the Lord Chief Justice. But a medical examination is not, in my opinion, in the same category as these instances.

HIGGINS J. I agree with the judgment of the Lord Chief Justice, save that I do not share his reservations about the correctness of the position of the judgment of O'Donnell LJ in Pettigrew's case, which dealt with the final medical examination. On that subject I concur with Kelly LJ.

HUTTON LCJ. On 15 October 1986, at about 11.35 am, Constable Gibson of the Royal Ulster Constabulary arrested the appellant, Mr Martin Leonard Oscar, who was then aged 19, at Aspen Park in the Twinbrook Estate in Belfast. After the arrest the appellant was taken into police custody and was brought to Castlereagh Police Office, when Constable Gibson again arrested him at 12.05 pm. The appellant was detained in Castlereagh Police Office until 8.15 pm when he was released.

The appellant brought an action against the Chief Constable of the Royal Ulster Constabulary claiming damages for assault and battery, false imprisonment and trespass to goods. The learned trial judge, Sheil J, held that the arrest at 11.35 am was unlawful, but that the second arrest at 12.05 pm and the subsequent detention until 8.15 pm were lawful, and the judge awarded the plaintiff £150 general damages in respect of the unlawful arrest and subsequent unlawful detention until 12.05 pm.

The appellant now appeals to this Court on the principal ground that his second arrest at 12.05 pm and consequent detention were also unlawful. The appellant further contends that the award of £150 damages was inadequate compensation in respect of unlawful arrest and the subsequent period of unlawful detention lasting for about 30 minutes.

The facts giving rise to the plaintiff's action against the Chief Constable were these. On 11 October 1986, the blue Cavalier car, Registration No GIW 9701, owned by Mr James McClenaghan was hijacked from him at gun point by men who threatened him and told him that they were INLA, which is a terrorist organisation. The hijackers told Mr McClenaghan not to report the hijacking to the police and he did not do so. After the car had been hijacked Mr McClenaghan got it back later in the course of the same day.

It was stated in evidence at the trial, and was not in dispute, that during the time it was in the possession of the hijackers on 11 October Mr McClenaghan's car was used to carry out two armed robberies.

On 15 October 1986 at about 11.00 a.m, Mr McClenaghan, who was a young man, was driving his Cavalier car with his small child as a passenger in the area of the Twinbrook estate when he saw the appellant, also a young man, standing at a bus stop and offered him a lift. Mr McClenaghan drove the appellant to Aspen Park where the latter's mother lived. On the car stopping in Aspen Park the appellant got out and went to a mobile shop to buy some bread. On emerging from the shop the appellant was stopped by Constable Gibson and other members of a police mobile patrol who had also surrounded Mr McClenaghan's car.

A few days prior to 15 October 1986 Constable Gibson had been made aware that the blue Cavalier car was wanted in connection with robberies, and on the morning of 15 October 1986, when his mobile patrol saw the blue Cavalier car, they followed it for a short distance until it stopped at Aspen Park at about 11.30 am. Constable Gibson dismounted from his vehicle and went over and spoke to the appellant who was coming out of the shop, and obtained his name and address and other personal details. Constable Gibson then spoke to Sergeant Green, who was in command of the patrol, and Sergeant Green informed him that the car had been involved in robberies the previous weekend and that one of the robberies had been at the Glen Snooker Club in Upper Dunmurry Lane where guns were produced. On being given this information by Sergeant Green, Constable Gibson suspected that the robberies had been carried out by the INLA or the IRA. Sergeant Green then instructed Constable Gibson to arrest the appellant, and Constable Gibson arrested the appellant and told him that he was arresting him under Section 12 of the Prevention of Terrorism Act. Constable Green then took the appellant to Castlereagh Police Office. In Castlereagh Police Office at 12.05 pm Constable Gibson told the appellant that he was arrested and read the following words to him from a form:

"I arrest you under Section 12(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1984 as I have reasonable grounds for suspecting you have been concerned in the commission, preparation or instigation of acts of terrorism."

Sergeant Green, who was an Inspector at the time of the trial, said in his evidence in chief that a couple of days before 15 October 1986 he was briefed specifically about the blue Cavalier car, Registration No GIW 9701. He was informed at the briefing that the car had been involved in armed robberies at the Glen Snooker Club, which is on the edge of Twinbrook, and at the Hannahstown Inn, which is close to Lenadoon. He was also informed that there was no report that the car had been stolen or hijacked. Sergeant Green was also instructed that if he came across the car it was to be stopped and searched and any occupants of the car were to be arrested in respect of the robberies.

On the morning of 15 October 1986 his mobile patrol followed the car for a short distance until it stopped, and members of his patrol spoke to the appellant and Mr McClenaghan. Sergeant Green then checked with his station that he had stopped the correct car, and the station verified that he had done so.

He then directed two constables to arrest Mr McClenaghan and the appellant under Section 12 of the Prevention of Terrorism Act, and Constable Gibson arrested the appellant. Sergeant Green gave the direction for the arrest of Mr McClenaghan and the appellant under Section 12 of the Prevention of Terrorism Act because the car had been involved in two armed robberies, and the vast majority of armed robberies in the area where the robberies were carried out were committed by, or on behalf of, the IRA or the INLA. Sergeant Green said that there had been no report that the car had been stolen or hijacked and that it was reasonable to assume that the occupants of the car, when it was stopped on 15 October, were the occupants at the time of the robberies.

In the course of cross-examination by Mr McDonald for the appellant the following answers were given by Sergeant Green:

"Q. Did it occur to you that a passenger in the vehicle on the 15th October may not have been in the vehicle or involved in either of these robberies on 11th October?

A. I agree that this is possible, My Lord, but I still maintain that my assumptions were reasonable at the time.

Q. Now, I suggest that even though it may have been reasonable to believe that the owner and driver of the car could have had something to do with the robberies on the 11th, that there was no believing that the passenger in the vehicle had anything to do with the robberies or knew anything about the robberies?

A. It is possible that a passenger did not have anything to do with the robberies, however it is quite possible that they did. It was on that basis that I directed the arrest.

THE JUDGE: So its quite possible either way, either that he had something to do with it or he had nothing to do with it?

A. Yes.

MR McDONALD: In fairness to yourself was it not the case that you were arresting this man, or you were directing his arrest, that is Mr Oscar, because you were instructed to arrest the occupants of the car?

A. Well, partly that and partly for the reasons that I have given. The owner, as it turned out, and another person were in this car, which was involved in the robberies and which was not reported stolen or hijacked.

. . .

Q. So when you say that you think now that it was reasonable to assume that the occupants of the car were involved in the robberies you didn't need to make any assessment at the time whether it was reasonable to arrest him or not because you had the direction to arrest the occupants and he was an occupant?

A. 'Direction' is a little bit of a hard word. These directions are given as a general thing. The officer on the ground has to decide on his own mind whether there are grounds to carry on and make the arrest.

THE JUDGE: I mean, for example, if it was a 90 year old lady in the back discretion would indicate to you, although the general direction was to arrest the occupants, obviously it would be most unlikely that she had anything to do with a robbery? A. Yes.

MR McDONALD: Yes, likewise with a five year old baby at the other end of the extreme, but in those exceptional circumstances you were going to carry out the direction that you had received?

A. That seemed reasonable, yes.

Q. To put it another way, you would carry out the direction, except it seemed completely unreasonable?

A. That would be a fair point."

Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 provides:

"(1) Subject to subsection (2) below, a constable may arrest without warrant a person whom he has reasonable grounds for suspecting to be -

(a) a person guilty of an offence under section 1, 9 or 10 above;

(b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this Part of this Act applies;

(c) a person subject to an exclusion order.

. . .

(4) A person arrested under this section shall not be detained in right of the arrest for more than forty-eight hours after his arrest; but the Secretary of State may, in any particular case, extend the period of forty-eight hours by a period or periods specified by him.

(5) Any such further period or periods shall not exceed five days in all."

Section 14(1) provides:

"(1) In this act, unless the context otherwise requires -

. . .

'Terrorism' means the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear."

Sections 12 and 14 of the 1984 Act have now been replaced in very similar terms by Sections 14 and 20 of the Prevention of Terrorism (Temporary Provisions) Act 1989.

The learned trial judge held that the arrest of the appellant at 11.35 am and his subsequent detention until 12.05 am were unlawful because, at 11.35 am when Constable Gibson told the appellant that he was arresting him under Section 12 of the Prevention of Terrorism Act, he failed to inform him that he was arresting him because he had reasonable grounds for suspecting that he had been concerned in the commission, preparation or instigation of acts of terrorism. However the judge held that the arrest at 12.05 pm was lawful, and that the detention thereafter in Castlereagh Police Office was also lawful. These findings gave rise to the central issues in this appeal.

In holding that the words used by Constable Gibson at 12.05 pm were adequate to effect a lawful arrest the learned trial judge followed the decision of the Divisional Court in Ex parte Lynch [1980] NI 126 in which the judgment of the court was delivered by Lord Lowry LCJ.

The first main argument advanced in this appeal by Mr Hanna QC on behalf of the appellant was that Ex parte Lynch was wrongly decided and was inconsistent with the decision of the House of Lords in Christie v Leachinsky [1947] AC 573. Counsel submitted that the arrest at 12.05 pm was unlawful because Constable Gibson had failed to inform the appellant that he was suspected of involvement in two armed robberies on 11 October 1986 at the Glen Snooker Club and the Hannahstown Inn.

In Ex parte Lynch the applicant was arrested by a constable on suspicion of being involved in acts of terrorism under Section 12(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1976. The terms of Section 12 of the 1976 Act were virtually identical with the terms of Section 12 of the 1984 Act which replaced it, and Section 12 of the 1976 Act provided:-

"12(1) A constable may arrest without warrant a person whom he reasonably suspects to be -

(a) a person guilty of an offence under section 1, 9, 10 or 11 of this Act;

(b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism;

(c) a person subject to an exclusion order.

(2) A person arrested under this section shall not be detained in right of the arrest for more than 48 hours after his arrest; but the Secretary of State may, in any particular case, extend the period of 48 hours by a further period not exceeding 5 days.

(5) The provisions of this section are without prejudice to any power of arrest conferred by law apart from this section."

The applicant applied for a writ of habeas corpus to obtain his release from police custody on the ground that he had been unlawfully arrested.

The applicant was first arrested on 27 May 1980 by a constable under Section 11 of the Northern Ireland (Emergency Provisions) Act 1978 on suspicion of being a terrorist and was detained at Castlereagh Police Office until he was released from custody on 30 May without a charge being preferred against him. He was arrested again on 2 June 1980 under Section 12(1)(b) of the 1976 Act.

Lord Lowry LCJ stated at 128A:

"It further appeared from the affidavits of Detective Superintendent Hylands and Constable Armstrong (the arresting constable on the second occasion) that at the time of the first arrest (on 27 May) the applicant was suspected of being a member of the Provisional IRA and of being implicated in the murder of Constable Magill, RUC, who died on 9 April 1980. Shortly before the applicant's release on 30 May the Detective Superintendent received fresh information which, he believed, further tended to implicate the applicant in this murder and in membership of the Provisional IRA but, because the statutory period of 72 hours' detention under section 11 had almost expired, he had not time to pursue this in interview with the applicant. Further police inquiries followed his release and then Mr Hylands received information that the applicant and his wife were about to leave Northern Ireland. He decided then to have the applicant arrested under section 12 of the 1976 Act and the task was entrusted to Constable Armstrong. He had, late on Sunday, 1 June, attended a police briefing in the course of which he was instructed by a member of the RUC Special Branch to carry out the arrest on the grounds that the applicant was suspected of membership of the IRA and of being involved in the murder referred to. Constable Armstrong was already aware that the applicant had been arrested, detained and interviewed on the first occasion about these matters and at the police briefing was told by the Special Branch Officer that further information had since become available implicating the applicant in these offences.

Because they bear particularly on the issue for decision I now refer to some of the actual words used by Constable Armstrong in his affidavit:

'2. On the basis of my existing knowledge and the information given to me at the said briefing I suspected that the said Martin Henry Lynch had been concerned in the commission, preparation or instigation of acts of terrorism.

3. I went to 2e Glenties Drive, Suffolk, where I tried to gain admittance by knocking at the door. It became apparent that I was not going to be admitted voluntarily and accordingly I effected entry by breaking the lock.

4. I thereupon arrested the said Martin Henry Lynch informing him that I was arresting him under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1976 as I suspected him of being involved in terrorist activities and I brought him to Castlereagh Police Office.'

Mr Nicholson, who with Mr Harvey appeared on behalf of the applicant, submitted that the second arrest was invalid and the applicant's detention thereunder was unlawful on the following grounds:-

1. (a) The words of arrest did not indicate to the applicant the nature of the act or acts of terrorism which he was suspected of being involved in;"

Lord Lowry stated at 129G:

"With regard to ground 1(a), counsel did not rely on the constable's omission to use the precise words of paragraph (b) (conceding that to intimate a suspicion that the applicant was involved in terrorist activities was reasonably equivalent): his point was that the constable's statement was defective because he failed to inform the applicant of the particular act or acts of terrorism which he was suspected to be concerned in, that is, membership of the Provisional IRA and the murder of the constable.

The general rules governing the power and execution of arrest are well known and have been stated may times in these courts. Any form of words will suffice to inform a person that he is being arrested if they adequately bring to his notice the fact that he is under compulsion: Alderson v Booth [1969] 2 QB 216; but there is no challenge on that ground in this case. The other general requirements for valid arrest (upon which Mr Nicholson relied) are set out in the familiar words of Viscount Simon in his speech in Christie v Leachinsky [1947] AC 573 at 587:-

'If a policeman arrests without warrant on reasonable suspicion of felony or of other crime of a sort which does not require a warrant he must, in ordinary circumstances, inform the person arrested of the true ground of arrest. He is not entitled to keep the true ground to himself or give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized . . .'

In the same case Lord Simonds, in his concurring speech, affirmed the general rule, went on to consider some of its examples and possible qualifications and then continued at p 593:-

'In all such matters a wide measure of discretion must be left to those whose duty it is to preserve the peace and bring criminals to justice. These and similar considerations lead me to the view that it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment. But this and this only, is the qualification which I would impose upon the general proposition. It leaves untouched the principle, which lies at the heart of the matter, that the arrested man is entitled to be told what is the act for which he is arrested.'

Archbold (40th Edition) states the general rule at paragraph 2803 in these words:-

'If a constable arrests without warrant on reasonable suspicion of an arrestable offence he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.'

These observations seem to us to lay down that what must be communicated to the suspected person at the time of his arrest is the true ground of arrest, which, in the context in which the observations were made, means informing the suspect of the felony or arrestable offence of which he is suspected. Such crimes can be described and communicated to the suspect in reasonably precise terms, if a police officer is making an arrest either under section 2 of the Criminal Law Act 1967 in respect of the alleged commission of an arrestable offence (usually an offence or an attempted offence carrying a penalty of imprisonment of 5 years or more) or under the former position at common law before the 1967 Act when the commission of a felony was suspected. The power of arrest under section 12(1) of the 1976 Act exists when there is a reasonable suspicion of the suspect's guilt of specific offences, as in section 12(1)(a) or where a person is suspected of being subject to an exclusion order, as in section 12(1)(c). But the power conferred by section 12(1)(b) is wider and more general, being derived from a suspicion of the suspect's being concerned in the commission, preparation or instigation of acts of 'terrorism'. This word is defined in wide terms in section 14(1) as meaning 'the use of violence for political ends,' and includes 'any use of violence for the purpose of putting the public or any section of the public in fear.' The scope of this language is such that no specific crime need be suspected in order to ground a proper arrest under section 12 (1)(b). And it is further to be noted that an arrest under

section 12(1) leads under section 12(2) to a permitted period of detention without preferring a charge. No charge may follow at all; thus an arrest is not necessarily (to use Scott LJ's phrase in the Court of Appeal in Christie v Leachinsky [1946] KB 124, 130) 'the first step in a criminal proceeding against a suspected person on a charge which was intended to be judicially investigated.' Rather it is usually the first step in the investigation of the suspected person's involvement in terrorism. In all these circumstances, and in the context of the 1976 Act, we consider that Constable Armstrong, in telling the applicant at the time of arrest that he was arresting him under section 12 of the Prevention of Terrorism Act 1976 as he suspected him of being involved in terrorist activities, not only communicated the true ground of arrest but did what was reasonable in the circumstances to convey to the applicant the nature of the constable's suspicion, namely, that the applicant was involved in terrorist activities. We therefore take the view that the lawfulness of the applicant's arrest and his subsequent detention cannot be impugned on ground 1(a)."

Mr Hanna submitted that this decision was erroneous because it had been held in Christie v Leachinsky that in order to constitute a lawful arrest the person arrested must be told by the arresting constable the charge against him or the facts which were said to constitute a crime on his part. Accordingly it followed that where a person was arrested under Section 12(1)(b) of the 1984 Act he must be told the specific act or acts of terrorism which led to his arrest, and an arrest was unlawful where the arrested person was only told that there were reasonable grounds for suspecting him of having been concerned in the commission, preparation or instigation of acts of terrorism.

The passages in the judgments in Christie v Leachinsky upon which counsel for the appellant particularly relied were the following: at p 587 Viscount Simon stated:

"The above citations, and others which are referred to by my noble and learned friend, Lord du Parcq, seem to me to establish the following propositions. (1.) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2.) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3.) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4.) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed. (5.) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, eg, by immediate counter-attack or by running away."

At p 593 Lord Simonds stated:

"In all such matters a wide measure of discretion must be left to those whose duty it is to preserve the peace and bring criminals to justice. These and similar considerations lead me to the view that it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment. But this, and this only, is the qualification which I would impose upon the general proposition. It leaves untouched the principle, which lies at the heart of the matter, that the arrested man is entitled to be told what is the act for which he is arrested. The 'charge' ultimately made will depend upon the view taken by the law of his act. In ninety-nine cases out of a hundred the same words may be used to define the charge or describe the act, nor is any technical precision necessary: for instance, if the act constituting the crime is the killing of another man, it will be immaterial that the arrest is for murder and at a later hour the charge of manslaughter is substituted. The arrested man is left in no doubt

that the arrest is for that killing. This is, I think, the fundamental principle, viz, that a man is entitled to know what, in the apt words of Lawrence LJ, are 'the facts which are said to constitute a crime on his part'."

I do not accept the submissions advanced by counsel in reliance upon the judgments in Christie v Leachinsky. I consider that those judgments do not support the proposition that where Parliament, in express terms, has given a constable power to arrest without warrant a person whom he has reasonable grounds for suspecting to be concerned in the commission, preparation or instigation of acts of terrorism, the arrest of such a person is unlawful unless the constable not only tells him that he has such a suspicion but goes on to specify the actual act or acts of terrorism which he suspects the person to have been engaged in.

It is important to note that Christie v Leachinsky was concerned with the power of a constable to arrest at common law without a warrant, and the argument advanced by the police officers who appealed to the House of Lords was described as follows by Lord du Parcq at p 598:

"The appellants, in para 17 of their case, set out the contention which their counsel sought to maintain at the Bar, 'that where a police constable has reasonable and probable cause to suspect and does suspect that a person has committed felony he may lawfully arrest that person without specifying any particular felony or even telling that person that he is arresting him on suspicion of felony."

Therefore the House of Lords was asked by the appellant police officers to rule that, in effect, a police officer could lawfully arrest a person whom he suspected, on reasonable grounds, of having committed a felony without telling him of the felony of which he was suspected and could, as Viscount Simon put it at p 588 "march him off to a police station without giving any explanation of why he was doing this". It was this proposition which was rejected by the House of Lords.

Moreover, it is clear that the House of Lords was considering the issue against the background of the common law where no statute gave a power to arrest on specific grounds. This is made clear in the judgment of Scott LJ in the Court of Appeal [1946] KB 124, which was referred to with approval by the House of Lords. Scott LJ, after stating the facts, commenced his judgment at p 126 as follows:

"It is the claim by the executive to a discretionary power of arrest without warrant, outside the statute, coupled with an attempted justification after the event under a common law power to arrest - exercisable only in certain circumstances and only for a specific purpose - that makes this appeal so important to the public, for it is obvious that it raises questions about the law of arrest which affect essential principles of the British Constitution and are of supreme importance to individual liberty. Indeed, both directly and indirectly, the judgment below cuts down in far-reaching ways the freedom under the general law from liability to arrest by the executive without judicial warrant, which, apart from war legislation, original and delegated, every individual person within the King's allegiance enjoys to-day."

Viscount Simon commenced his judgment at p 581 by stating:-

"My Lords, I agree with Scott LJ that the main issue raised is of great importance and requires careful examination, for it concerns the liberty of the subject and the extent of the powers of the police to arrest without warrant."

Therefore the issue before the House of Lords was the nature of the information which a police officer had to give in carrying out an arrest, where the arrest was not authorised by statute, and where the police officer had no warrant. At 584 Viscount Simon stated:

"The all-important question in this appeal is whether . . . If a policeman arrests without warrant when he entertains a reasonable suspicion of felony, is he under a duty to inform the suspect of the nature of the charge, and if he does not do so, is the detention a false imprisonment?"

There were two further considerations which strongly influenced the House of Lords. The first was the consideration that where an arrest for a crime is carried out pursuant to a warrant, the warrant must specify the charge against the person to be arrested and the charge must be read out to the person when the warrant is executed. This consideration led to the conclusion that where a police officer arrests for a crime without a warrant, he must inform the person arrested of the basic nature of the charge against him. Viscount Simon stated at 585:

"If the arrest was authorized by magisterial warrant, or if proceedings were instituted by the issue of a summons, it is clear law that the warrant or summons must specify the offence. This rule is now embodied in s 32 of the Criminal Justice Act, 1925, but it is a principle involved in our ancient jurisprudence. Moreover, the warrant must be founded on information in writing and on oath and, except where a particular statute provides otherwise, the information and the warrant must particularize the offence charged. The famous case of Entick v Carrington, dealing with the illegality of 'general warrants' is an illustration of the principle. Again, when an arrest is made on warrant, the warrant in normal cases has to be read to the person arrested. All this is for the obvious purpose of securing that a citizen who is prima facie entitled to personal freedom should know why for the time being his personal freedom is interfered with. Scott LJ argued that if the law circumscribed the issue of warrants for arrest in this way it could hardly be that a policeman acting without a warrant was entitled to make an arrest without stating the charge on which the arrest was made . . ."

Lord Simonds stated at 592:-

"In the first place, the law requires that, where arrest proceeds upon a warrant, the warrant should state the charge upon which the arrest is made. I can see no valid reason why this safeguard for the subject should not equally be his when the arrest is made without a warrant."

A second consideration which influenced the House of Lords was the consideration that a person is entitled to know why his liberty has been interfered with. If a man is arrested he is entitled to resist arrest and to defend his freedom unless he is given a reason sanctioned by the law for his arrest (save in the circumstances described by Viscount Simon, as where the person makes it practically impossible to inform him of the reason by immediate counter-attack or by running away). Viscount Simon stated at 588:

"If a policeman who entertained a reasonable suspicion that X has committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. No one, I think, would approve a situation in which when the person arrested asked for the reason, the policeman replied 'that has nothing to do with you: come along with me'."

And at 591 Lord Simonds stated:

"Putting first things first, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitled to resist arrest unless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested? It is to be remembered that the right of the constable in or out of uniform is, except for a circumstance irrelevant to the present discussion, the same as that of every other citizen. Is citizen A bound to submit unresistingly to arrest by citizen B in ignorance of the charge made against him? I think, my Lords, that cannot be the law of England. Blind, unquestioning obedience is the law of tyrants and of

slaves: it does not yet flourish on English soil. I would, therefore, submit the general proposition that it is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested . . ."

In my respectful opinion the reasons which caused the House of Lords to hold that a person, arrested without warrant on suspicion of a felony, must be told the nature of the charge against him or the facts which are said to constitute a crime on his part, do not lead to the conclusion that when a person is arrested under Section 12(1)(b) of the 1984 Act that person, in addition to being told that he is suspected on reasonable grounds of being concerned in the commission, preparation or instigation of acts of terrorism, must also be told the nature of the terrorist act or acts which he is suspected to have committed.

Considering those reasons in relation to an arrest under Section 12(1)(b) I would distinguish them as follows. First, unlike the case in Christie v Leachinsky, a statute expressly authorises the arrest of a person in the circumstances specified in Section 12(1)(b). Secondly, an arrest under Section 12(1)(b) is not comparable to the procedure where an arrest is made pursuant to a warrant, because the arrest is made pursuant to statute. Thirdly, unlike the position contended for in Christie v Leachinsky by the appellants, the person arrested in this case did know why he was being arrested; he knew that he was suspected of being involved in the commission, preparation or instigation of acts of terrorism. This information was, in my opinion, sufficient to inform him that he was being lawfully arrested and that he was not entitled to resist the arrest.

The common law power of a constable to arrest on reasonable suspicion of the commission of a felony was replaced by a statutory power to arrest on reasonable suspicion of the commission of an arrestable offence - the statutory power in England being contained in Section 2(4) of the Criminal Law Act 1967 and now in Section 24(6) of the Police and Criminal Evidence Act 1984, and in Northern Ireland being contained in Section 2(4) of the Criminal Law Act (Northern Ireland) 1967 and now in Article 26(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989. It is clear that where a constable made an arrest on reasonable suspicion of the commission of an arrestable offence under the statutory power given by the 1967 Act in England or the 1967 Act in Northern Ireland, the principles laid down in Christie v Leachinsky applied to that arrest and the constable had to inform the person arrested of the nature of the charge or of the facts which are said to constitute a crime on his part (Abbassy v Commissioner of Police [1990] 1 All ER 193). But the statutory power to arrest on suspicion of the commission of an arrestable offence was comparable in width to the former common law power to arrest on suspicion of the commission of a felony, and the reasoning of the House of Lords that a person was entitled to know the reason for his arrest applied to an arrest for an arrestable offence under the statutory power as much as to the former common law power of arrest.

In my opinion a sufficient reason for arrest under Section 12(1)(b) of the 1984 Act was given to a person if he was told that he was being arrested on reasonable suspicion of being concerned in the commission, preparation or instigation of acts of terrorism, but I consider that it was not a sufficient reason for a person only to be told that he was being arrested on reasonable suspicion of having committed an arrestable offence. Statutory effect has now been given to the principles stated in Christie v Leachinsky by Section 28 of the Police and Criminal Evidence Act 1984, and subsection (3) provides:

"Subject to subsection (5) below, no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest."

Article 30 of the Police and Criminal Evidence (Northern Ireland) Order 1989 contains similar provisions and paragraph (3) provides:

"Subject to paragraph (5) and without prejudice to section 14(2) of the Northern Ireland (Emergency Provisions) Act 1978, no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest."

In Christie v Leachinsky at [1947] AC 573 588 Viscount Simon took account of practical considerations to support the view which he took. I consider that in relation to arrests under Section 12(1)(b) there are practical considerations which support the view that the constable, having informed the person of the suspicion specified in paragraph (b), need not inform him of the nature of the terrorist act or acts of which he is suspected.

In Northern Ireland a person may frequently be suspected by the police, on the basis of reliable information or of covert sightings, to be an active member of an IRA or INLA or UVF terrorist gang, which has carried out a number of crimes in a particular area. But the police may not know what specific crime or crimes the person has participated in until they receive further information or until they question that person. The police may decide to arrest such a person but find, when they try to do so, that he has gone on the run. A general instruction would then be issued to all members of the RUC that he is to be arrested because he is a known member of a terrorist gang. If that person is stopped in a car by a constable who has no detailed knowledge of the activities of the gang, I consider that, in addition to the legal reasons which I have already set out, practical considerations support the view that the constable can lawfully arrest the person by saying, "I have reasonable grounds for suspecting you have been concerned in the commission, preparation or instigation of acts of terrorism", and that the constable should not have to allow the person to drive away, without being taken into custody, unless he can specify to him the particular terrorist acts of which he is suspected.

There is a further practical consideration which supports the view that a constable carrying out the arrest of a terrorist suspect under Section 12(1)(b) should not have to specify the nature of the terrorist act or acts which he is suspected to have committed. This consideration was referred to by the European Court of Human Rights in paragraph 32 of its judgment in the case of Fox, Campbell and Hartley [1989]:

"In this respect, terrorist crime falls into a special category. Because of the attendant risk of loss of life and human suffering, the police are obliged to act with utmost urgency in following up all information, including information from secret sources. Further, the police may frequently have to arrest a suspected terrorist on the basis of information which is reliable but which cannot, without putting in jeopardy the source of the information, be revealed to the suspect or produced in court to support a charge."

Frequently the police in Northern Ireland will receive information from an informer, who himself may be a very close associate of the suspect, that the suspect has committed a terrorist crime, for example, a murder by placing a booby-trap bomb. If the suspect is told in specific terms by an arresting constable, who has no knowledge of the source of the police information and of the background of the case, that he is suspected of murder by placing a booby-trap bomb, this information may cause the suspect to infer that the information has come from the informer and so endanger his life. In such a case it is clearly safer that the first reference to the suspect about the placing of the booby-trap bomb should come from the detective in the course of questioning after arrest who is fully aware of the nature of the sensitive background to the case and of the risks to the informer.

One of the practical considerations to which Viscount Simon referred at 588 and on which counsel for the appellant relied was the following one:

"If the charge on suspicion of which the man is arrested is then and there made known to him, he has the opportunity of giving an explanation of any misunderstanding or of calling attention to other persons for whom he may have been mistaken, with the result that further enquiries may save him from the consequences of false accusation."

Counsel argued that this consideration applied to the present case and that, if Constable Gibson had informed the appellant when he arrested him at 12.05 pm on 15 October that he was suspected of involvement in armed robberies on 11 October, the appellant could have given him information of his movements and activities on that day, which would either have resulted in him not being taken into police custody at all or in being released from custody earlier than he was. There is force in this argument, viewed in isolation and

viewed also in relation to the particular facts of this case, but I consider that this argument does not outweigh the strong arguments, on both legal and practical grounds, which point to the conclusion that the arrest at 12.05 pm was lawful. This was an arrest carried out pursuant to a section passed by Parliament for the purpose of combating the threat of terrorism, and in considering the exercise of the power of arrest given by Section 12(1)(b) it is important to have regard to the words of the European Court of Justice in para 48 of its judgment in the case of Brogan and Others (1988):

"The Court, having taken notice of the growth of terrorism in modern society, has already recognised the need, inherent in the Convention system, for a proper balance between the defence of the institutions of democracy in the common interest and the protection of individual rights."

Accordingly I consider that the judgments in Christie v Leachinsky, when applied to a statutory arrest under Section 12(1)(b), do not require the arresting constable to inform the person arrested of the nature of the terrorist act or acts of which he is suspected. I consider that the basic principle laid down in Christie v Leachinsky, which applies to a statutory arrest under Section 12(1)(b), is that stated by Lord Simonds at 591:

"I would, therefore, submit the general proposition that it is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested . . ."

I further consider that in this case the appellant did know why he was arrested, because he was told by Constable Gibson that, as provided in Section 12(1)(b), he was being arrested because there were reasonable grounds for suspecting that he had been concerned in the commission, preparation or instigation of acts of terrorism.

Accordingly I respectfully agree with the reasoning of Lord Lowry when, after citing passages from Christie v Leachinsky, he said in the course of his judgment in Ex parte Lynch at 130 and 131:

"These observations seem to us to lay down that what must be communicated to the suspected person at the time of his arrest is the true ground of arrest . . . and in the context of the 1976 Act, we consider that Constable Armstrong, in telling the applicant at the time of arrest that he was arresting him under Section 12 of the Prevention of Terrorism Act 1976 as he suspected him of being involved in terrorist activities, not only communicated the true ground of arrest but did what was reasonable in the circumstances to convey to the applicant the nature of the constable's suspicion, namely that the applicant was involved in terrorist activities."

I further agree with the reasoning of Lord Lowry at 131 where he contrasts the distinction between the power to arrest for certain specific offences designated in Section 12(1)(a) and the wider and more general power given by Section 12(1)(b) to arrest on reasonable suspicion of the suspect being concerned in the commission, preparation or instigation of acts of terrorism, and says:

"The scope of this language is such that no specific crime need to suspected in order to ground a proper arrest under Section 12(1)(b)."

The decision of Carswell J in Hugh Gerard Brady v The Chief Constable of the Royal Ulster Constabulary [1991] (unreported) is to the same effect as the decision in Ex parte Lynch. In that case the plaintiff, who sued the Chief Constable for damages for wrongful arrest and false imprisonment, was arrested under Section 12(1)(b) of the 1984 Act and at the time of arrest the arresting constable informed the plaintiff:

"I arrest you under Section 12(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1984 as I have reasonable grounds for suspecting you have been concerned in the commission of acts of terrorism."

In his judgment at 8 Carswell J stated:

"It was submitted on behalf of the plaintiff that his arrest was unlawful by reason of the fact that he was suspected by the police officers who directed his arrest of planning Konig's murder, whereas he was informed by Constable McGonigle that he suspected him of being concerned in the commission, as distinct from the preparation, of acts of terrorism. It was argued that even if the arresting officer entertained a suspicion sufficient to satisfy the requirements of section 12(1)(b), the plaintiff was not in the circumstances given correct and proper information about the offence of which he was suspected.

I do not think that this submission is correctly founded. It is based on the assumption that when a suspect is arrested under the powers contained in section 12(1)(b) of the 1984 Act he is entitled to a degree of information analogous to that which must be furnished when an arrest is made under other powers on suspicion of (complicity) in a specific offence. The condition which had to be fulfilled in order to ground an arrest under section 12(1)(b) is that the arresting constable reasonably suspects that the arrestee has been concerned in the commission, preparation or instigation of acts of terrorism. Neither the suspicion nor the information given to the person arrested need be any more specific. I do not propose to attempt to set out definitively the conditions for a valid arrest under the section in various circumstances. I restrict myself to holding that the arrest was valid in the present case when the arresting officer informed the plaintiff that he was being arrested under section 12(1)(b) of the 1984 Act and referred to acts of terrorism. That was enough to inform the plaintiff of the statutory power under which he was arrested and to enable him to know what powers of detention the police would have. I shall not attempt to decide the questions whether it was necessary in law to refer to terrorism at all or to do more than cite the sub-section of the Act, or whether the word "commission" is sufficient to include the planning of a terrorist crime carried out by others. I hold simply that this plaintiff was given sufficient information to satisfy the requirements of the law for a valid arrest. It was in my judgment enough to enable him to know in substance the reason why it was claimed that he was bound to submit to a restraint upon his freedom."

The passage from Lord Lowry's judgment in Ex Parte Lynch which I have already set out at pages 8 to 12 of this judgment contains a short section as follows at 131B:

"And it is further to be noted that an arrest under section 12(1) leads under section 12(2) to a permitted period of detention without preferring a charge. No charge may follow at all; thus an arrest is not necessarily (to use Scott LJ's phrase in the Court of Appeal in Christie v Leachinsky [1946] KB 124, 130) 'the first step in a criminal proceeding against a suspected person on a charge which was intended to be judicially investigated'. Rather it is usually the first step in the investigation of the suspected person's involvement in terrorism."

However in Holgate-Mohammed v Duke [1984] AC 437 Lord Diplock, in considering an arrest without warrant for an arrestable offence, stated at 445E:

"That arrest for the purpose of using the period of detention to dispel or confirm the reasonable suspicion by questioning the suspect or seeking further evidence with his assistance was said by the Royal Commission on Criminal Procedure in England and Wales (1981) (Cmnd 8092) at paragraph 3.66 'to be well established as one of the primary purposes of detention upon arrest'. That is a fact that will be within the knowledge of those of your Lordships with judicial experience of trying criminal cases; even as long ago as I last did so, more than 20 years before the Royal Commission's Report. It is a practice which has been given implicit recognition in rule 1 of successive editions of the Judges' Rules, since they were first issued in 1912. Furthermore, parliamentary recognition that making inquiries of a suspect in order to dispel or confirm the reasonable suspicion is a legitimate cause for arrest and detention at a police station was implicit in section 38(2) of the Magistrates' Courts Act 1952 which is now reproduced in section 43(3) of the Magistrates' Courts Act 1980, with immaterial amendments consequent on the passing of the Bail Act 1976."

Therefore I consider, with respect, that the distinction which Lord Lowry drew, based on Scott LJ's phrase, between an arrest under Section 12(1)(b) and an arrest for an arrestable offence under Section 2(5) of the Criminal Law Act (Northern Ireland) 1967 is not valid in the light of Lord Diplock's judgment, because just as a person may be arrested under Section 12(1)(b) on reasonable suspicion that he has been concerned in the commission, preparation or instigation of acts of terrorism so that he may be questioned to determine whether he should be charged with a specific offence committed on behalf of a terrorist organisation, so also a person may be arrested under Article 26(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 on reasonable suspicion of an arrestable offence for the purpose of questioning to determine whether a charge should be brought against him. Whether a person was arrested under Section 12(1)(b) of the 1984 Act or under Article 26(6) of the 1989 Order, it may be that the arrest leads to a period in police custody without a charge being ultimately preferred, because the questioning of the person whilst in police custody may reveal that the reasonable suspicion which led to his arrest cannot be confirmed so as to justify a charge being brought. In this case it was clear that the appellant was arrested as a suspected terrorist so that he could be questioned about the two armed robberies, but he was released after the questioning.

Counsel for the appellant sought to rely on the decisions of the European Court of Human Rights in the case of Brogan and Others [1988] and the case of Fox, Campbell and Hartley [1989]. I consider that the appellant derives no assistance from the judgment of the court in Brogan and Others, because in that case in relation to Article 5.1(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms the court stated at paragraph 53 of their judgment:

"The fact that the applicants were neither charged nor brought before a court does not necessarily mean that the purpose of their detention was not in accordance with Article 5§ 1(c). As the Government and the Commission have stated, the existence of such a purpose must be considered independently of its achievement and sub-paragraph (c) of Article 5§ 1 does not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicants were in custody.

Such evidence may have been unobtainable or, in view of the nature of the suspected offences, impossible to produce in court without endangering the lives of others. There is no reason to believe that the police investigation in this case was not in good faith or that the detention of the applicants was not intended to further that investigation by way of confirming or dispelling the concrete suspicions which, as the Court has found, grounded their arrest (see paragraph 51 above). Had it been possible, the police would, it can be assumed, have laid charges and the applicants would have been brought before the competent legal authority.

Their arrest and detention must therefore be taken to have been effected for the purpose specified in paragraph 1(c)."

Article 5(2) of the European Convention provides:

"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

Mr Hanna relied on the point that in the case of Fox, Campbell and Hartley the United Kingdom conceded that Article 5(2) was not complied with if a person was told on his arrest that he was suspected of being a terrorist. Paragraphs 41 and 42 of the judgment of the court are as follows:

"41. On being taken into custody, Mr Fox, Ms Campbell and Mr Hartley were simply told by the arresting officer that they were being arrested under section 11(1) of the 1978 Act on suspicion of being terrorists (see paragraphs 9 and 13 above). This bare indication of the legal basis for the arrest, taken on its own, is insufficient for the purposes of Article 5§ 2, as the Government conceded.

However, following their arrest all of the applicants were interrogated by the police about their suspected involvement in specific criminal acts and their suspected membership of proscribed organisations (see paragraphs 9, 10 and 14 above). There is no ground to suppose that these interrogations were not such as to enable the applicants to understand why they had been arrested. The reasons why they were suspected of being terrorists were thereby brought to their attention during their interrogation.

42. Mr Fox and Ms Campbell were arrested at 3.40 pm on 5 February 1986 at Woodbourne RUC station and then separately questioned the same day between 8.15 pm and 10.00 pm at Castlereagh Police Office (see paragraph 9 above). Mr Hartley, for his part, was arrested at his home at 7.55 am on 18 August 1986 and taken to Antrim Police Station where he was questioned between 11.05 am and 12.15 pm (see paragraph 13 above). In the context of the present case these intervals of a few hours cannot be regarded as falling outside the constraints of time imposed by the notion of promptness in Article 5§ 2)."

In my opinion this concession made by the United Kingdom in relation to an arrest under Section 11(1) of the Northern Ireland (Emergency Provisions) Act 1978 in a case concerned with the jurisprudence of the European Court of Human Rights is not decisive in the present case. Moreover it appears from paragraphs 41 and 42 of the judgment that there was no breach of Article 5(2) in the present case as in the interview which commenced at 3.40 pm, when the appellant was questioned about the two armed robberies in which the car had been involved, the reason why he was suspected of being concerned in the commission of acts of terrorism was brought to his attention.

Accordingly I would hold that the arrest of the appellant at 12.05 pm was not unlawful because the constable failed to tell him of the nature of the terrorist acts which he was suspected to have committed.

The second main argument advanced on behalf of the appellant was that the Chief Constable had failed to establish (the burden of proof being upon him to do so) that Constable Gibson had reasonable grounds for suspecting the appellant to be a person who had been concerned in the commission, preparation or instigation of acts of terrorism. The question raised by this argument must be determined in accordance with the approach stated by Lord Atkin in Liversidge v Anderson [1942] AC 206 at 239:

"It is said that it could never have been intended to substitute the decision of judges for the decision of the minister, or, as has been said, to give an appeal from the minister to the courts. But no one proposes either a substitution or an appeal. A judge's decision is not substituted for the constable's on the question of unlawful arrest, nor does he sit on appeal from the constable. He has to bear in mind that the constable's authority is limited and that he can only arrest on reasonable suspicion, and the judge has the duty to say whether the conditions of the power are fulfilled. If there are reasonable grounds, the judge has no further duty of deciding whether he would have formed the same belief any more than, if there is reasonable evidence to go to a jury, the judge is concerned with whether he would have come to the same verdict."

The question must also be approached on the basis that it is the state of mind of Constable Gibson that matters and that alone - not the state of mind of some other police officer such as Sergeant Green: see per Lord Roskill (McKee v Chief Constable for Northern Ireland) [1985] 1 All ER 1 at 4b.

In his judgment the learned trial judge stated at page 13A:

"As already mentioned Constable Gibson in his evidence stated that when he went out on patrol on this particular day he was aware that this particular vehicle was wanted in connection with some robberies. He also stated in evidence that immediately prior to arresting the plaintiff at Aspen Park, Sergeant Greene had informed him that the car had been involved in a robbery the previous weekend at the Glen Snooker Club at the edge of Twinbrooke and that a gun had been produced. I am satisfied on the evidence in this case that Constable Green had reasonable grounds for his suspicions with regard to the plaintiff both at the time of the

purported arrest at Aspen Park and at the time of his further arrest at Castlereagh Holding Centre . . . Mr McDonald referred me to the recent decision of the Court of Appeal in England in Castorina v Chief Constable of Surrey reported in The Independent Newspaper Law Report for 16th June 1988. With regard to the three questions posed by Lord Justice Woolf in that case I am satisfied: (1) that Constable Gibson did suspect the plaintiff of having been involved in the robberies the previous weekend; (2) that he had reasonable cause for that suspicion; (3) that he exercised his discretion in arresting the plaintiff and that he did so in accordance with the principles laid down by Lord Green MR in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223."

In my opinion in the light of the evidence before him, which I have referred to in an earlier part of this judgment, the learned trial judge was fully entitled to so hold.

In Shaaban Bin Hussien v Chong Fook Kam [1970] AC 942 at 948 Lord Devlin stated:

"Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.'"

I consider that Constable Gibson had reasonable grounds for his conjecture or surmise that the appellant had been concerned in terrorist acts on the basis that terrorists had used the car a few days before and that the appellant, a young man, was being driven in the car by another young man. I consider that those facts made it reasonable for Constable Gibson to surmise that the terrorists who had used the car a few days before were still using it.

It is clear, in my opinion, that if Mr McClenaghan and the appellant had been stopped in the car a few hours after the robbery at the Glen Snooker Club it would have been reasonable for a police officer to suspect that they had been involved in the robbery. Mr Hanna submitted that it was unlikely that after using a car to commit a crime terrorists would go on driving the same car for three or four days afterwards. However it frequently happens that criminals are apprehended because they are stopped in a car which is known to have been used in an earlier crime, and I consider that in this case Constable Gibson could not be said to be acting without reasonable grounds because he suspected that the appellant had been involved in the earlier terrorist robberies.

Constable Gibson did not say in express terms in the course of his evidence that he suspected that the appellant was a terrorist who had been involved in the earlier robberies, but this was a clear and obvious inference from his evidence which the learned trial judge was fully entitled to draw.

Mr Hanna further submitted that Constable Gibson had not properly exercised his discretion to arrest the appellant because he had acted on the instructions of Sergeant Green. I reject this submission. It is clear from the decision of the House of Lords in McKee v Chief Constable for Northern Ireland [1985] 1 All ER 1 that an arrest by a police officer, who is instructed by a superior officer to make the arrest, is lawful, provided that the arresting officer himself has the requisite state of mind specified in the statute. Lord Roskill stated at 4(a):

"On the true construction of s 11(1) of the statute, what matters is the state of mind of the arresting officer and of no one else. That state of mind can legitimately be derived from the instruction given to the arresting officer by his superior officer. The arresting officer is not bound and indeed may well not be entitled to question those instructions or to ask on what information they are founded. It is, in my view, not legitimate in the light of the trial judge's findings as to PC Graham's state of mind at the time of the arrest to seek to go behind that finding and deduce from Det Con Moody's evidence as to questioning which took place some time after the arrest what Sgt Jackson's state of mind may have been when he gave PC Graham his instructions. It is PC Graham's state of mind that matters and that alone."

Accordingly I would hold that the arrest of the appellant at 12.05 pm was lawful.

In the event of this court upholding the decision of the learned trial judge that the arrest at 12.05 pm was lawful, Mr Hanna advanced a further argument which was that the period which elapsed between the arrest of the appellant at 12.05 pm and the commencement of the interview of the appellant by detective officers at 3.40 pm was unreasonably long. Mr Hanna submitted that the appellant should have been interviewed sooner after his arrest, that the onus rested on the Chief Constable to establish that the delay between 12.05 pm and 3.40 pm in commencing the interview was reasonable, and that the Chief Constable had failed to discharge this onus.

On this point this court is bound to follow the earlier decision of the court in Petticrew v Chief Constable [1988] 3 NIJB 86 where a similar point was argued. In that case a person was arrested as a suspected terrorist under Section 12 of the Prevention of Terrorism Act 1984 and was brought to Castlereagh Police Office, where she arrived at 6.05 am and she was not interviewed until 11.25 am. She claimed, as did the appellant in this case, that the period between her arrival at Castlereagh and the commencement of the first interview was unreasonably long and that during that period, or part of it, she was unlawfully detained. The claim was dismissed by the trial judge and his decision was affirmed by this court, O'Donnell LJ stating at 98:

"The basis for this claim of overholding is in my view misconceived, a person lawfully arrested under Section 12 of the Prevention of Terrorism Act 1984 can be detained for the purposes of that Act, for a period of 48 hours, and with an extension of up to 7 days. The function of the court is to determine whether the arrest is lawful, it cannot determine the pace of the interviews, or their number, which must be a matter within the discretion of the police. Provided that the court is satisfied that the detention is bona fide for the purposes of interrogation and not a pretext for simple detention or removal of the suspect from the community, it cannot add up the time taken at interviews, or the number of interviews, and thereby conclude that had there been more interviews, or had the interviews lasted longer, the suspect would have been released earlier. As Lord Griffiths said in Murray v Ministry of Defence.

'The power of detention under section 14 is "for not more than four hours", and it is common ground that the burden is on the army to show not only that the period of detention did not exceed four hours but also that it did not exceed the time that was reasonably required to make a decision whether to release the suspect or to hand them over to the police.'

The learned trial judge held that:

'The question is whether or not the detaining constable acted reasonably. The explanation for the slow start to interviewing is that WD Constable Drysdale was coming from Tennant Street RUC Station, but apart from that I do not consider that it is unreasonable not to commence all interviews straight away.'

In my view the test applied by the learned trial judge was correct, and I see no justification for differing from his conclusion."

Therefore I reject the submission that the appellant was unlawfully detained for some period between 12.05 pm and 3.40 pm.

The argument advanced that the appellant was unlawfully detained between 12.05 pm and 3.40 pm even, if there was a lawful arrest at 12.05 pm, calls for a further observation. This point relating to the period between the time of the arrest and the commencement of the first interview was dealt with at the trial by counsel for both parties in an unsatisfactory and somewhat perfunctory way. I think the reason for this was that the claim

that the period of detention was unlawful was not expressly pleaded. The relevant paragraphs of the statement of claim are as follows:

"3. On or about 8th October 1986 at or near Aspen Square, Twinbrook, Belfast Police Officers unlawfully and against the Plaintiff's will arrested him and conveyed him to and subsequently detained him at Castlereagh Police Office, Belfast, where Police Officers unlawfully interrogated, searched, fingerprinted and photographed him, removed personal property from him and treated him without due respect for his dignity and legal rights.

4. In proof of the foregoing allegations the plaintiff will further rely on such facts as are within the knowledge of the Defendant but not of the Plaintiff and as may appear from the evidence of the Defendant and his witnesses at the trial of this action.

5. By reason of the matters complained of, the Plaintiff has been wrongfully deprived of his liberty, he has suffered personal injuries, physical discomfort and inconvenience, mental anxiety and distress, loss and damage."

These paragraphs give no indication that a "fall back" argument would be advanced that the period between arrest at Castlereagh Police Office and the start of the interview was unreasonable and that therefore the detention during that period was unlawful. Because the onus rests on the Chief Constable to justify the continuance of custody after arrest, it probably cannot be maintained as a matter of strict and technical pleading that a plaintiff, who pleads the bare averment that he was unlawfully arrested and detained, is debarred from making the case that the subsequent detention was unlawful even if the arrest was lawful. But I think it desirable that the Chief Constable, like any other defendant, should know the case against him and should know whether he has to call police officers to give evidence in respect of the period of detention after arrest.

Whilst there is not an automatic summons for directions in this jurisdiction, the observations of Lord Donaldson MR in Mercer v Chief Constable of Lancashire [1991] 1 WLR 367 at 375G are relevant:

"But, however unilluminating the pleadings, the district judge at any hearing for directions can and should metaphorically take the case by the scruff of the neck and shake it with a view to finding out what are the real issues between the parties and, on the basis of that information, ensuring that neither party is taken by surprise or need have additional evidence available to deal with a possible ambush. If, for example, either of the plaintiffs is alleging that, if he was lawfully arrested, he was detained in other than a designated police station (see section 35 of the Police and Criminal Evidence Act 1984) or that, despite the fact that he was awake and his detention continued for a sufficient time to call for its review under section 40, he was given no opportunity of making representations, he should be required to say so."

Therefore I am in agreement with the view expressed by Clayton & Tomlinson in Civil Actions against the Police p 75:

"Nevertheless, it is submitted that the plaintiff should set out the nature of the case he advances in claiming that he was unlawfully arrested or detained. In order to clarify the issues, it is probably desirable that the statement of claim (rather than the reply) pleads the case so that the defendant is then in a position to join issue on each and every allegation raised."

Mr Hanna advanced a further argument, which was that it appeared from the evidence that the decision to release the appellant was taken about 7.30 pm, but that he was not released from Castlereagh Police Office until about 8.15 pm, and that part of that period between 7.30 pm and 8.15 pm was occupied with a medical examination. Mr Hanna further submitted that this meant that the period between 7.30 pm and 8.15 pm, or

part of it, constituted unlawful detention, because after the decision had been taken to release the appellant, the police had no power to hold him for the purpose of a medical examination.

This argument was based on the judgment of this court in Petticrew v The Chief Constable where O'Donnell LJ stated at 101:

"It is quite clear therefore that after the decision to release had been made, the appellant was detained for some further period of up to 45 minutes while she was awaiting medical examination and while the medical examination took place. There is no statutory provision for detention for medical examination, and as far as I am aware there is no common law justification for detention for medical examination purposes. The learned trial judge dealing with this issue said:

'It seems to me to be in the interests of both the individuals and the police that persons should be medically examined before leaving Castlereagh. This is because it is important to detect abuse if it has occurred and to answer charges of ill-treatment if they have not occurred. Accordingly I am satisfied that the plaintiff was not detained for an unreasonable period of time.'

Once a decision has been made to release, the detainee is entitled to be released. If it is considered necessary or desirable that a medical examination be carried out subsequent to that decision to release, then in my view it would have to be by specific statutory provision.

Whether it is desirable or whether it is even reasonable is not the issue. The issue is whether it is lawful. Reasonableness is the test to measure the conduct of the police vis a vis the arrested person throughout his detention while he is retained in custody. Once, however, his detention comes to an end - and it must come to an end at the time when senior police officers, who have the decision, reach it - any holding thereafter can only be justified on the ground of lawfulness and not reasonableness or convenience."

As I understand it, the long established practice of having a suspect examined by a police doctor before he leaves Castlereagh Police Office is for the protection of the suspect in order to provide a medical check that he has not been physically ill-treated whilst in police custody, and is also for the protection of the police to enable them to rebut false allegations by the suspect of ill-treatment, if such allegations are made. Therefore this final medical examination at Castlereagh Police Office appears to have much to commend it.

I have, with great respect, reservations about the correctness of the portion of the judgment in Petticrew's case dealing with the medical examination. It seems to me that the reality is that when the officer in charge of the investigation decides that a suspect can be released, he does not make the decision: "we will now release the suspect from police custody, and after his release we will keep him in Castlereagh Police Office in order to carry out a further medical examination." Rather I think he decides that the suspect will be released out of police custody once he has undergone the final medical examination. However the decision on this point in Petticrew's case is binding on us and we must follow it.

But it is clear that after the decision is taken to release a suspect, some minutes can lawfully be taken by the police before finally releasing the suspect, in order to carry out certain formalities, such as completing forms and obtaining an officer to escort the suspect from his cell to the outer door of the police office. Therefore, on the basis that the decision was taken to release the appellant at 7.30 pm, I would estimate that about 30 minutes of the time until 8.15 pm was taken up in arranging and carrying out a medical examination. Therefore, following the decision in Petticrew as this court is bound to do, I would hold that the appellant was unlawfully detained for a period of 30 minutes during the three-quarters of an hour between 7.30 pm and 8.15 pm, and that he is entitled to damages in respect of that period.

Again I observe that this point about the medical examination was not expressly pleaded and was dealt with at the trial by counsel in a way which was less than satisfactory, and the evidence adduced in relation to this aspect of the case was meagre. If this point is made in future on behalf of a plaintiff, I think it desirable that the matter should be expressly pleaded so that the issue is properly raised at the trial and so that witnesses can deal adequately with the point, which was not the position at this trial.

The appellant further claimed that some items of personal property were unlawfully taken from him by the police on his arrival at Castlereagh Police Office. These items were a payment book for the Northern Ireland Housing Executive, an unemployment card, a watch, 10 pence piece, a bap of bread, and a pair of laces. These items were taken by Constable Harvey. In the course of cross-examination he gave the reasons for taking these various items:

"Q. Constable Harvey, can you explain to the court why you took his property off him?

A. Its standard procedure, My Lord. A prisoner comes into custody. His property is removed from him so that he will not injure himself or any other person or that he will not cause any damage to property or indeed to secure any evidence that he may have on him.

THE JUDGE: So, its to avoid danger to himself, others, or?

A. Or to secure any evidence that he may have on him at the time.

MR McDONALD: Can the court take it that there was no reason to believe that he would use the bap of bread, for example, to injure himself or others?

A. My Lord, a bap of bread, a person could choke on a bap of bread in a cell.

Q. So, are you saying to the court then that you exercised your discretion in relation to the bap of bread in that he may injure himself with it?

A. I did, My Lord, and also it is policy to take the items from the prisoner.

Q. Well, realistically, is it not the case that you took these items off him simply, as you said at the beginning, because it was standard procedure and not for any other reason?

A. They were taken off him so that he could not injure himself or any other person, or he could not cause any damage to any property, or indeed to secure any evidence.

Q. Did you think that he might injure himself with his Unemployment Card?

A. He could injure himself or any other person with his Unemployment Card.

Q. An Unemployment Card?

A. Indeed.

Q. How would he do that?

A. With an Unemployment Card he could roll it up, hard end, stick it into his ear, he could stick it into his eye, stick it into an interviewing detective.

THE JUDGE: Is there a plastic cover on it?

A. No. Its a bit of hardened paper. Harder than this and when rolled together can become solid and can cause an injury to himself or indeed to any other person.

MR McDONALD: Does the same apply to the watch?

A. Indeed, My Lord. He could take the glass out of the watch and cut himself or cut anyone else.

Q. So your evidence is that you did not apply standard procedure without thinking about it. You thought about each individual item that you were taking off him and it could be used for the purposes that you have described?

A. Correct, My Lord.

Q. Thank you."

In his judgment the learned trial judge stated:

"Mr McDonald further submits on behalf of the plaintiff that there was no lawful authority for the removal of the plaintiff's personal belongings as itemised at page 3 of the pro forma, Exhibit D2, to which I have already referred. There was no evidence in this case that the plaintiff was at any time searched. On arrival at Castlereagh he complied with the request made by Constable Harvey that he should empty his pockets. I have already referred to the reasons given by Constable Harvey for keeping those items until they were eventually returned to the plaintiff prior to his release from Castlereagh Holding Centre, which reasons I accept. Mr Hopley could not point to any statutory authority for Constable Harvey taking temporary possession of those items. Mr Hopley relied upon the common law but could not point to any specific authority other than, by way of analogy, the decision of the Court of Appeal in Petticrew v Chief Constable of the RUC [1988] NIJB No 3, 86 at p 95 in relation to the power to frisk a suspected terrorist. Mr McDonald helpfully referred me to the recent decision of Mr Justice McCollum in O'Hara v Chief Constable of the Royal Ulster Constabulary delivered on 24th October 1990, but as yet unreported. While Mr McDonald informed me that that decision is at present the subject of an appeal, I agree with the observation of McCollum J at page 13 of his judgment when he stated that,

'It is obviously inherent in the power to imprison a person that the jailer has power to take belongings away from a prisoner.'

In this action I am satisfied that the defendant has established the burden of proof resting on him to justify the plaintiff's arrest at Castlereagh Holding Centre, his subsequent detention at that centre and the temporary removal of his personal belongings."

I am of opinion that there is a power at common law for a constable to take items of property from a person who has been arrested and who is in police custody. The nature of the power was described as follows by Donaldson LJ (as he then was) in Lindley v Rutter [1981] QB 128 at 134E, where the Court of Appeal in

England was considering a case where a female prisoner had been forceably searched and her brassiere removed from her:

"It is the duty of the courts to be ever zealous to protect the personal freedom, privacy and dignity of all who live in these islands. Any claim to be entitled to take action which infringes these rights is to be examined with very great care. But such rights are not absolute. They have to be weighed against the rights and duties of police officers, acting on behalf of society as a whole. It is the duty of any constable who lawfully has a prisoner in his charge to take all reasonable measures to ensure that the prisoner does not escape or assist others to do so, does not injure himself or others, does not destroy or dispose of evidence and does not commit further crime such as, for example, malicious damage to property. This list is not exhaustive, but it is sufficient for present purposes. What measures are reasonable in the discharge of this duty will depend upon the likelihood that the particular prisoner will do any of these things unless prevented. That in turn will involve the constable in considering the known or apparent disposition and sobriety of the prisoner. What can never be justified is the adoption of any particular measures without regard to all the circumstances of the particular case.

This is not to say that there can be no standing instructions. Although there may always be special features in any individual case, the circumstances in which people are taken into custody are capable of being categorised and experience may show that certain measures, including searches, are prima facie reasonable and necessary in a particular category of case. The fruits of this experience may be passed on to officers in the form of standing instructions. But the officer having custody of the prisoner must always consider, and be allowed and encouraged to consider, whether the special circumstances of the particular case justify or demand a departure from the standard procedure either by omitting what would otherwise be done or by taking additional measures."

I think that Donaldson LJ's observation that experience may show that certain measures are prima facie reasonable and necessary in respect of a particular category of case is particularly relevant in respect of persons arrested as suspected terrorists.

I consider that Constable Harvey's evidence established that the taking of the various articles belonging to the appellant constituted reasonable measures to ensure that the appellant did not injure himself or others, and that the taking of the articles was lawful.

The final point which arises on this appeal is the amount of damages to which the appellant is entitled. The learned trial judge awarded him £150 damages in respect of the period of 30 minutes between the unlawful arrest at 11.35 am and the subsequent lawful arrest at 12.05 pm. This award was within the range of awards which have been made in this jurisdiction for unlawful detention: see the cases and the awards made therein which are set out in the judgment of this court in Harper v Associated British Foods Limited [1991] 8 NIJB 1. Mr Hanna compared those awards with awards in English cases, which are set out in an article by Clayton and Tomlinson 'Assessing damages in civil actions against the police' published on 25 November 1987 in the Law Society Gazette which point to a higher level of damages being awarded by judges and juries in similar cases in England. Unlawful detention of a citizen is a grave matter and a person unlawfully detained is entitled to proper compensation. I consider that the current level of awards for unlawful detention in this jurisdiction is too low and that the level should now be increased.

When the appellant was unlawfully arrested by Constable Gibson at 11.35 am and taken to Castlereagh Police Office he was not subjected to any improper treatment. The purported arrest and the subsequent detention until 12.05 pm would have been entirely lawful had it not been for the failure of Constable Gibson to tell the appellant that he was being arrested because the Constable had reasonable grounds for suspecting him to have been concerned in the commission, preparation or instigation of acts of terrorism. It is clear, therefore, that the applicant is not entitled to aggravated or exemplary damages.

I do not consider that this court should attempt to lay down exhaustive guidelines as to how damages in false imprisonment claims should be assessed. A number of factors varying from case to case may have to be taken into account. However, I consider that it would be helpful to trial judges if this court were to specify a basic or conventional sum for general damages in false imprisonment cases where there is unlawful imprisonment following an unlawful arrest.

Such a basic sum should seek to reflect (1) curtailment of liberty and (2) injury to feelings. The following passage in McGregor on Damages, 15th Ed at paragraph 1619 sets out the factors to be considered:

"The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, ie the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, ie the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status. This will all be included in the general damages which are usually awarded in these cases; no breakdown appears in the cases."

I consider that the basic figure for general damages should be a sum in the region of £600 per hour where there is unlawful detention following an unlawful arrest, but no aggravating features, and where the detention does not exceed 12 hours and there are no special features. After a period of 12 hours it might be appropriate to reduce the level of damages for continuing unlawful detention if it appeared that the distress caused by the detention had lessened.

When unlawful detention by way of overholding follows a lawful arrest the injury to feelings is likely to be less and this should be reflected by a reduction in the basic sum.

In this case damages fall to be awarded for

(1) unlawful detention for 30 minutes between 11.35 pm and 12.05 pm following an unlawful arrest and followed immediately by a lawful arrest, and

(2) unlawful detention for 30 minutes between 7.30 pm and 8.15 pm following a lawful arrest, when the appellant was detained for a medical examination.

In respect of the first period of unlawful detention for 30 minutes I would increase the award to £300 and I would award the appellant the further sum of £200 for the second period of unlawful detention, making a total award of £500.

Judgment accordingly