

THE CENTRAL CRIMINAL COURT

LIMERICK

DIRECTOR OF PUBLIC PROSECUTIONS

Prosecution

-V-

Defendants

DESMOND DUNDON, ANTHONY MCCARTHY, JAMES  
MCCARTHY, DAVID STANNERS and CHRISTOPHER  
COSTELLO

ACTION HEARD BEFORE MR. JUSTICE BUTLER

ON TUESDAY, 21 OCTOBER 2003

3

I hereby certify the following to be a true and accurate transcript of my shorthand notes of the evidence in the above-named matter.

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APPEARANCES

FOR THE PROSECUTION: MR. DENIS VAUGHAN-BUCKLEY SC  
MR. JOHN O' SULLIVAN BL

INSTRUCTED BY: The Director of Public  
Prosecutions

FOR MR. ANTHONY McCARTHY: MR. O' HANLON SC  
MR. O' LI DEADHA BL

INSTRUCTED BY: Michael Hanahoe & Company

FOR MR. DESMOND DUNDON: MR. B. O' CARROLL SC  
MR. M. MALONEY BL

INSTRUCTED BY: John Devane

FOR MR. DAVID STANNERS: MR. SAMMON SC  
MR. M. BOWMAN BL

INSTRUCTED BY: Andrew McCarthy

FOR MR. JAMES McCARTHY: MR. JOHN EDWARDS SC  
MR. ANDREW SEXTON BL

INSTRUCTED BY: Andrew McCarthy

FOR MR. COSTELLO: MR. BRENDAN NIX SC  
MR. B. McINERNEY BL

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1 MR. JUSTICE BUTLER: That seems reasonable.  
2 MR. O' CARROLL: It does, my Lord, and we  
3 have no problem with that.  
4 MR. JUSTICE BUTLER: Okay, fine. I am told they  
5 were available to the 12: 30  
6 office for the last week and you could have asked,  
7 just in case anybody thinks they were holding them  
8 back from you, the registrar assures me.  
9 MR. SAMMON: I appear for David Stanners  
10 with Mr. Michael Bowman 12: 30  
11 instructed by McCarthy Solicitors.  
12 MR. JUSTICE BUTLER: Thank you.  
13 MR. O' LI DEADHA: I appear for  
14 Anthony McCarthy, my Lord,  
15 with Roderick O' Hanlon instructed by Michael Hanahoe 12: 31  
16 and Company.  
17 MR. JUSTICE BUTLER: Thank you.  
18 MR. EDWARDS: I appear for  
19 Mr. James McCarthy, my  
20 Lord, with Mr. Andrew Sexton instructed by John Cooke 12: 31  
21 Solicitors.  
22 MR. JUSTICE BUTLER: Thank you, Mr. Edwards.  
23 MR. NIX: I appear for Mr. Costello,  
24 my Lord, with  
25 Mr. Brian McInerney instructed by Mr. McCarthy. 12: 32  
26 MR. JUSTICE BUTLER: Thank you, Mr. Nix.  
27 MR. EDWARDS: Just in relation to my  
28 client, my Lord, there is a  
29 Mr. McCarthy also of John Cooke and Company.

1 MR. JUSTICE BUTLER: Thank you.

2 MR. VAUGHAN BUCKLEY: I would ask that they be  
3 arraigned on all the counts  
4 in the indictment, my Lord.

5 MR. JUSTICE BUTLER: Thank you, Mr. Buckley. 12: 33

6 REGISTRAR: Desmond Dundon,  
7 David Stanners,  
8 Anthony McCarthy, James McCarthy and  
9 Christopher Costello, in Bill number 61/2003 of the  
10 Central Criminal Court you each stand indicted on 12: 34  
11 Count 1 that on the 29th day of January 2003 in  
12 Limerick City you falsely imprisoned Kieran Keane.  
13 Desmond Dundon, how do you plead, guilty or not  
14 guilty?

15 MR. DUNDON: Not guilty. 12: 34

16 REGISTRAR: David Stanners, how do you  
17 plead, guilty or not  
18 guilty?

19 MR. STANNERS: Not guilty.

20 REGISTRAR: Anthony McCarthy, how do 12: 35  
21 you plead, guilty or not  
22 guilty?

23 MR. A. MCCARTHY: Not guilty.

24 REGISTRAR: James McCarthy, how do you  
25 plead, guilty or not 12: 35  
26 guilty?

27 MR. J. MCCARTHY: Not guilty.

28 REGISTRAR: Christopher Costello, how  
29 do you plead, guilty or not

1 guilty?  
2 MR. COSTELLO: Not guilty.  
3 REGISTRAR: Count 2 charges each of you  
4 that on the 29th day of  
5 January 2003 in Limerick City you falsely imprisoned 12:36  
6 Owen Tracey. Desmond Dundon, how do you plead,  
7 guilty or not guilty?  
8 MR. DUNDON: Not guilty.  
9 REGISTRAR: David Stanners, how do you  
10 plead, guilty or not 12:36  
11 guilty?  
12 MR. STANNERS: Not guilty.  
13 REGISTRAR: Anthony McCarthy, how do  
14 you plead, guilty or not  
15 guilty? 12:36  
16 MR. A. MCCARTHY: Not guilty.  
17 REGISTRAR: James McCarthy, how do you  
18 plead, guilty or not  
19 guilty?  
20 MR. J. MCCARTHY: Not guilty. 12:36  
21 REGISTRAR: Christopher Costello, how  
22 do you plead, guilty or not  
23 guilty?  
24  
25 MR. COSTELLO: Not guilty. 12:36  
26 REGISTRAR: Count 3 charges each of you  
27 that on the 29th day of  
28 January 2003 at Drombana, otherwise known as Bushy  
29 Island, County Limerick you murdered Kieran Keane.

1 Desmond Dundon, how do you plead, guilty or not  
2 guilty?  
3 MR. DUNDON: Not guilty.  
4 REGISTRAR: David Stanners, how do you  
5 plead, guilty or not 12: 37  
6 guilty?  
7 MR. STANNERS: Not guilty.  
8 REGISTRAR: Anthony McCarthy, how do  
9 you plead, guilty or not  
10 guilty? 12: 37  
11 MR. A. MCCARTHY: Not guilty.  
12 REGISTRAR: James McCarthy, how do you  
13 plead, guilty or not  
14 guilty?  
15 MR. J. MCCARTHY: Not guilty. 12: 37  
16 REGISTRAR: Christopher Costello, how  
17 do you plead, guilty or not  
18 guilty?  
19 MR. COSTELLO: Not guilty.  
20 REGISTRAR: Count 4 charges each of you 12: 39  
21 that on the 29th day of  
22 January 2003 at Drombana, otherwise known as Bushy  
23 Island, County Limerick you attempted to murder  
24 Owen Tracey. Desmond Dundon, how do you plead,  
25 guilty or not guilty? 12: 39  
26 MR. DUNDON: Not guilty.  
27 REGISTRAR: David Stanners, how do you  
28 plead, guilty or not  
29 guilty?

1 MR. STANNERS: Not guilty.

2 REGISTRAR: Anthony McCarthy, how do

3 you plead, guilty or not

4 guilty?

5 MR. A. MCCARTHY: Not guilty. 12: 40

6 REGISTRAR: James McCarthy, how do you

7 plead, guilty or not

8 guilty?

9 MR. J. MCCARTHY: Not guilty.

10 REGISTRAR: Christopher Costello, how 12: 40

11 do you plead, guilty or not

12 guilty?

13 MR. COSTELLO: Not guilty.

14 REGISTRAR: I am now about to swear a

15 jury to try you. You each 12: 40

16 have a right to challenge seven jurors without cause

17 shown, and you may challenge for cause shown any

18 number of jurors, but you must challenge such jurors

19 immediately their names are called to be sworn and

20 before the administration of the oath to them has 12: 40

21 begun otherwise you will be too late.

22 MR. VAUGHAN BUCKLEY: Before your Lordship

23 proceeds to empanel the

24 jury, I think there is certain information I should

25 give your Lordship -- 12: 42

26 MR. JUSTICE BUTLER: Certainly.

27 MR. VAUGHAN BUCKLEY: -- in relation to each of

28 the accused and in relation

29 to the alleged victims in this case so that you can

1 direct a jury as to whether they know any of these  
2 people involved, my Lord, allegedly involved. In  
3 relation to the deceased Kieran Keane, this is the  
4 man who is alleged to have been murdered, my Lord, at  
5 the time of his death, Kieran Keane -- I have handed 12: 43  
6 up your Lordship, I think you are entitled to have a  
7 handwritten copy of this, my Lord.

8 MR. JUSTICE BUTLER: Yes.

9 MR. VAUGHAN BUCKLEY: Kieran Keane, the deceased,  
10 resided at time of his 12: 43  
11 death at Garyowen House, Greenhills Road, Garyowen  
12 here in the city of Limerick. Owen Tracey, who is  
13 the chief prosecution witness in this case, my Lord,  
14 and also the person who is the subject matter of the  
15 last count on the indictment, it is alleged that the 12: 44  
16 accused attempted to murder him, my Lord. Owen  
17 Tracey resides at 94 St. Munchin Street,  
18 St. Mary's Park, Limerick, my Lord.

19  
20 The accused in this case, their addresses are as 12: 45  
21 follows: Desmond Dundon, the first-named accused, my  
22 Lord resides at 80 Pine Road, Limerick;  
23 David Stanners, the second-named accused on the  
24 indictment resides at 120 Pineview Gardens, Moyross  
25 Limerick; Anthony McCarthy, the third-named accused, 12: 46  
26 resides at 5 Fair Green, Limerick; James McCarthy,  
27 the fourth-named accused, resides at 110 Delmege  
28 Park, Moyross, Limerick; and Christopher Costello  
29 resides at 1 Moylish Avenue, Ballynante, Limerick, my

1 Lord.

2 MR. JUSTICE BUTLER: Thank you very much,  
3 Mr. Vaughan Buckley.

4 Ladies and gentlemen of the jury panel, I would like  
5 to thank you for your attendance here, and I am just 12: 48  
6 obliged to say a couple of things to you. With your  
7 jury summons you received documents and you have  
8 heard all of this but if you are either disqualified  
9 or ineligible or you have any interest or know any of  
10 the parties, you must not serve on the jury. If you 12: 49  
11 come into one of those categories and if you are  
12 called, please let us know immediately. You have  
13 heard Mr. Vaughan Buckley on behalf of the DPP read  
14 out particulars of various people involved in it. I  
15 will read them out again, ladies and gentlemen, just 12: 49  
16 in case you know any of the people or know of them.

17

18 The deceased here in this case is Kieran Keane. He  
19 resided at Garyowen House, Green Hills Road,  
20 Garyowen, Limerick. A prosecution witness is 12: 49  
21 Mr. Owen Tracey. He resides at 96 St. Munchin  
22 Street, St. Mary's Park, Limerick.

23

24 The accused, Desmond Dundon, has an address at  
25 80 Hyde Road, Limerick; David Stanners has an address 12: 50  
26 at 120 Pineview Gardens, Moyross, Limerick;  
27 Anthony McCarthy has an address at 5 Fair Green,  
28 Limerick; James McCarthy has an address at  
29 110 Delmege Park, Moyross in Limerick; and

1 Christopher Costello resides at 1 Moylish Avenue,  
2 Ballynante in Limerick, Ladies and gentlemen. So if  
3 you have any doubts about the matter, please raise it  
4 if and when you are called. How long is the case  
5 likely to take? 12: 51

6 MR. VAUGHAN BUCKLEY: Well now, in relation to  
7 the length of the trial,  
8 this is a trial that could go on for a considerable  
9 length of time. It depends really on the State  
10 witness but it could well go on up to Christmas, up 12: 52  
11 to that time, my Lord.

12 MR. JUSTICE BUTLER: You heard that, Ladies and  
13 gentlemen, it is a surprise  
14 to me too but the trial could -- things can happen  
15 and it can be shorter, but the trial could 12: 52  
16 conceivably go to Christmas. That obviously  
17 inconveniences everybody but if it causes a  
18 particular difficulty with somebody, please raise  
19 this when you are called for service and we will deal  
20 with it as best we can at that stage. I should say 12: 52  
21 that the trial, as far as I am concerned, it is now  
22 11.30 and it will take some time to empanel you, it  
23 is intended to commence the trial at 11.00 o'clock  
24 tomorrow morning, Ladies and gentlemen.

25 REGISTRAR: Now, members of the jury, 12: 53  
26 as I call your names will  
27 you please answer first and then come forward to the  
28 jury box here on my right-hand side.  
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JURORS CALLED

MR. JUSTICE BUTLER: Before the registrar goes on, Ladies and gentlemen, there will be a number of challenges, as you heard the parties have challenges. There is nothing personal in it and do not be embarrassed if it happens.

13:00

FURTHER JURORS CALLED - FOUR JURORS SWORN

MR. JUSTICE BUTLER: Ladies and gentlemen, any difficulties it would help a lot if you mention them if and when you are called by the registrar, thank you.

17:02

FURTHER JURORS CALLED - SIX JURORS SWORN

MR. JUSTICE BUTLER: Some people are going to be recalled who were temporarily excused. We will recall you and I will ask you more about why you should be excluded. Thank you.

17:13

PREVIOUSLY EXCUSED JURORS RE-CALLED - ONE JUROR SWORN

MR. JUSTICE BUTLER: Ladies and gentlemen, we have run out of jurors, we have run out of panel at the moment. We have only 11 jurors. There is power to issue summonses in

1 situations like this, so what I propose to do, unless  
2 anyone has a submission on the matter, is to adjourn  
3 the matter to tomorrow and see what can be done about  
4 getting further jurors. Does anyone have anything to  
5 say about that? 17: 13

6 MR. VAUGHAN BUCKLEY: No, my Lord.  
7 MR. O' CARROLL: No, my Lord.  
8 MR. JUSTICE BUTLER: All right.  
9 REGISTRAR: We will just role call the  
10 jury we have before we go 17: 14  
11 on.  
12 MR. JUSTICE BUTLER: Yes, of course.  
13 REGISTRAR: Members of the jury, will  
14 you please answer as I call  
15 your names just to make sure I have all of you. 17: 14  
16

17 JURY ROLE CALL  
18

19 REGISTRAR: There is one other juror,  
20 my Lord, that is excused 17: 15  
21 from tomorrow but I will just call her anyway to see.  
22 Helen Hennessy, 1813, is she present? Is  
23 Ms. Hennessy present? Could you come up,  
24 Ms. Hennessy, please?  
25 MR. JUSTICE BUTLER: We have a note that you are 17: 16  
26 -- you were not called  
27 because you were excused on 23 October so we can work  
28 around that.  
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12TH JUROR SWORN

MR. JUSTICE BUTLER: We will not sit tomorrow.  
To accommodate the last  
person called, we will not sit tomorrow. I would 17: 18  
like you to use that time perhaps to look at  
statements and perhaps shorten the matter if that can  
be achieved. Sorry, tomorrow is the 23rd is it not?  
REGISTRAR: 22nd.  
MR. JUSTICE BUTLER: I am sorry. You do have to 17: 18  
be excused on 23rd; is that  
right? I do not ask for details because you have  
already done that I believe.  
JUROR: Yes.  
MR. JUSTICE BUTLER: All right, that is 17: 19  
perfectly reasonable. I  
can do one of two things: I can adjourn further to  
get further jurors tomorrow, or I can say we start  
on, is it Friday? Today is Tuesday. We start on  
Friday. I think that is better and you could use the 17: 19  
time to save even more days in that I would imagine.  
MR. VAUGHAN BUCKLEY: Or start tomorrow, my  
Lord, and then break until  
Friday. Get something done tomorrow.  
MR. JUSTICE BUTLER: Whichever you like. 17: 20  
MR. VAUGHAN BUCKLEY: Start tomorrow and break  
until Friday then, my Lord.  
MR. JUSTICE BUTLER: You think that is...  
MR. VAUGHAN BUCKLEY: We are all down here now,

1 we would prefer to do some  
2 work.

3 MR. JUSTICE BUTLER: Some of you live here.

4 MR. SAMMON: Sorry, my Lord, it occurs  
5 to me that if the case was 17: 25  
6 to start tomorrow within terms of the usual procedure  
7 and the opening statement by the prosecution. The  
8 juror's difficulty arises on Thursday as I understand  
9 and perhaps if counsel could, if the trial could be  
10 kept in being so to speak with the jury excused while 17: 27  
11 counsel could perhaps work to some extent to see if  
12 the matter could be pruned somewhat, and it would be  
13 best if we could avail of the services in the  
14 building, my Lord, to do so. If the usual facilities  
15 were made available to us in recognition of our 17: 28  
16 services on that date, my Lord.

17 MR. VAUGHAN BUCKLEY: It could be put  
18 in... (INTERJECTION).

19 MR. JUSTICE BUTLER: In other words, it is a wet  
20 day. 17: 29

21 MR. SAMMON: Precisely, my Lord.

22 MR. JUSTICE BUTLER: All I am concerned with --  
23 of course I am concerned  
24 with everything, but the principle thing I am  
25 concerned with is what we are doing with this 17: 29  
26 voluntary jury, you know, and it seems that because  
27 of them, not because of counsel, the best we can do  
28 is start tomorrow and go on and review on Friday.

29 MR. SAMMON: Yes.

1 MR. JUSTICE BUTLER: So that is the first  
2 decision to be made.

3 MR. VAUGHAN BUCKLEY: If it could be left to the  
4 list for mention on  
5 Thursday, for mention only on Thursday, my Lord. 17: 30

6 MR. JUSTICE BUTLER: Yes, yes, we will leave it.  
7 There are things to be  
8 dealt with without the jury on Thursday but that is  
9 another question. It will be facilitated I am sure.

10 MR. VAUGHAN BUCKLEY: If it could be listed on 17: 31  
11 Thursday, we may be able to  
12 deal with matters on Thursday.

13 MR. JUSTICE BUTLER: Okay, ladies and gentlemen,  
14 you heard that. I do  
15 appreciate you being here. The best we can do is 17: 32  
16 commence the case -- it is commenced by opening  
17 statements, commence the case tomorrow, break it on  
18 Thursday and continue on Friday.

19  
20 Now, ladies and gentlemen, I do appreciate your 17: 32  
21 giving up your time. Most people here are being  
22 paid, it is their job. I deeply appreciate your  
23 giving up your time, so any problems you have about  
24 time, about parking, about anything, do let me know  
25 and I will fight your corner. 17: 32

26 JUROR: We have a problem with  
27 parking.

28 MR. JUSTICE BUTLER: Yes. I can ask you to bear  
29 with me tomorrow morning.

1 I am going to ask the guards to do all they can just  
2 to get a space that anyone who shows they are a juror  
3 can -- I do not want to say too much about where you  
4 are and where you will be going and all that, but one  
5 way or another that will be resolved. Interrupt me 17: 34  
6 anytime and tell me if it has not been resolved. I  
7 hear there are plans afoot about that. I do  
8 appreciate it. You are being hugely inconvenienced  
9 by having to be here. All the petty things like your  
10 coffees and your parking and everything else must be 17: 34  
11 accommodated. I will insist on it. So thank you  
12 very much indeed.

13  
14 Now, ladies and gentlemen, the matter is going to  
15 commence tomorrow morning at 11.00. Perhaps when you 17: 35  
16 assemble, you will be shown to a jury room. If you  
17 use the few minutes that inevitably we will spend  
18 organising things to select a foreperson from amongst  
19 your number, please do.

20 MR. VAUGHAN BUCKLEY: Of course one of the jurors 17: 35  
21 did say that he has been  
22 sworn in that... (INTERJECTION).

23 MR. JUSTICE BUTLER: I am sorry?

24 MR. VAUGHAN BUCKLEY: One of the jurors did swear  
25 that he lives or told your 17: 35  
26 Lordship that he lives in the vicinity of the accused  
27 but that he did not know them.

28 MR. JUSTICE BUTLER: I am sorry?

29 MR. VAUGHAN BUCKLEY: One of the

1 jurors... (INTERJECTION).  
2 MR. JUSTICE BUTLER: Yes, yes, I know that, yes.  
3 MR. VAUGHAN BUCKLEY: That he lived in the same  
4 area as the accused or some  
5 of the accused, but that he does not know them, he 17: 36  
6 does not know any of accused.  
7 MR. JUSTICE BUTLER: Yes.  
8 MR. VAUGHAN BUCKLEY: But certainly those jurors  
9 should not discuss the case  
10 with anybody. 17: 36  
11 MR. JUSTICE BUTLER: I was coming to that. The  
12 one thing I will be saying  
13 to you every time you leave this room throughout this  
14 trial, and it is vitally important, is that you  
15 should not, not even with close relatives, do not 17: 36  
16 discuss -- you can discuss the fact that you are  
17 serving on a jury with your relatives, but do not  
18 discuss any aspect of the case or the evidence with  
19 anyone other than amongst yourselves please, Ladies  
20 and gentlemen. It is vital that that is so. 17: 37  
21  
22 Perhaps while things are being organised, you will be  
23 shown to the jury room for the moment, then you will  
24 be free until tomorrow. Thank you for your great  
25 patience. 17: 38  
26 MR. VAUGHAN BUCKLEY: 11.00 o'clock tomorrow  
27 morning.  
28 MR. JUSTICE BUTLER: Yes. All unsworn jurors  
29 are now excused. Thank you

1 very much for your attendance even though you were  
2 not called. Thank you very, very much for coming, I  
3 do appreciate it. Mr. Vaughan Buckley, I just want  
4 to be in a position to perhaps organise movement for  
5 the jury in. Of course I have to do that in front of 17: 45  
6 this one so they may be back so you are not excused  
7 yet.

8 MR. VAUGHAN BUCKLEY: You have asked the jury to  
9 appoint a foreman. Did  
10 your Lordship not do that? 17: 45

11 MR. JUSTICE BUTLER: I asked them to do that  
12 tomorrow.

13 MR. VAUGHAN BUCKLEY: Tomorrow.

14 MR. JUSTICE BUTLER: Bear with me a moment. I  
15 may have to instruct the 17: 46  
16 jury as to travel and so forth. I have not told them  
17 where they assemble in the morning.

18 REGISTRAR: That is not our.

19 MR. JUSTICE BUTLER: No. All right then,  
20 11.00 o'clock tomorrow 17: 48  
21 morning. Thank you all very much.

22  
23 THE MATTER WAS THEN ADJOURNED UNTIL WEDNESDAY,  
24 22 OCTOBER 2003

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## 1

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