



AN CHÚIRT UACHTARACH

THE SUPREME COURT

[2026] IESC 38

Supreme Court AP:IE:2026:000011

Court of Appeal Record No: 2023/170

Special Criminal Court Bill No: SCDP 6/2021

**O'Malley J.
Woulfe J.
Hogan J.
Hyland J.
O'Moore J.**

Between/

THE PEOPLE (DIRECTOR OF PUBLIC PROSECUTIONS)

RESPONDENT

AND

JASON BONNEY

APPELLANT

JUDGMENT of Ms. Justice Niamh Hyland delivered on the 21st of July 2026

Introduction

1. The background to these proceedings concerns the conviction of the appellant, Jason Bonney, on 17 April 2023, of an offence under s. 72 of the Criminal Justice Act 2006, as amended by s. 6 of the Criminal Justice (Amendment) Act 2009. The appellant stood trial with two co-accused, who are not relevant to the current appeal. Following conviction in the Special Criminal Court (the “SCC”), the appellant was sentenced to eight-and-a-half years’ imprisonment on 12 May 2023.
2. The conviction arose in the following circumstances. On 5 February 2016, a gang-related shooting took place at the Regency Hotel in Dublin. Armed gunmen took over the venue and shot and killed one victim. The gunmen fled the scene to a GAA park, dispersing into a convoy of six vehicles. It was the prosecution’s case that the appellant was the driver of one of these vehicles, a black BMW X5, consequently committing an offence particularised by the indictment as:

“...with knowledge of the existence of a criminal organisation, participate in, or contribute to, activity intending to, or reckless as to whether such participation or contribution could, facilitate the commission of a serious offence by that criminal organisation or any of its members, to wit, the murder of David Byrne, by providing access to a motor vehicle.”
3. During trial, the appellant’s primary defence was that he was not the driver of the relevant vehicle at the material times, calling two witnesses, Ms. Julie McGlynn and Mr. Peter Tyrell, to attest to such.
4. The crux of this appeal relates to the treatment of alibi and rebuttal evidence during trial, including the correct interpretation of the definition of “*evidence in support of an alibi*” in s.20(8) of the Criminal Justice Act 1984 (the “1984 Act”). However, those issues

were not raised at the hearing before the SCC, instead being identified for the first time before the Court of Appeal. Therefore, a discrete issue arises in respect of the extent to which the appellant is entitled to raise them for the first time on appeal, following the principles identified in *People (DPP) v Cronin (No 2)* [2006] 4 IR 329 (“*Cronin*”).

The Special Criminal Court

5. The SCC (Burns J, Her Honour Judge Berkeley, Judge Malone, Bill No SCDP 6/2021, Reference Number CCAOT0170/2023) concluded beyond reasonable doubt that the appellant was the sole driver of the black BMW involved in the commission of the crime. The central defence put forth on behalf of the appellant was that his father, William “Willie” Bonney, was the driver of the black BMW at all material times during the commission of the crime. (All subsequent references to Mr. William “Willie” Bonney will be to “Willie Bonney” to distinguish him from Jason Bonney, the appellant in these proceedings).
6. The SCC approached the case on the basis that the alibi controversy was not dispositive. Rather, the SCC identified a coherent circumstantial case which, taken as a whole, was considered to establish guilt independently of any dispute concerning the alibi as follows: (Day 53 of the trial, p. 41, line 33—p. 42, line 3)

“Having regard to all of the evidence, the Court is satisfied beyond reasonable doubt that Jason Bonney remained the sole driver of the BMW throughout that day and is, therefore, satisfied beyond reasonable doubt that Jason Bonney was driving the BMW at Bella Street and at Saint Vincent's GAA park when [Kevin Murray] got into that BMW after the Regency attack.”

7. The SCC considered that, having regard to the BMW’s movements, its association with the convoy of vehicles, and the appellant’s presence at what the SCC found to be the

operational centre of the attack, it was satisfied beyond reasonable doubt that the appellant knowingly provided access to the BMW so as to facilitate a serious offence by the Hutch criminal organisation. The SCC also accepted that the appellant knew of the existence of that organisation, relying on his acknowledged association with the Hutches and his presence at Buckingham Village when other participants and vehicles connected to the operation were present there.

Day 50

8. For the purposes of this judgment, the relevant sequence of events giving rise to the grounds of appeal commenced on Day 50 of the trial, namely 24 January 2023. The SCC commenced by giving a short ruling on an unrelated issue and then prosecution counsel indicated that the prosecution case was about to close and that he wished to disclose that a statement had been given *“in respect of a witness who the prosecution would propose to call in respect of the alibi which Mr. Fitzgerald has alluded to that he was proposing to call as part of his case”*. He indicated that this evidence would be given after the alibi evidence was adduced and described it as statutory rebuttal evidence under the 1984 Act. The statement in question was that of Mr. Sharon.
9. Counsel for the appellant asked for time to take instructions on the statement, indicating that he might be seeking disclosure as to the background of the statement. Submissions were made by counsel for a co-accused who is not relevant to this appeal, and the court ruled on those submissions.
10. Counsel for the appellant then went into evidence, calling his first witness, Ms. McGlynn. Her evidence is summarised below but, in short, she testified that the appellant was with her in Newbrook Ave. around 14.45 on 5 February 2016. This was also around the time the DPP identified that the appellant had picked up one of the

assailants – known as the man with flat cap – shortly after the shooting in the Regency Hotel.

11. Counsel for the appellant then called Mr. Tyrell. His evidence is also set out below but, in summary, he gave evidence that he had seen the black BMW being driven shortly after the attack in the hotel and that it was being driven not by the appellant, but by his father, Willie Bonney.
12. What happened next is significant. Counsel for the DPP asked for the witness to be stood down and made the following submissions. First, he observed that there was no alibi notice for Mr. Tyrell and asked for time to consider the evidence before proceeding. The court agreed to give him time. Counsel for the appellant then made a short submission indicating that he had no obligation to serve an alibi notice. I set out the exchange later in this judgment given that the appellant relies upon it to argue that the definition of alibi evidence was raised, albeit briefly. When the court resumed after the adjournment, counsel for the DPP indicated he could not continue and had directed that a statement be prepared and served on the defence and it would be done overnight. The statement was given by Detective Garda Harkin.

Day 51

13. On the following day, 25 January 2023, (Day 51 of the trial), Mr. Tyrell was cross-examined and he reiterated that he had seen the jeep (being the black BMW X5) every day in the Trinity Sports & Leisure Club for the past 10 years and whenever he saw it, he saw Willie Bonney get in and out of it and that he had never seen the appellant use the jeep.
14. After the cross-examination, a Mr. Byrne, Willie Bonney's brother-in-law, was called by counsel for the DPP and examined. No objection was made by the defence to Mr.

Byrne being called. He gave direct evidence that the only jeep Willie Bonney drove for the 10 years prior to his death in 2019 was a black Lexus jeep. He said that he and his wife, Sharon Bonney Byrne (Willie Bonney's daughter) arrived at Willie and his wife, Greta Bonney's house at about 12, stayed there till 16.00 or 16.30 and that Willie never left the whole time they were there.

15. Detective Garda Harkin then gave evidence. At that stage, closing submissions started, with counsel for the DPP going first, followed by counsel for one of the co-accused.

Day 52

16. The following day, 26 January 2023 (Day 52) closing submissions were made by counsel for the appellant, as well as by counsel for another co-accused. Notably, in the closing submissions made on behalf of the appellant, no point was taken about the evidence of Mr. Byrne being inadmissible or in any way inappropriate, either by reference to the evidence of Ms. McGlynn or of Mr. Tyrell. Instead, the submissions engaged with the substance of the evidence, in particular relying upon the cross examination of Mr. Byrne and the alleged frailties of same.

The Court of Appeal

17. An appeal against conviction and sentence was dismissed by the Court of Appeal (Edwards, Kennedy, MacGrath JJ, [2025] IECA 239). The appellant alleged, *inter alia*, errors regarding the lawfulness of his arrest and detention, issues with the admission into evidence of Garda interviews, and errors with findings of fact amounting to an error of law. These grounds are not directly relevant to this appeal. The only ground of appeal that remains live before this Court is ground A, which was particularised as "*the SCC erred in allowing the State to call Paul Byrne to give rebuttal evidence*". The appellant argued that the correct interpretation of s.20(4), as considered in *People*

(DPP) v. O'Sullivan [2018] IESC 15 ("O'Sullivan"), meant that Mr. Byrne ought not to have been called in rebuttal in response to the evidence of Ms. McGlynn and Mr. Tyrell. He further argued that Mr. Tyrell's evidence was wrongly characterised as alibi evidence under s.20(8).

18. The DPP noted that the appellant had not raised the matter at trial, referring to *Cronin* as authority for the proposition that the appellant could not rely on a ground not advanced at trial where it did not reach the threshold of a flagrant denial of justice. Nonetheless, the DPP responded substantively to the points arising on s.20.

19. I explain later in the judgment how the Court of Appeal addressed the admissibility of the appeal point. Having indicated that the appellant was not entitled to raise the new grounds, it nonetheless considered the substantive points raised, concluding that the SCC was entitled in the circumstances to exercise its discretion pursuant to s. 20(4) of the 1984 Act to allow the prosecution to call evidence from Mr. Byrne in rebuttal of the evidence of Ms. McGlynn and Mr. Tyrell. On the s. 20(8) point, the Court of Appeal determined that Mr. Tyrell's evidence fell within the scope of alibi evidence and held that the evidence of Mr. Byrne was entitled to be admitted as rebuttal evidence of same.

The Determination

20. This Court granted leave to appeal to this Court pursuant to Article 34.5.3 of the Constitution – see *People (DPP) v. Bonney* [2026] IESCDET 28. The Determination notes that alibi evidence (defined by s. 20(8) of the 1984 Act) is of potential importance to many criminal trials, and that whether it applies only to whether the accused could not have committed the crime due to him or her being elsewhere or to other categories of absences, such as that of witnesses, needs to be decided. Leave was also granted,

inter alia, on the calling of evidence in rebuttal of defence testimony and on whether a point not raised in the trial could be raised on appeal.

Meaning and effect of Section 20 of the 1984 Act

21. As identified later in this judgment, I conclude that the Court of Appeal were correct in refusing to give the appellant leave to raise arguments on s.20(8) and on evidence in rebuttal, having regard to the principles identified in *Cronin* on the admission of appeal points not raised at trial. However, in the course of its judgment, the Court of Appeal expressed a view on the correct interpretation of the term “evidence in support of an alibi” under s.20(8). Leave having been given on the basis that the interpretation of s.20(8) was a matter of general public importance, I will proceed to consider same, along with the arguments on rebuttal evidence.

22. Section 20 puts in place a distinct procedure in trials on indictment in respect of alibi evidence. It requires the defence to give notice in advance of the evidence to be adduced and establishes a statutory framework for the giving of such notice.

23. Section 20(1) provides:

“On a trial on indictment for an offence committed after the commencement of this section the accused shall not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.”

24. Notice is required to be given considerably in advance of the trial, presumably to ensure the prosecution have sufficient time to investigate the alibi witness identified. Under s. 20(8), the prescribed period referred to in s. 20(1) is defined as being either 14 days from the end of the preliminary examination, 14 days from the waiver of the preliminary examination, 14 days from the defendant changing his plea to one of not guilty or,

where the matter is to be heard by a Special Criminal Court, such period as is fixed by the court from when the court fixes the date of trial.

25. This interpretation is reinforced by s. 20(2), which provides that the alibi evidence may not be called unless the accused has given the details of the name and address of the witness and, if not available, information that might be of material assistance in finding the witness. If the name and address are not included, the court should be satisfied that the accused has taken reasonable steps to secure the name or address and continues to take such steps. It further obliges the accused to provide the name, address and other information if they come to light, including information that may be of material assistance in finding the witness. This is clearly intended to assist in the identification of the person intended to be called, to allow investigation of that witness.

26. Section 20(4) addresses the timing of rebuttal evidence as follows:

"Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi."

27. Section. 20(8) defines “*evidence in support of an alibi*” within the meaning of s. 20(1) and its terms are set out below.

28. The appellant argues that the evidence of one of the two witnesses called on his behalf, Mr. Tyrell, was wrongfully treated as alibi evidence under s. 20(8), and that as a result, Mr. Byrne’s rebuttal evidence was incorrectly admitted. He contends that, contrary to what is envisaged by s. 20(8), Mr. Tyrell’s evidence identifying Mr. Willie Bonney as the driver of the getaway car at 14.45 on the day of the shooting was not evidence tending to show that by reason of the presence of the appellant at a place, the appellant was unlikely to have been at the place where the offence is alleged to have been

committed. He submits that the evidence of Mr. Tyrell has nothing to say at all about the location of the appellant at the relevant time.

29. The DPP, on the other hand, places significant emphasis on the words “*tending to show*”, arguing that it is enough if the evidence forms part of the factual narrative from which the conclusion can reasonably be drawn that the accused was at a particular place. The DPP argues that the statutory test extends to evidence making the accused's presence at the scene merely unlikely and not impossible and therefore Mr. Tyrell's testimony falls within the concept of alibi evidence or, at a minimum, evidence in support of an alibi because it tended to show that the prosecution had identified the wrong person at the crucial time and place. It is said that Mr. Tyrell's testimony was evidence in support of an alibi because, taken together with Ms. McGlynn's evidence, it tended to make it less likely that the appellant was the person driving the BMW at the locus in the manner alleged. It is argued that Mr. Tyrell's evidence should not be viewed in isolation simply because he did not say that he saw the appellant elsewhere - the material evidence was not merely evidence of the accused's non-presence, but evidence advanced as part of a concrete alternative narrative as to who was driving the vehicle at the material times.

30. To test these arguments, it is necessary to detail Mr. Tyrell's evidence. Neither an alibi notice nor a statement had been served in respect of Mr. Tyrell prior to him being called by the defence. Mr. Tyrell gave evidence to the effect identifying his address and that his wife Jacinta had given evidence to the court on 25 October 2022 identifying the CCTV footage from the camera of their house that showed the black BMW passing by at 14.48 shortly after the attack. Her evidence disclosed that Mr. Tyrell's own car could also be seen on the CCTV footage behind the black BMW as he pulled into the driveway of his house. Mr. Tyrell gave evidence that he was driving his car on that day, that he

recognised the jeep behind him and saw Willie Bonney driving it, whom he knew because he had had a legal dispute with him. He said he knew the jeep because Willie Bonney and the appellant had a boxing club in Donaghmede for the previous 10 years and he, Mr. Tyrell, had a leisure centre in Donaghmede. He said the jeep belonged to Willie and it would be in the club nearly every day of the week. In cross-examination, Mr. Tyrell reiterated that he had seen the jeep every day in the Trinity Sports and Leisure Club for the past 10 years and whenever he saw it, he saw Willie Bonney get in and out of it and that he had never seen the appellant use the jeep.

31. Returning now to s. 20(8), it defines “*evidence in support of an alibi*” as follows:

"evidence tending to show that by reason of the presence of the accused at a particular place or in particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission".

32. It is accepted by both parties to this appeal that s. 20 does not impose a penal obligation and therefore the interpretative approach applicable to penal statutes does not apply. Nonetheless, the appellant proposes that s. 20(8) ought to be strictly construed, arguing that s. 20(8) operates as a statutory derogation from the requirement of the general rule that advance notice is not required from the defence as to a factual defence. It is emphasised that, absent a specific statutory requirement, the burden remains throughout on the prosecution to prove its case beyond reasonable doubt and to negative any defence, and that s. 20 constitutes an exception to that general rule by imposing a notice requirement in relation to alibi evidence.

33. Further reliance is placed on the constitutional setting in which s. 20(8) operates, insofar as the provision ought to be construed against the backdrop of the constitutional

protections afforded to an accused, in particular the presumption of innocence, the right to silence, and the broader guarantee contained in Article 38 of trial in due course of law. Finally, the appellant contends that a strict approach to the construction of the statute derives directly from the phrasing of s. 20(8), in that if the Oireachtas had intended s. 20(8) to capture a broader category of evidence relied upon by the courts below (that is, evidence which positively places the accused at another particular place or area at the material time, and not extended to evidence which merely tends to suggest absence from the scene or which only acquires significance when read together with other defence evidence), it would have said so expressly.

34. The DPP argues that insofar as an argument is made for strict construction given the interference with constitutional rights represented by s.20, here any incursion on the right to a fair trial is balanced and fair. It argues that even allowing for a strict interpretation, the approach of the appellant is wrong. Moreover, it is noted that the appellant fails to refer to the balancing exercise in the legislation placed on the obligation to disclose alibi evidence, particularly the discretion of the trial judge regarding the calling of rebuttal evidence.

35. I agree that s. 20(8) ought to be interpreted strictly, given that it restricts the rights of the defence in placing an obligation upon it to notify the prosecution in advance of evidence to be tendered in support of an alibi. However, for the reasons I explain above whether s.20(8) is interpreted strictly or not, I am satisfied the result would be the same given the clarity of the wording and the absence of ambiguity.

36. If s. 20(8) simply covered evidence that tended to show that the accused was unlikely to be/was not at the place where the offence is alleged to have been committed at the relevant time, it would encompass a very wide range of evidence. For example, it might

encompass the evidence of Mr. Tyrell that Willie Bonney was driving the car at 14.48 as that might suggest the appellant was not in the car.

37. However, that is not what the section says. Rather it is concerned with evidence tending to show a person was unlikely to be/not at the place where the offence was committed *“by reason of the presence of the accused at a particular place at a particular time”* (my emphasis). In other words, it is concerned with geography – the evidence that Mr. X was in town A tends to show he was not in town B, the scene of the crime. In my view, it cannot encompass a situation where a person is treated as being not at, or unlikely to be at, the place of the crime simply because there is evidence suggesting he was not at the place of the crime, i.e. because Willie Bonney was in the car, the appellant was not in the car. The evidence must go beyond that and place the accused in a different place that makes it unlikely or impossible he was at the scene of the crime i.e. that the appellant was not in the car because he was with Ms. McGlynn in a different part of town. In other words, it is necessary that there be a positive identification of the accused in a place that is different to the scene of the crime and his location in that place makes it unlikely, or impossible, that he was at the scene of the crime.

38. That was the interpretation of an identical statutory provision adopted by the English Court of Appeal. In *R v. Johnson* [1995] 2 Cr App R1, the appellant was convicted of assaulting a man arising out of a violent disturbance in a nightclub. Counsel for the accused was informed about a witness, a Mr. O’Dea, who would say that Mr. Johnson had not been present in the club at all on the night of 21 April 1990, but he was unable to say where Mr. Johnson had been on the night. The question arose as to whether the evidence in question constituted alibi evidence thus necessitating a notice. The applicable section was s. 11 of the Criminal Justice Act 1967. It seems likely s. 20 was modelled on s. 11 given the similarity of the two sections. Sections 20(1) and (8) are

identical to their equivalents in s. 11. The Court of Appeal dealt with the issue as follows:

“In our judgment, evidence, whether from a defendant himself or from any other person, which goes no further than that the defendant was not present at the place when offence was committed is not "evidence in support of an alibi" within s. 11 (8) and thus within the remainder of the section. The clear words of subs. (8) evidence in support of an alibi have to be evidence that the defendant was at some other particular place, or in some other particular area. If, as we are told, there is any doubt about the proper interpretation of s. 11 (8), that doubt, we hope, can now be stilled".

- 39.** Accordingly, the court held that the trial judge was wrong to rule that an alibi notice was required. It is clear from this passage that the court took the same view of the wording that I take, i.e., that to come within the definition, it is necessary that evidence is given of the person's presence at a particular place that makes it unlikely or impossible that he was at the scene of the crime. At its simplest, the legislation requires evidence that a person was not at the relevant place because he was at a different place.
- 40.** The DPP argued that the wording "*tending to show*" at the start of the section meant that a more liberal approach could be taken, and that evidence from which it could be deduced that a person was not at a given location because of the presence of a different person at that location at the relevant time comes within the section. I cannot agree. The words "*tending to show*" are clearly subsidiary to the controlling part of the definition requiring evidence as to the presence of the person at a different place from where the offence was committed. The function of the words "*tending to show*" is to indicate that the evidence does not have to be conclusive. For example, it is not

necessary to show that a person was some 300km from the relevant place and therefore could not on any view have been at the relevant location of the crime. Rather, it is sufficient if the evidence as to the presence of the accused at that other place suggests or “*tends to show*” he could not have been at the scene of the crime at the relevant time.

41. When one considers the evidence of Mr. Tyrell, it implied that the appellant was not in the car at the relevant time because the car was being driven by another person. It had nothing to say about where the appellant was at the relevant time, or the likelihood that he was not in the car because he was in another location. (In fact, I have some doubts as to whether the evidence was as conclusive as the defence thought. The particulars of the offence were not that the appellant was driving the car at the relevant time but that he provided access to the car. Evidence putting Willie Bonney in the driver’s seat at the relevant time did not necessarily mean that the appellant was not in the car).

42. For that reason, despite the fact that the evidence, if accepted, was undoubtedly highly relevant to the charges laid against the appellant, it was not evidence in support of an alibi within the meaning of s. 20(8). In the circumstances, I cannot agree with the Court of Appeal's view that the evidence of Mr. Tyrell was within s. 20(8).

Evidence in rebuttal

43. Because I have indicated that the evidence of Mr. Tyrell was not evidence in support of an alibi, evidence could not be tendered to disprove it under s.20(4). However, that does not mean that Mr. Byrne’s evidence must be treated as being inadmissible. It will be remembered from the description of Days 50-52 that Mr. Byrne’s statement was produced in response to Ms. McGlynn’s alibi notice. I will consider the appellant’s argument that the SCC erred in allowing Mr. Byrne’s evidence to be given under s.20(4) after the defence closed its case by reference to the evidence of Ms. McGlynn only.

44. This argument is based on the appellant's interpretation of the principles governing rebuttal evidence identified in *O'Sullivan*. They may be summarised as follows: Mr. Byrne's evidence did not factually rebut Ms. McGlynn's evidence; Mr. Byrne's evidence did not go to Ms. McGlynn's credibility; Mr. Byrne's evidence ought to have been adduced as part of the prosecution case and it was unfair on the appellant to have his evidence adduced after the close of the defence case. Despite having Mr. Byrne's statement before Ms. McGlynn gave evidence, none of these points were raised during the trial and the SCC therefore had no opportunity to deal with them. I will address the consequences of this omission below.
45. It is useful at this point to briefly summarise the judgment in *O'Sullivan*. The factual background of that case was that the appellant was charged with a burglary said to have occurred in Cork in June 2014. At the trial, after the prosecution case had closed and after the appellant had given evidence in support of that alibi, the prosecution sought leave to call a rebuttal witness. The defence objected on the basis that certain material capable of undermining the alibi account had not been disclosed or notified in advance, but the trial judge permitted the evidence, and the appellant was convicted.
46. On appeal, the Court of Appeal rejected the complaint, reasoning in substance that there was no obligation to warn an accused in advance of weaknesses in his alibi, particularly where the proposed rebuttal material went only to credibility. It also considered that any issue regarding the prejudicial effect of the evidence was met by the proposition that the appellant had, in effect, "*dropped his shield*".
47. However, the Supreme Court rejected that analysis. O'Malley J. held that the Court of Appeal had mischaracterised the nature of the rebuttal evidence. In her view, the alibi evidence ought not to be characterised as collateral material going to credit in the strict

evidential sense but, rather, it was evidence directed to a substantive disputed fact in the trial. Such evidence, which purported to place the appellant near the scene of the offence at a material time, went to proof of a substantive issue in the case.

48. O'Malley J accepted that there may be cases where material concerns only the credibility of defence witnesses and where the prosecution is not obliged to assist the defence in assessing the reliability of its own witnesses. However, this principle did not extend to evidence which, though it may also damage credibility, in substance proves or tends to prove a fact in issue.

49. The Court also considered the significance of s. 20(4) of the 1984 Act. O'Malley J. held that this provision does not give the prosecution unrestricted latitude in how it handles rebuttal evidence. On the contrary, the trial judge's "*discretion conferred by s. 20(4) must be exercised judicially, and the issue is one on which the defence must be entitled to be heard.*" That entitlement would be hollow unless the defence had sufficient notice of the proposed evidence to decide how to respond, whether further investigation was required, whether an adjournment should be sought, and indeed whether the accused should persist in a plea of not guilty at all.

50. The appellant contends the DPP was on notice that Ms. McGlynn's evidence sought to identify Willie Bonney as the driver of the black BMW, making Mr. Byrne's evidence that Willie Bonney had been at home an integral part of the prosecution's case, meaning it ought not to have been adduced after the defence case closed. He relies on the following extract from *O'Sullivan* at para. 89:

"It seems to me to be likely that the primary consideration in exercising that discretion must be whether the evidence should properly be seen as part of the prosecution case. It will, I think, be categorised as such if it tends to positively

support the prosecution rather than simply undermining the defence. Thus, factual evidence that bolsters the facts contended for by the prosecution should be adduced in the prosecution case...”

51. It is submitted that the Court of Appeal erred in distinguishing the present case from *O’Sullivan* in holding that the evidence of Mr. Byrne “*tended to undermine to a significant extent the credibility of the account being advanced by both Julie McGlynn and Peter Tyrell*”. The correct test is contended to be whether Mr. Byrne’s evidence tended to positively support the prosecution case rather than simply undermining the defence.

52. The appellant also cites *O’Sullivan* as authority for the proposition that the prosecution can generally only call rebuttal evidence if something arises from the defence case that could not have been reasonably foreseen. Emphasis is placed on para. 69 of the judgment, where O’Malley J. noted that:

“According to Phipson on Evidence, 16th Ed., (London, 2025) the prosecution are expected to react reasonably to pre-trial warnings of matters likely to be raised. The authors suggest that if a matter is raised in a defence statement the prosecution are unlikely to be permitted to call evidence in rebuttal.”

53. Should such a standard be applied, the appellant submits that as Ms. McGlynn’s evidence was that Willie Bonney had been driving the black BMW, and this was known in advance, it necessarily follows that Mr. Byrne’s evidence could not have been called in rebuttal of Ms. McGlynn’s evidence.

54. In respect of the rebuttal evidence, the DPP submits that the Court of Appeal did not err in drawing a distinction between the present case and *O’Sullivan* on its facts. It is submitted that Ms. McGlynn was called to give evidence after the defence received the

statement of Mr. Byrne, and no objection was taken. Moreover, the location of Willie Bonney formed no part of the prosecution case, and therefore the DPP was entitled to call rebuttal evidence in respect of that issue, as opposed to making such evidence part of the prosecution case. The DPP cites *People (DPP) v. Cahill* [2001] 3 IR 494 in support of this argument, wherein the Court of Criminal Appeal quashed a conviction where the prosecution applied to have rebuttal evidence called as part of the prosecution case prior to an application to adduce alibi evidence, despite notice of alibi evidence having been served.

55. In short, the DPP maintains that the SCC exercised appropriate discretion in allowing Mr. Byrne to be called as a rebuttal witness pursuant to s. 20(4) of the 1984 Act.

Evidence of Ms. McGlynn and Mr. Byrne

56. To analyse this argument, it is necessary to recall the relevant evidence of Ms. McGlynn and Mr. Byrne. An alibi notice had been served in respect of Ms. McGlynn. The particulars of the alibi were set out on the notice as follows:

“On the 5th February 2016, the accused’s father arrived at Ms. McGlynn’s mother’s house at [] Newbrook Avenue around 11:00 AM, and that the accused arrived 20 minutes later. They left together shortly afterwards and the accused went across the road to [] Newbrook Ave, while his father drove off in a black BMW X5 Jeep. Ms. McGlynn next saw the accused at [] Newbrook Avenue shortly after 2:40 PM when she asked him to move a truck from in front of her mother’s house.”

57. Ms. McGlynn gave a statement to An Garda Síochána in December 2022 which essentially covered the same ground.

58. In her direct evidence on Day 50, she gave evidence to the same effect, although with additional particulars. Ms. McGlynn said that the appellant was renovating the house at [] Newbrook Ave. and that on the morning of the Regency Hotel shooting, Willie Bonney came to her house. Willie Bonney had asked to use Ms. McGlynn's bathroom, noting that he was in the area to retrieve his jeep. Ms. McGlynn said the appellant later arrived at her house. When both the appellant and his father left at around 11.30, Ms. McGlynn recounted Willie Bonney entering the jeep, which she testified to looking like the black BMW in question, and driving away. Later that day, Ms. McGlynn left her house to collect her children around 14.35 and returned to her mother's house at approximately 14.45-14.50. She stated that the driveway was blocked by a truck parked outside the house that she knew was owned by the appellant. Ms. McGlynn went to the appellant's house down the street and asked for him. The appellant came out of the house and moved the truck. Ms. McGlynn indicated that she then went inside her mother's house and saw no one else for the rest of the day.

59. In cross-examination, she said that Willie Bonney drove the jeep more than the appellant, that she saw Willie Bonney driving it around Donaghmede or he would be dropped up to the complex or the Donaghmede Inn in the jeep at times. It was pointed out to her that in her statement, she had not said that Willie Bonney drove the jeep, and that she had made the point that Willie Bonney was coming to get the jeep back because the appellant had kept the jeep. She indicated she had no recollection of the car in which Willie Bonney had arrived and did not see any other car except the black BMW. It was put to Ms. McGlynn that one of the things that Willie Bonney was doing on 5 February 2016 was having lunch with his family and his daughter and son in law over the course of 4 hours and that he never drove off on 5 February in the appellant's jeep and that her

evidence in that regard was not true. She disagreed with the latter proposition and maintained that he was in her house between 11 and 11.30 as per her evidence.

60. In rebuttal, the prosecution called Mr. Byrne. On the day of the attack, Mr. Byrne testified that he and his wife Sharon visited Willie and Greta Bonney in their home, arriving about 12pm. Mr. Byrne stated that Willie and Greta Bonney had a black Lexus. Mr. Byrne indicated that this was the only jeep that Willie Bonney owned and had driven in the last 10 years. Mr. Byrne recalled that he and Sharon did not leave the home until approximately 4pm, several hours after the events at the Regency Hotel had unfolded, and Willie and Greta Bonney did not leave the house during that time. Mr. Byrne indicated that he did not have a relationship with the appellant and that the appellant had distanced himself from the family since 2013, following a family dispute. At the time of trial, both Willie and Greta Bonney were deceased.

Discussion

61. In respect of the argument that Mr. Byrne's evidence did not counter the evidence of Ms. McGlynn and/or did not go to her credibility, thus breaching the principles identified in *O'Sullivan*, and rendering his evidence inadmissible as rebuttal evidence, it is certainly true that the evidence of Mr. Byrne more obviously counters that of Mr. Tyrell. But it also counters that of Ms. McGlynn. She gave evidence that at some time around 11.30 Willie Bonney got into the black BMW and drove off. Mr. Byrne's evidence on the other hand made it much less likely that this was the case as he said that Willie Bonney was at his own house from 12 o'clock onwards, that Willie Bonney always drove a Lexus black jeep, and that he had never seen him driving the BMW jeep. That evidence both countered the evidence of Ms. McGlynn and potentially

undermined her credibility by showing her to be unreliable in her account of Willie's driving habits.

62. Turning to the point that Mr. Byrne's evidence ought to have been part of the prosecution case, as opposed to being introduced after the defence evidence, I am unpersuaded by a fairness argument in circumstances where the defence were provided with the statement of Mr. Byrne the day before he gave evidence and had sufficient time to consider it. Having done so, no objection was taken to him giving rebuttal evidence, and no argument made that the defence were taken by surprise or disadvantaged. Equally, no objection was taken when counsel indicated at the close of the prosecution case that rebuttal evidence would be given on behalf of the DPP after the defence case, in circumstances where the defence had served an alibi notice. Where an alibi notice is served, the usual – although not inevitable – course is for the rebuttal evidence to be given after the defence calls the witness giving alibi evidence. There was nothing unusual about the placing of it after the defence case had closed.

63. Moreover, the impact of a case closing with prosecution rather than defence evidence – and the corresponding risk of unfairness to the accused - is considerably lessened when a case is being tried by the SCC rather than a jury. As acknowledged in *O'Sullivan*, a jury may be influenced by prosecution evidence closing the case. No such concerns arose here given the composition of the SCC i.e. three experienced judges from the District Court, the Circuit Court and the High Court respectively.

64. As for the argument that the evidence of Mr. Byrne ought to have been introduced as part of the prosecution case, and was not true rebuttal evidence, given that it was foreseeable that an argument would be made that someone else would be driving the car, I am unpersuaded by that argument. Mr. Byrne's evidence was obviously only

adduced in response to the alibi notice, and oral evidence of, Ms. McGlynn. It was not a core part of the prosecution case. That case did not encompass the activities of Willie Bonney and his whereabouts on the day of the murder, or the type of car he drove. It was limited to the movements of the appellant. The evidence given by Mr. Byrne as to the whereabouts of Willie Bonney on the day of the murder, and evidence relating to the type of car Willie drove, only became relevant because of the evidence introduced by Ms. McGlynn. Mr. Byrne's evidence would not have been required by the prosecution absent the evidence given by Ms. McGlynn. It was therefore properly rebuttal evidence in response to alibi evidence, and therefore no error of law arose in permitting it to be adduced after the defence closed its case.

65. In summary, Mr. Byrne's evidence was properly characterised as rebuttal evidence in response to Ms. McGlynn and was properly before the SCC as legitimate rebuttal evidence to admitted alibi evidence.

Effect of raising point on appeal for the first time

66. As identified earlier, neither the argument based on s.20(8) nor the argument about the placing of Mr. Byrne's rebuttal evidence were raised before the SCC. The Court of Appeal accordingly refused to permit those arguments to be made. The principal argument made by the appellant to undermine the Court of Appeal's conclusion is that the principle in *Cronin* ought not prevent a point from being raised where it goes to the essential justice of the case, and that in this case justice requires the points to be determined.

67. However, he also argues that the *Cronin* threshold is "lower" in circumstances where an issue was at least raised before the trial judge, even if the issue was not ultimately pressed, citing *People (DPP) v. Connorton* [2023] IESC 19 and *People (DPP) v.*

Shahzad Hussain [2014] IECCA 26. The appellant contends that counsel desisted on the alibi evidence issue after the SCC determined that Mr. Tyrell was indeed an alibi witness and indicated it was disinclined to further consider the matter.

68. Separately, he argues that, in asserting that counsel for the defence ought to have “*pressed for a ruling if only to preserve the possibility of revisiting the issue on appeal before this Court at a later stage*” (at para. 174), the Court of Appeal was directing an unnecessary exercise to uphold “*a rigid interpretation of Cronin that is not required by the authorities cited*”.

69. The DPP maintains that it was open to the appellant to seek a ruling on whether Mr. Tyrell’s evidence constituted alibi evidence, which the appellant failed to do. The SCC indicated that it would allow ample time for the appellant to consider Mr. Byrne’s statement, which the appellant did not avail of. Further, it is contended that the Court of Appeal dealt with the *Cronin* issue comprehensively. The Court of Appeal upheld the *Cronin* objection following a crucial assessment of whether to dismiss the argument would amount to a flagrant denial of justice. The DPP submits that the Court of Appeal made no error in finding that no flagrant denial of justice arose and accordingly that the appellant’s arguments failed on a procedural basis.

Court of Appeal

70. The Court of Appeal, considering the decision in *Cronin*, acknowledged that none of the issues raised on appeal had been voiced during the trial. It highlighted multiple occasions where the appellant had the opportunity to express issue with the rebuttal evidence during the trial and did not do so, particularly when the matter was raised by the presiding trial judge. In respect of the argument that counsel had been discouraged from raising the issue of whether Mr. Tyrell’s evidence came within s. 20(8) because of

the court's intervention – a hypothesis for which I note no evidence was advanced - the Court of Appeal indicated as follows at para. 174:

“An indication by the bench, or a member of the bench, as to a preliminary view on a legal issue, or as to a matter of fact, or as to mixed question of law and fact, may sometimes arise in a criminal trial. However, it will rarely represent an actual pre-judgment, rather in truth it will constitute an implicit invitation to a party or the parties to engage with the court if necessary and seek to persuade it of the opposite view, should there be disagreement with the preliminary view expressed and a desire to contest it.”

71. In such circumstances, the Court of Appeal held that the appellant ought to have raised a formal objection to the rebuttal evidence and sought a ruling on whether Mr. Tyrell's testimony constituted alibi evidence for the purposes of the 1984 Act. To test whether refusing to entertain this aspect of the appeal would result in a flagrant denial of justice, the Court of Appeal engaged with the substantive issues at hand and concluded that no injustice would result in adopting that course of action, given its evaluation of the points raised by the appellant.

Discussion

72. The principles set out in *Cronin* and related cases are well established and it is not proposed to rehearse them again. In substance, there must be an error or oversight of substance sufficient to ground an apprehension that a real injustice has occurred before a court should allow points not taken at trial to be argued on appeal. Further, there must be some sort of explanation tendered to explain why the point was not taken. A recent application of those principles by the Supreme Court may be seen in the judgment of

O'Malley J. in *The People (DPP) v. Limen* [2021] IESC 8, [2021] 2 IR 546 at para. 54 as follows:

“Counsel who have acted for the appellant in the Court of Appeal and in this Court have at no stage suggested that the defence was conducted incompetently, or that counsel had made a mistake, or that there had been any significant oversight on his part. It seems to me that, in truth, much of the case now made simply reflects a different view as to how the case could or should have been run, combined with an assertion that the trial was fundamentally unsatisfactory because the issues were not seen by the trial judge in the light of that different view. But the fact is that no two counsel would run a trial in an identical manner, and it is often the case that counsel can envisage different approaches, equally valid as defence strategies, that give rise to choices having to be made as to the conduct of the trial. It is appropriate to apply the principles in Cronin in such circumstances, unless the Court considers that a fundamental injustice has occurred. Therefore, I would not accept that it is now open to the appellant to maintain that the question of collusion, or mutual innocent contamination, lay at the heart of the case and was not adequately dealt with by the trial judge. In these circumstances, this issue does not require to be considered further.”

73. In applying the *Cronin* principles, a court will consider whether the new point sought to be made could have been raised and, if so, why it was not raised. The explanation for the omission is relevant. If a good reason is given for the omission, that may favour admission of the point. Conversely, if no explanation is offered – as in the instant case - that might tilt the balance against admission of the point. If there is obvious bad faith, i.e. withholding a point for tactical reasons, that is likely to weigh against introduction of the point. If the point was missed because of inadvertence, error or incompetence,

that might also weigh against introduction. A court will often look not just at why the argument was originally omitted but also at the circumstances in which it was decided to raise it on appeal, including a change of legal team, the late introduction of a ground of appeal and whether a new legal team have attempted to explain the original omission.

Consequences of excluding a point not raised at trial

74. As observed by O'Malley J. in *People (DPP) v. Forsey* [2019] 2 IR 417, *Cronin* does not require or permit the court to overlook a fundamental error of law (para. 150), or to prevent a point being raised where the interests of justice so require it. Sometimes, the analysis will require a consideration of the consequences on omission by reference to what would have happened had the point been raised and determined – see for example the dissenting judgment of MacMenamin J. in *Forsey*, where he indicated he would not have allowed the new argument to be introduced on appeal as it would have made no difference to the outcome of the trial had it been introduced at that stage.

Partial raising of the appeal grounds

75. Turning now to the application of these principles to the present appeal, the first question is whether there was in fact a raising of the alibi issue by the defence at the trial, such that it should not be treated as an entirely new point. The appellant argues that *Cronin* may be afforded less weight when a point has been at least raised at trial, with reliance being placed *inter alia* upon *Hussain* in this respect. In *Hussain*, an issue with the judge's charge had been identified and a recharge had been sought. Clarke J. observed that somewhat less weight needs to be attached to a failure to persist in the point once raised, in comparison with a point not raised at all, while pointing out the duty on counsel to persist with a point they consider has not been adequately dealt with by a trial judge.

76. It is contended by the appellant that because of an exchange between Burns J. and counsel for the accused, the SCC clearly determined that the evidence proposed was alibi evidence and that, in substance, counsel was told that any attempt to take the point further would be fruitless. It is further argued that in the circumstances it cannot be inferred that counsel thought his point to be an inherently weak one. The exchange was in the following terms:

“MS JUSTICE BURNS: Well, can I ask a question, Mr Fitzgerald, is the evidence that we’ve heard contained in a statement from Mr Tyrell?

MR FITZGERALD: One that he gave to us, but not that he ever gave to gardai.

MS JUSTICE BURNS: I see, because perhaps my hearing has faltered, but I’ve just heard him give evidence that Mr Willie Bonney was in the car behind him. Now, that would seem to me to fall within the terms of the Act. But you know what, I’m not going to get into a dispute about this.

MR FITZGERALD: Well, I say it doesn’t, Judge.

MS JUSTICE BURNS: Well, that’s very nice of you. Mr Gillane has indicated that he’s not going to stand on ceremony, so I don’t expect you either to stand on ceremony.

MR FITZGERALD: Very well.

MS JUSTICE BURNS: But that said, I would have expected it to form part of the alibi notice. So, Mr Gillane, when you’re ready for us –”

77. In determining these arguments, it must be remembered that, because an entirely new legal team were retained after the trial, there is no evidence before us as to what counsel retained at the trial was in fact thinking, or why he proceeded in the way he did. The

inferences we are asked to draw are based on a hypothesis as to what counsel must have been thinking.

78. The Court of Appeal held that the trial court had merely expressed a provisional view that remained capable of being contested. I fully agree with that analysis. But I wish to delve somewhat deeper into the theory now being raised that counsel was put off raising the issues they would otherwise have raised by reason of the approach of the SCC. It is undoubtedly correct that in the context of a discussion as to whether an alibi notice was required for Mr. Tyrell's evidence, counsel for the appellant made it clear that he did not consider Mr. Tyrell to be an alibi witness and therefore no notice was required. In the context of deciding on the point about whether an alibi notice was required – and in no other context – Burns J., while making it clear she was not going to require an alibi notice, observed that she would have expected it to form part of the alibi notice. Taking the appellant's case at its highest, that exchange demonstrated that the judge was treating Mr. Tyrell's evidence as alibi evidence without any argument on the issue or any requirement to give a ruling on the issue in circumstances where the prosecution was not insisting on an alibi notice.

79. Counsel could have at this point objected to the introduction of Mr. Byrne's evidence on the basis that Mr. Tyrell was not giving alibi evidence, or indeed on the following morning (Day 51), before Mr. Byrne gave his evidence. After all, the defence team had already received the statement of Mr. Byrne at this point and knew the content of same. No such objection was taken.

80. In the circumstances, I am satisfied that the hypothesis advanced as to counsel's state of mind is entirely unconvincing. No ruling had been given on whether Mr. Byrne's rebuttal evidence was admissible because that issue had not been raised. A brief

discussion had taken place as to whether an alibi notice was acquired. Because of the flexible attitude of the DPP, that issue did not require to be decided. No ruling of any sort was delivered. The transcript simply does not support the entirely speculative hypothesis that counsel was put off seeking a ruling on the admissibility of evidence because of the brief exchange about the necessity for an alibi notice.

81. Separately, I wish to address the argument at para. 141 of the submissions of the appellant to the effect that the Court of Appeal was setting an artificial and wasteful exercise requiring the appellant to press for a ruling to preserve the possibility of revisiting the issue on appeal. This argument demonstrates a lack of understanding on the part of the appellant and his legal team of the trial process. The point of the approach identified in *Cronin* is to ensure that parties are reinforced in their obligation to raise points before the trial judge and obtain a ruling on same. That is not either artificial or wasteful – it is the essence of the trial process. It allows any objections, whether when the jury is being directed, or earlier, as in the instant case, to be raised and determined by the trial court. The Court of Appeal was entirely correct to remind the appellant and his legal team of their obligations in this regard.

82. In conclusion, there is no basis for considering the *Cronin* threshold should be applied differently on the basis that there was a partial raising of the issue at the trial. The issue now being raised on appeal, i.e., whether Mr. Byrne was entitled to give rebuttal evidence, was not partially raised at the trial. The Court of Appeal was quite correct in its approach.

Application of Cronin principles to instant case

83. As identified earlier, the new argument sought to be raised is that Mr. Byrne’s evidence ought not to have been admitted because (a) Mr. Tyrell was not giving evidence in

support of an alibi and (b) the evidence Mr. Byrne gave in response to Ms. McGlynn's evidence was not evidence in rebuttal. No reason was given for the failure to raise those points save for that which I have rejected above i.e. that it was partially raised. Moreover, the nature of the issue i.e. the alleged error of the SCC in allowing a witness to give evidence, is one that required resolution at the trial. To allow matters to proceed without demur and then seek to complain on appeal that the trial was unfair undermined the SCC's ability to address and, if necessary, remedy the issue when it arose. To take this approach in the context of a 53-day trial, without any reason given for the failure to raise the point, makes the application even more unmeritorious. The only basis upon which the argument could be raised is if the interests of justice require such leave.

84. As identified above, I am persuaded that the appellant is correct in his argument that Mr. Tyrell's evidence was not evidence in support of an alibi within the meaning of s. 20(8). Nonetheless I do not believe that it would occasion a real injustice to refuse him liberty to advance this ground of appeal for two reasons. First, as identified above, Mr. Byrne's evidence was in any case correctly admitted as rebuttal evidence to that of Ms. McGlynn. Second, as set out below, even absent Mr. Byrne's evidence, the SCC were independently satisfied of the guilt of the appellant and roundly rejected the evidence of both Ms. McGlynn and Mr. Tyrell.

85. The decision of the SCC makes it clear that the conviction did not depend on Mr. Byrne's evidence. The SCC identified a circumstantial case which, taken as a whole, was considered to establish guilt quite independently of any dispute concerning the alibi. The circumstances relied upon by the court in reaching that conclusion include the movements captured on CCTV (from Bella Street through the convoy, to the GAA club, and thereafter to the escape route) the identification and continuity of the vehicle, the timing and sequencing of events, and the pattern of coordinated activity consistent

with a planned operation. Even absent Mr. Byrne’s evidence, the SCC had obvious concerns about the credibility of Ms. McGlynn and Mr. Tyrell. It subjected Ms. McGlynn’s evidence to a rigorous credibility assessment, ultimately rejecting it as unreliable and internally inconsistent. The court expressly approached her testimony “*with scepticism*,” (p. 36, line 29) grounding that stance in a combination of structural credibility concerns, evidential contradictions, and broader contextual factors bearing on motive and reliability.

86. At the outset, the court identified features of Ms. McGlynn’s relationship with the accused (p. 32, lines 11—13: “*She knows Jason Bonney for over 30 years and while they drifted apart for a period, after the Regency attack they became very friendly again.*”) and potential personal interest which diminished the independence of her testimony. Of particular note was her application for planning permission in respect of land owned by the appellant, coupled with the absence of any clear evidence as to the terms of any proposed purchase (p. 36, lines 30—31: “*she applied for planning permission for a plot of land owned by Jason Bonney for the purpose of building a house for herself.*”) These vested personal interests went directly to her credibility, positioning her as someone with a possible material incentive to assist the appellant’s defence.

87. A central pillar of the court’s reasoning lay in its criticism of the timing and manner of the disclosure of her evidence. The court found it “*bizarre*” and highly implausible that Ms. McGlynn, who claimed to possess “*vital exonerating information*”, failed to disclose it to An Garda Síochána, to legal representatives, or indeed to anyone, despite the appellant having been charged as early as April 2021 and despite her acknowledged close and regular contact with him (p. 36, line 34—p. 37 line 5). Her silence persisted until she was approached by the appellant’s solicitor after the trial had commenced. The

court attached significance to what it characterised as the late emergence of certain elements of the defence case (p. 36, line 34—p. 37, line 5: *“Furthermore, it seems a bizarre situation that she had this vital exonerating information to give regarding her close friend, Jason Bonney, whose house she regularly visits, yet she did nothing about it until she was approached by his solicitor, after this trial, with all the attendant publicity, had started. It seems even more bizarre that Jason Bonney would have left bringing this vital witness to the attention of his solicitor until the 11th hour.”*

- 88.** The SCC also found a conflict between Ms. McGlynn’s narrative and the objective CCTV evidence. Ms. McGlynn’s timeline placed the appellant and his father departing her mother’s house at approximately 11.30, yet the CCTV evidence (which the defence accepted) showed the BMW X5 only leaving Drumnigh Woods at 11.38 and not reaching key subsequent locations until later times. (p. 37, lines 7—20).
- 89.** Further inconsistencies arose in relation to her assertions about Willie Bonney’s use of the BMW X5. Ms. McGlynn claimed to have frequently seen him driving the vehicle; however, this was contradicted by the appellant’s statement to the Gardaí that he had exclusive use of the jeep since 2009, as well as Mr. Byrne’s evidence.
- 90.** The SCC observed that the narrative advanced by Ms. McGlynn (and Mr. Tyrell) had the effect of implicating Willie Bonney (now deceased) in serious criminal conduct. It described this as a *“malevolent”* development and stated that it was *“amazing”* anyone thought such an account would be accepted (p. 39, lines 24—27). However, the court was careful to emphasise that it did not rely on any finding that the witnesses had lied; instead, it confined itself to rejecting their evidence on grounds of credibility, inconsistency, and lack of reliability (p. 39, lines 28—29).

91. The SCC was also sceptical of the evidence of Mr. Tyrell, ultimately rejecting it as unreliable, implausible, and inconsistent with the more cogent body of objective and testimonial evidence. At the outset, the SCC expressed scepticism toward Mr. Tyrell's conduct in relation to the CCTV evidence, particularly the manner in which he chose to engage with it. Rather than approaching An Garda Síochána, who had originally obtained the footage from his wife and with whom he had already interacted in connection with his wife's evidence, Mr. Tyrell instead contacted the appellant's solicitor directly in order to view the footage (p. 35, lines 21—24). The court regarded this as “*bizarre*” and procedurally anomalous, especially in circumstances where he had recently been privy to police engagement regarding the same material (p. 37, lines 22—26). Compounding this concern was the fact that Mr. Tyrell provided no satisfactory explanation as to how he identified or contacted the appellant's legal representatives, a detail which the SCC highlighted as a further irregularity (p. 37, lines 22—26).

92. The SCC also attached significant importance to Mr. Tyrell's failure to disclose his account at an earlier and more natural point in time. Despite having had an opportunity to speak with Gardaí—indeed, having been present during discussions concerning his wife's evidence—he did not mention his alleged recognition of Willie Bonney driving the BMW X5 (p. 35, lines 24—27). As with Ms. McGlynn, the court treated this delay as a factor undermining credibility. The SCC also pointed out that Mr. Tyrell asserted that he recognised Willie Bonney driving the BMW X5 and that he associated the vehicle with him from regular observation. However, this assertion was contradicted by the appellant's own evidence that he had exclusive use of the vehicle since 2009, as well as the testimony of Mr. Byrne. Importantly, the SCC specifically identified that the concerns it had about the evidence of Ms. McGlynn and Mr. Tyrell were “separate to the direct conflict between each of these witnesses and Paul Byrne” (p.37, lines 33-34).

93. In short, the circumstantial evidence existed as a self-sustaining and internally coherent body of proof; and the alibi evidence, even absent the testimony of Mr. Byrne, was disbelieved for the reasons set out above.

Conclusion

94. The appellant sought to argue before the Court of Appeal that evidence given by the prosecution witness, Mr. Byrne, after the close of the defence case ought not to have been admitted. He contended that (a) Mr. Tyrell's evidence was not “*evidence in support of an alibi*” within the meaning of s.20(8), and (b) Mr. Byrne's evidence was not properly admissible as rebuttal evidence to Ms. McGlynn. Those arguments had not been raised before the SCC. The Court of Appeal's refusal, applying the *Cronin* principles, to permit those arguments to be raised on appeal is upheld.

95. The contention that the alibi evidence point had been partially raised cannot be accepted having regard to the nature of the exchange between counsel and the court. No other reason was given for the failure to raise those points at the trial. Moreover, the nature of the issue i.e. the alleged error of the SCC in allowing a witness to give evidence, is one that required resolution at the trial. To allow matters to proceed without demur and then seek to complain on appeal that the trial was unfair undermined the SCC's ability to address and, if necessary, remedy the issue when it arose. The arguments could therefore only be raised for the first time on appeal if the interests of justice warranted leave. Here, the interests of justice do not so require.

96. This Court has considered the interpretation of s.20(8) because of the general public importance of that issue. Section 20(8) applies to evidence tending to show a person was unlikely to be present or otherwise not at the place where the offence was

committed “*by reason of the presence of the accused at a particular place at a particular time*”. It is concerned with geography – the evidence that Mr. X was in town A tends to show he was not in town B, the scene of the crime. It is necessary that there be a positive identification of the accused in a place that is different to the scene of the crime such that his location in that place makes it unlikely, or impossible, that he was at the scene of the crime. In short, the legislation requires evidence that a person was not at the relevant place because he was in fact at a different place.

97. As Mr. Tyrell’s evidence was limited to the whereabouts of Mr. Willie Bonney and did not touch on the whereabouts of the appellant, it ought not to have been treated as evidence in support of an alibi within the meaning of s.20(8).

98. Nonetheless, although this finding means that Mr. Byrne’s evidence in response to Mr. Tyrell ought not to have been introduced, refusal of leave to raise that issue on appeal causes no injustice to the appellant. Mr. Byrne’s evidence was, in any event, properly admissible as rebuttal evidence to Ms. McGlynn’s evidence, contrary to the submissions of the appellant. It was adduced in response to the alibi notice, and oral evidence, of Ms. McGlynn. No unfairness was occasioned in permitting it to be given after the defence evidence. That is usual where an alibi notice is served. Moreover, the defence had the written statement of Mr. Byrne in advance of his evidence. No objection was taken to the proposal that he would give rebuttal evidence after the defence case.

99. Further, even absent Mr. Byrne’s evidence, the SCC were independently satisfied of the guilt of the appellant and roundly rejected the evidence of both Ms. McGlynn and Mr. Tyrell. In short, had the point on alibi evidence been raised and determined in the appellant’s favour, it would have made no difference to the outcome of the trial.

100. In those circumstances, I dismiss the appeal and affirm the order of the Court of Appeal.