



**INQUIRY PURSUANT TO THE DUBLIN POLICE ACT 1924
AS AMENDED BY THE POLICE FORCES AMALGAMATION ACT 1925**

SUMMARY OF THE REPORT OF MR HUGH HARTNETT S.C.

PREPARED BY THE DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

MARCH 2008

The Rossiter Inquiry

Summary of report

This summary of the report of the Inquiry into the circumstances surrounding the death of Brian Rossiter has been prepared by the Department of Justice, Equality and Law Reform after consultation with the Attorney General. The summary starts off with an executive summary of the findings of the Inquiry, and is then divided into three parts. Part 1 deals with the establishment of the Inquiry and what it was asked to examine. Part 2 sets out a chronicle, based on the evidence heard by the Inquiry, of the events leading up to and surrounding Brian Rossiter's death. Part 3 sets out the conclusions of the inquiry in full based on the evidence before it.

Executive Summary of Inquiry's Findings

The Inquiry was directed to enquire in relation to there being a violation or neglect of duty by named members of the Garda Síochána in respect of the following issues. The issues are set out in bold type, with the relevant finding beneath in each case.

(1) That the arrest of Brian Rossiter of 11 Mount Prospect, Clonard, County Wexford in Clonmel on the 10th day of September 2002 was unlawful.

The Inquiry is satisfied that the arrest was not unlawful.

(2) That the said Brian Rossiter was unlawfully assaulted during the course of his arrest and detention

The Inquiry is not satisfied that Brian Rossiter was assaulted in the course of arrest or when he was in custody.

(3) That the Criminal Justice Act, 1984, (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 (S.I. No. 119/1987) were infringed in relation to the detention of the said Brian Rossiter.

The Inquiry finds that there was a failure to accurately record the times at which Brian Rossiter was given information pursuant to Article 8(1) of the Custody Regulations [relating to the reason for arrest, the right to consult a solicitor and, in respect of a young person, the notification of parents] and the Notice of Rights.

It also finds that the contact made with Brian Rossiter's mother by phone during his detention should have been recorded in the custody record and failure to do so was a breach of Regulation 23 of the Custody Regulations. The Inquiry is of the view, however, that this breach must be seen in the light of the fact that Brian Rossiter's father was

present during this telephone call and that his arrival and departure from the Garda station was recorded.

(4) That the detention in Clonmel Garda Station of the said Brian Rossiter was unlawful.

The Inquiry is of the view that the detention of Brian Rossiter was unlawful.

(5) That ambulance personnel, medical personnel and / or Dr Marie Cassidy were wrongfully given incorrect information concerning the consumption of alcohol and drugs by the said Brian Rossiter.

The Inquiry sees no evidence proving that there was an attempt made to mislead medical personnel wrongfully with incorrect information.

(6) That all the circumstances of the death of the said Brian Rossiter were not fully investigated and all witnesses were not interviewed.

The Inquiry finds that there was a failure to investigate all the circumstances surrounding the death of Brian Rossiter.

Part 1 - Establishment of the inquiry

On 14 September 2005 the Minister for Justice, Equality and Law Reform, Mr Michael McDowell TD nominated Mr Hugh Hartnett SC, pursuant to Section 12 of the Dublin Police Act 1924 as amended, to hold an inquiry and examine on oath into the truth of any or all of named members of the Garda Síochána being in violation or neglect of duty in relation to certain specific aspects of the arrest, detention and treatment of Brian Rossiter on the 10th and 11th of September 2002 and the subsequent investigation into his death.

The specific aspects to be inquired into were:

- (1) That the arrest of Brian Rossiter of 11 Mount Prospect, Clonard, County Wexford in Clonmel on the 10th day of September 2002 was unlawful;
- (2) That the said Brian Rossiter was unlawfully assaulted during the course of his arrest and detention;
- (3) That the Criminal Justice Act 1984, (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119/1987) were infringed in relation to the detention of the said Brian Rossiter;
- (4) That the detention in Clonmel Garda Station of the said Brian Rossiter was unlawful;
- (5) That ambulance personnel, medical personnel and / or Dr Marie Cassidy were wrongfully given incorrect information concerning the consumption of alcohol and drugs by the said Brian Rossiter;
- (6) That all the circumstances of the death of the said Brian Rossiter were not fully investigated and all witnesses were not interviewed.

The named members of the Garda Síochána were:

Retired Superintendent Richard Burke¹

Garda Gerard Canty

Garda Anne-Marie Coogan

Garda Anthony Flynn

Garda Pádraig Frawley

Garda Pádraic Jennings

Detective Garda Daniel Quinlan

Mr Hartnett was asked to report to the Minister with his findings and conclusions. He submitted his report to the Minister for Justice, Equality and Law Reform on 2 October 2007 and it was referred to the Attorney General for advice in relation to publication. His advice was that there were legal impediments to the publication of the full report. The Minister has therefore arranged for the preparation and publication of this summary of the report. The summary relies extensively on direct quotations from the report, and these quotations are italicized for ease of reference.

“PROCEDURES ADOPTED BY THE INQUIRY

The Parties Represented

¹ Although retired at the time of the Inquiry, for consistency throughout the report and this summary he is referred to as Superintendent Richard Burke.

The Inquiry was represented by Counsel, Mr Ronan Kennedy BL

The following interested parties were granted full representation:

- 1. Superintendent Richard Burke represented by Mr David Kennedy SC and Mr Shane Costelloe BL, instructed by Lanigan & Curran Solicitors;*
- 2. Garda Anthony O'Flynn, Garda Ann Marie Coogan, Garda Gerard Canty, Garda Pádraic Jennings, Detective Garda Daniel Quinlan and Garda Pádraic Frawley represented by Ms Mary Ellen Ring SC and Ms Caroline Cummings BL, instructed by Martin Moran & Co. Solicitors;*
- 3. The Rossiter family represented by Mr David Sutton SC and Mr Aidan Doyle BL, instructed by Lynch & Partners.*

Work Preparatory to the Taking of Evidence

After the appointment of the Chairman, there were several meetings between the Chairman and the representatives of the interested parties to discuss preliminary matters. The primary issue was to ensure that the Inquiry would be furnished with all information which might be relevant to the matters which the Inquiry would have to consider. The Inquiry was furnished with a substantial amount of documentation including reports prepared by Superintendent Burke and Inspector Duggan and statements of evidence taken by members of An Garda Síochána during the initial investigation. When these materials were considered, the Inquiry requested further information. Requests were made for such information and documentation from various parties throughout the course of the Inquiry. A Garda Liaison Officer was appointed to facilitate the work of the Inquiry. His role was to assist in the procurement of documentation and materials from An Garda Síochána.

As many of the witnesses had previously made statements to the Gardai during the course of the initial investigation, the Inquiry considered that it was unnecessary to take further statements from them in advance of them giving evidence to the Inquiry. There were a number of witnesses who had not made statements to the Gardai during the investigation but had been interviewed by Mr O'Carroll of Lynch & Partners. During the taking of evidence, Mr O'Carroll agreed to furnish memoranda from such interviews to the Inquiry in advance of such persons being called to give evidence. It became apparent after the evidence was complete that Mr O'Carroll was in possession of other memos which the Inquiry considered relevant and these were furnished on the 17th of July 2006 and the 10th of November 2006.

Statements were also taken from a number of witnesses by Counsel for the Inquiry in the presence of an independent witness. These statements were circulated to the interested parties in advance of the witness being called to give evidence under oath to the Inquiry so that their representative had advance warning of the proposed evidence and had an opportunity to prepare cross-examination. Copies of all relevant documents discovered to the Inquiry were made available to the representatives of the interested parties. Video tapes of interview, CCTV footage and other materials, such as reports prepared by experts retained by the Inquiry, were also made available to the representatives of the interested parties.

Facilities were put in place during the taking of the evidence for the inspection of items which had been collected by the Gardai during the course of the criminal investigation into the death of Brian Rossiter.

Video tapes of interview and CCTV footage from a shop which Brian Rossiter had visited on the 9th and 10th of September 2002 were watched during the taking of evidence. These were also made available to the representatives to the parties to view at their convenience or for the purposes of retaining experts.

The interested parties were reminded on a number of occasions during the taking of

evidence that any information or materials which were of relevance to the Inquiry should be disclosed. The parties were also repeatedly reminded that if they were in possession of any information which might assist the workings of the Inquiry, including the names and locations of possible witnesses, that the information should be furnished. At the conclusion of the oral evidence, each of the interested parties was formally requested to confirm that they had made available to the Inquiry all information and materials in their power or possession which were relevant to the issues that the Inquiry was set up to investigate.

The Taking of Evidence

The Inquiry sat in private on seventy-seven days between the 5th of December 2005 and the 13th of September 2006. The sittings were held in the Distillery Building, 145-151 Church St, Dublin 7. Oral evidence commenced on the 5th of December 2005. A request was made of the Inquiry by the Rossiter family to hold sittings in Clonmel to facilitate a number of witnesses. The Inquiry acceded to this request and sat at Clonmel Courthouse on the 26th of April 2006 and the 27th of April 2006. A total of ninety-nine witnesses gave oral evidence under oath to the Inquiry.

The interested parties were, insofar as was reasonably practicable, given advance notice of the order in which it was proposed that witnesses were to be called by the Inquiry.

The witnesses were examined first by Counsel for the Inquiry and then by the interested parties in the following order, Counsel for Superintendent Burke, Counsel for the other Gardaí named in the warrant of appointment and Counsel for the Rossiter family. Exceptions to this sequence were made on a few occasions, the most notable being the examination of the persons named in the warrant of appointment. When it came to the evidence of these persons, they were cross-examined by their own Counsel last, so that their representatives had an opportunity to hear all the evidence adduced prior to cross-examination.

Counsel for the Inquiry had the right to re-examine any witness. Counsel for the

interested parties was afforded the right to re-examine any witness on application to the Inquiry. Generally, any such application was granted when applied for. A few witnesses were re-called by the Inquiry itself of its own motion and after considering requests by the interested parties. This was to clarify aspects of the evidence the witness had previously given or to permit the witness to comment on other evidence the Inquiry had heard in the intervening period. Superintendent Burke was offered the opportunity to return to the Inquiry to give further evidence if he so wished but he declined to do so, preferring that the matters raised by the Inquiry in light of his evidence and other evidence be addressed by the written submissions furnished by his representatives.

Every conceivable effort was made to secure the attendance of any person who had any evidence which was relevant to the terms of reference. Unfortunately, the Inquiry experienced difficulty in securing the attendance of a number of civilian witnesses. This hampered the Inquiry and led to many delays. On a number of occasions, witnesses failed to show without any notice to the Inquiry. This was a source of great inconvenience to the Inquiry and the parties. When this occurred, these witnesses were contacted again and give further opportunities to attend. Despite numerous written requests and telephone calls the Inquiry was unable to secure the attendance of a few witnesses. A great deal of time and effort was spent trying to secure the attendance of one particular witness who was central to the Inquiry. A statement was eventually taken from this witness and he subsequently attended the Inquiry and was examined by Counsel for the Inquiry. This witness was due to attend again for further examination and cross-examination by the interested parties but failed to attend.

Transcripts

Transcripts were furnished to the Inquiry and the interested parties on a daily basis as the Inquiry progressed. Thus, each of the interested parties had full access to transcripts to assist with the preparation of their case and in particular the preparation of cross-examination and submissions.

Rulings

The Inquiry was required to give rulings on certain matters from time to time during the course of the evidence. Prior to any ruling, each of the parties, including Counsel for the Inquiry, was given the opportunity to make submissions.

Visiting the Scene

The Inquiry was of the view that it was appropriate to hear evidence from the mapper, Garda Cleary, prior to formally visiting the scene. This evidence was heard on the 5th of December 2005 and copies of the location maps were made available to the parties. Arrangements were then made to travel to Clonmel to inspect the scene. The inspection took place on the 20th of December 2005. Each of the interested parties was represented. The inspection included a tour of Clonmel Garda Station which was facilitated by Superintendent McCann. The Inquiry and the representatives of the interest parties had access to the areas of the station which were of interest. The Inquiry also visited each of the locations in Clonmel which were of interest and traced the movements of young Brian Rossiter during the days prior to his unfortunate death.

Submissions

At the conclusion of the evidence, the interested parties were invited to furnish written submissions to the Inquiry. After the submissions had been provided to the Inquiry and exchanged between the parties, a further opportunity was given to reply to submissions.

Legal Issues

Standard of Proof

The Inquiry was of the view, having read the submissions of all the parties in relation to the standard or burden of proof applicable to the matters under inquiry, that the appropriate standard was the balance of probabilities, and that this standard must be exercised with due regard to the serious nature of the allegations being made in respect of the named parties.

Jurisdiction of the Inquiry to Consider the Conduct of Superintendent Richard Burke

It was submitted by Superintendent Burke that the Inquiry had no jurisdiction to consider his conduct because he had retired from service in An Garda Síochána. The Inquiry assessed this submission but was of the view that it had jurisdiction to consider the conduct of Superintendent Burke during the period when he was a working member of An Garda Síochána and to make related findings. It should be noted that Superintendent Burke sought representation at the Inquiry which was granted and took part in the Inquiry through his appointed representatives.”

Part 2 – The events leading up to Brian Rossiter’s death

Friday and Saturday, 6 and 7 September 2002

On 31 August 2002 Brian Rossiter and his three younger siblings moved with their mother Siobhán from Clonmel to a new home in Wexford. On Friday morning 6 September 2002 Siobhán Rossiter travelled back to Clonmel, accompanied by Brian and the other three children, in order to finalise certain matters. She returned to Wexford later the same day with one of her children. Of the other three children, two stayed with their father Patrick in his flat, while Brian stayed with his older sister Sharon in her house. The two children staying with their father returned by bus to Wexford the next day, Saturday 7 September, but Brian stayed in Clonmel, even though he apparently was due to return to Wexford and had a bus ticket.

It appears that Brian arrived at his sister’s house at around 4pm on Friday. He left the house later that evening and did not return until 3am or 4am next morning. Two Gardaí gave evidence that they came across Brian and some other youths in the early hours of Saturday. One of the Gardaí took a half-bottle of gin from Brian, and advised him to go home. It appears that the same Garda encountered Brian again later that morning, at around 3.40 am. He described Brian as having drink consumed, but not intoxicated. Brian undertook to heed the Garda’s advice and headed towards home.

On Saturday, Brian went out during the day and did not return to his sister’s house until around 5pm. His sister commented that he appeared “absolutely shattered.” Brian went to bed shortly afterwards and asked to be called at 8.30pm because a friend was due to call for him then. His sister tried to wake Brian when the friend called, but Brian did not wake up. While Brian’s sister went out that night, a babysitter (who was minding the sister’s infant daughter) gave evidence that Brian got up around midnight, had something to eat and returned to bed.

Sunday and Monday, 8 and 9 September 2002

On Sunday 8 September Brian left his sister's house at about 3 pm, returning around 7.30 or 8 pm to get money for chips before leaving again. The next his sister saw of him was after midnight, at 12.30 or 12.45 am on Monday 9 September, when he came into her house and asked for a cigarette. A short time later his sister heard banging at her back gate. She went out and saw Brian being assaulted by Noel Hannigan, a 22 year old local. She did not see all of the assault, but a witness who did described how Brian was hit a number of times, kneed four or five times and head-butted two or three times. The evidence heard by the Inquiry suggested that the assault on Brian was extremely vicious, leaving him with facial swelling and two black eyes.

The evidence heard by the Inquiry is that the following day, Monday 9 September, Brian was complaining of bad headaches. That evening Brian and a number of friends went to a flat where there is evidence that alcohol, hash and ecstasy tablets were available. The Inquiry was of the view that, in addition to failings of recollection which could be attributed to the passage of time, many of the witnesses who had contact with Brian in the days and hours before his arrest had been influenced in their evidence by the rumours and gossip which had abounded in Clonmel concerning the cause of Brian's death. It appeared to the Inquiry that many witnesses attempted through their evidence to insulate Brian from suggestions that he may have taken drink or drugs on the night of his arrest or in the days preceding it. The Inquiry was also satisfied that some witnesses attempted to play down Brian's complaints of headaches following the assault on him by Noel Hannigan because they were conscious that this was relevant to the issue of who had inflicted the fatal injury on Brian.

Tuesday 10 September 2002

The following day, Tuesday 10 September, Brian was still complaining of headaches, and took some painkillers. That evening, Brian and a number of friends returned to the flat they had been in the previous evening. There is evidence that alcohol and drugs were available in the flat. It appears that a fracas occurred in the flat, but there is no evidence that Brian was involved in it or received any injuries during it.

Brian left the flat along with two of his friends, who will be referred to in this summary as Boy A and Boy B. Boy A kicked and broke a window in Mitchell Street. His father came on the scene and restrained him. The Gardaí were called and Detective Garda Quinlan arrested Boy A. Garda Phelan arrived at the scene in a patrol car and took Boy A to the Garda station. The evidence is that both Brian and Boy B were abusive towards the Gardaí during the arrest of Boy A. Detective Garda Quinlan decided that both Brian and Boy B were in breach of the Criminal Justice (Public Order) Act 1994 and determined to arrest them. He followed them in the direction of the Piper Inn.

At the Piper Inn, it appears that the two boys separated, with Boy B going in the front door and Brian going into the car park. Detective Garda Quinlan was joined at the scene by Garda Pádraic Jennings and Garda Pádraig Frawley. Boy B was apprehended by Garda Jennings and Detective Garda Quinlan and arrested by Detective Garda Quinlan. He was brought to the Garda station by Detective Garda Quinlan. Brian was arrested by Garda Jennings, who had found him hiding under a car in the car park, and was brought to the Garda station by Garda Jennings and Garda Frawley. On the way to the station, they were joined by Detective Garda Quinlan who had come back out of the station to meet them.

Allegations of assault during and after arrest

A female witness and a male witness gave evidence that they saw Brian Rossiter being assaulted by Gardaí during his arrest and as he was being walked to the Garda station, and the Inquiry's assessment of their evidence is set out in Part 3 of this summary.

The detention of Brian Rossiter

The three boys were arrested for offences contrary to section 4 and 6 of the Criminal Justice (Public Order) Act, 1994, which do not carry any statutory power of detention.

Brian's father Patrick came to the station, having been notified by the Gardaí that Brian had been arrested. He signed a written consent to his son being detained overnight, and

the parents of the other two boys did the same. There was some conflict between the evidence of Patrick Rossiter and Detective Garda Quinlan on how this came about. Detective Garda Quinlan gave evidence that he wished to release Brian Rossiter into his father's custody, but that his father was unwilling to accept custody of his son and so there was no option but to detain him overnight. Patrick Rossiter gave evidence that the idea of Brian being kept overnight was presented to him by Detective Garda Quinlan.

The Inquiry was of the view that Mr Rossiter showed unwillingness to take his son. Commenting on the evidence, it said the following:

“He had not asked to see his son and refused at least two opportunities to visit him during the twenty minutes during which he remained in the Garda station. He had not mentioned to the Gardai that his son had been staying in Sharon's and he said that he would not have been prepared to let Brian go back there. Mr Rossiter very candidly admitted that he was in a very bad temper, and when asked as to his views on leaving Brian in the cell he stated: “In the heat of the moment I did not think it would do him any harm.” Mr Rossiter indicated that he was not told by the Gardai that his son had calmed down by the time of his arrival at the Garda station although it is clear that he was told that Brian was the quietest of the boys. The Inquiry was of the view that his attitude was clearly affected by what had been told to him by Detective Garda Quinlan to the effect that his son was “out of control” and had been drinking and possibly taking drugs.

The Inquiry is of the view that Detective Garda Quinlan had formed the opinion that it was desirable that Brian Rossiter should be held in custody overnight and that the idea of the letter of consent emanated from him. The Inquiry also has no doubt that the suggestion that Brian Rossiter might cause further trouble in the town if released also emanated from Detective Garda Quinlan. The failure of Detective Garda Quinlan and the member-in-charge, Garda Canty, to make any enquiries as to whether there were alternatives to Brian spending the night in the cells or in his father's flat is indicative of such an attitude. Detective Garda Quinlan was not told by Mr Rossiter that his son had been staying with his daughter Sharon but he indicated that he would not have been

happy to release him into her custody even if he had been aware of this fact. He explained that he would have been concerned about the type of person who was frequenting her home.

Detective Garda Quinlan and Garda Canty should have made further enquiry of Mr Rossiter as to whether there were other relations or persons to whom Brian could be sent, even if he was unwilling to take him himself and, in the view of the Inquiry, should have applied pressure on Mr Rossiter to see his son and to remain in the Garda station or to return to the Garda station later in the evening. Again, the failure to do this is consistent with a general view that it was desirable that he remain in custody.

The member-in-charge, Garda Gerard Canty, appears to have played virtually no role whatsoever in the process whereby a decision was made to detain Brian Rossiter. He seems to have accepted with great ease the proposition that the father had consented to his son spending the night in the Garda station and made no enquiries of Detective Garda Quinlan as to how this had come about or as to whether there was an alternative. Garda Canty had thought, when he came on duty, that once the parents of these boys arrived that they would be removed from the station. There was no suggestion made, by either Detective Garda Quinlan or by Garda Canty, that Mr Rossiter should return at some later time.

The detention of Brian Rossiter on foot of his father's consent was an exceptional event and no other member of An Garda Síochána who gave evidence had been involved in such a detention. The detention must be seen in light of the other two boys being detained on foot of similar letters of consent. [Boy B]'s father appeared to have shown no interest in going to the station to see his son and was more than happy to see him detained. However, [Boy A's father] had returned at 12 midnight and this was because it was suggested to him at an earlier time that he should return to the station later. He indicated that he had spoken to a Garda who indicated that Boy A might be better off to be left in the cell for the night for his own safety and he said that he took their word on this. He was asked if he had requested to see [his son] and he replied that he had not. [Boy A's

father] does not appear to have been told at the time that [his son] had become calm and was no longer out of control.”

Garda custody records relating to Brian Rossiter

The custody record in relation to Brian Rossiter, filled out by Garda Coogan, notes that he had two black eyes on arrival at the station. There is no reference to grazing on either his left cheek or left temple, or to an injury to his lip which was undoubtedly present since the assault on him by Noel Hannigan. It appeared to the Inquiry that Garda Coogan did not record a detailed description of all injuries present on Brian Rossiter’s face, but only his particularly distinctive black eyes.

The custody record relating to Brian Rossiter indicates that, in accordance with custody regulations, he was given oral information at 9.42 pm which explained the reason for his arrest and advised him that he could consult a solicitor and that a parent or guardian would be notified. The record also shows that he was given written notice of this information at 9.44 pm and that he was placed in his cell at 9.45 pm. However, the evidence heard by the Inquiry showed that Brian was not given the notice of his rights until after he was placed in the cell. The Garda evidence is that the priority was to secure Brian in a cell as he was behaving in an abusive and aggressive manner, and that the notice of rights was given to him once he was in the cell. The Report comments on the custody records relating to Brian and the other two boys detained with him, as well as a man, referred to in this summary as Mr. C, who was already detained in the station for an unrelated matter, as follows:

“The Inquiry comments on the following matters arising out of the evidence outlined above relating to the arrival and processing of [Boy A, Boy B] and Brian Rossiter at the Garda station:

(1) Duty of the Member-in-Charge

The role of a member-in-charge is central in relation to a person's custody in a Garda station. This role is established by the Criminal Justice Act 1984 (Treatment of Persons In Custody) Regulations 1987. The general duty of the member-in-charge is:

- (i) To oversee the application of the 1987 Regulations.*
- (ii) To make the necessary enquiries of the prisoner (and indeed the arresting member).*
- (iii) To visit the prisoner from time to time during his or her detention.*
- (iv) To maintain a complete and accurate record of the person's stay in custody. This record, known as the Custody Record, is a key feature in the system in place for the protection of a person's rights in custody.*

Garda Anne-Marie Coogan was assigned the role of member-in-charge on the night of the 9th September 2002 at Clonmel Garda Station. She gave evidence that she was familiar with the custody regulations and had some experience as member-in-charge. She confirmed to the Inquiry that between January 2001 and September 2002 she had acted as member-in-charge on a regular basis and often up to a few times a week.

(2) Clonmel Garda Station on the night of 9th September 2002

Along with having responsibility for the treatment of persons in custody, Garda Coogan was also responsible for answering the telephones and dealing with members of the public who arrived at the station for various reasons. The Inquiry accepted evidence that the station may have been somewhat busy on the night; whether it was "bedlam" as alleged by one or other of the witnesses is uncertain. In any event, if the station was as busy as some witnesses suggested, perhaps the member-in-charge should have delegated some of her lesser duties to one or other

of her colleagues, such as attending the phone, to allow her to deal more competently with prisoners. A member-in-charge should ensure that the rights of prisoners take priority.

(3) Details recorded in Custody Records on the 10th of September 2002

The Custody Record relating to Brian Rossiter indicates that he was given information in accordance with Regulation 8(1) at 9.42pm. The Notice of Rights was given at 9.44pm and he was then placed in a cell at 9.45pm. However, the evidence given at the Inquiry was to the effect that he was not given his Notice of Rights until after he had been placed in the cell and Garda Coogan returned to the public office for it. There is an obvious conflict. The same conflict arises in the Custody Records of both Boy B and Boy A.

The Custody Record of Boy A and Boy B both show a time of arrival at the Garda station of 9.35pm. However, the evidence of Garda Coogan was that they arrived at different times.

Garda Coogan has admitted that there are inconsistencies in the Custody Records.

According to the Custody Record, [Mr C] arrived at the station at 20.12. At 20.15, he was searched and placed in a cell. In subsequent entries in the Custody Record, he was described as “regular in his cell” and then “asleep.” According to the Custody Record, he was given his Notice of Rights at 21.32, a period of one hour and 17 minutes after being placed in the cell. When, during the course of evidence, this matter was raised with Garda Coogan, she stated that she could only assume that her times were wrong and that it would not have been more than an hour before he got his Notice of Rights. Garda Coogan gave evidence that the 24-hour clock may have caused her confusion here and suggested that the time of 21.32 recorded in the Custody Record was “out by an hour.”

A key element in the regime for the protection of a person in custody is the maintenance of a complete Custody Record of his stay in custody. Article 6(1) of the 1987 Regulations requires that a Custody Record to be kept in respect of each person held in custody. The member-in-charge must record or cause to be recorded in the record as soon as practicable such information as is required to be recorded under the 1987 Regulations. Each entry must be signed or initialled by the member making it. The member-in-charge is responsible for the accuracy and completeness of all entries made in the Custody Record while he or she is member-in-charge.

Garda Coogan has admitted that all three Custody Records are inaccurate.

This Inquiry cannot accept as a valid excuse for inaccuracies in documents as important as Custody Records that the member responsible for them was too busy. The duty to observe the rights of a person in custody should always be afforded priority over the duty to act as a public interface. To give priority to the latter duty at the expense of a prisoner's rights is, in the opinion of this Inquiry, to neglect one's duties as member-in-charge.

Since a Custody Record should be an accurate reflection of a person's time in custody, the inconsistencies in times recorded gives rise to serious doubts about the reliability of the other entries in the Custody Records between the time Boy A arrived at the station and the end of Garda Coogan's tour of duty at 10pm.

This evidence clearly casts doubt on the accuracy of entries in all Custody Records on the night."

Allegations of assault in the Garda Station

Mr. C gave evidence that he had seen Brian being assaulted by members of the Garda Síochána in the Garda station. The two boys detained along with Brian claimed to have

been assaulted in the Garda station, and Boy B gave evidence that Brian Rossiter had told him, from his cell, that he had been beaten by the Gardaí, saying “yeah they killed me too”. The Inquiry’s assessment of their evidence is set out in Part 3 of this summary.

It came to the attention of the Inquiry during the course of the hearings that the Regional Director of the South-Eastern Health Board had written a letter of 17 December 2002 on behalf of Mr C to Superintendent Burke, who was heading the criminal investigation into the death of Brian Rossiter, setting out his allegation that he had witnessed ill-treatment of a young man in Clonmel Garda Station between 9.30pm and 10pm on 10 September 2002. The letter indicated that Mr C felt unable to make a statement to the Gardaí and that the Health Board had agreed to act as a conduit in bringing his concerns to the attention of the Gardaí. The letter further indicated that Mr C had requested that a statement be taken from him by Gardaí from outside the Clonmel area.

The letter was brought to the attention of the Inquiry by Mr O’Carroll, the solicitor acting for the Rossiter family. *“It was a source of considerable concern to the Inquiry that such a relevant document had not been disclosed. An investigation was conducted and it transpired that this letter was not contained on the investigation file in the incident room but had been filed separately under a different reference code in the Superintendent’s office. The letter was neither referred to nor annexed to the Report forwarded to the Director of Public Prosecutions at the conclusion of the Garda investigation. Thus, it appears that when the Director of Public Prosecutions was requested to issue directions in the case of DPP v Hannigan, he was unaware of the letter and the fact that a potentially important witness had not been interviewed, or was seeking to advance evidence.”*

The comments of the Inquiry on this aspect of the investigation into the death of Brian Rossiter are set out in Part 3 of this summary.

Evidence of members of the Garda Síochána relating to the detention of Brian Rossiter

Prior to going off-duty at 10pm, Garda Anne-Marie Coogan observed Brian Rossiter in his cell. She noted that he was sitting on the window-sill, which is several feet off the ground.

Garda John Downey came on duty at 10pm. He described hearing roaring and shouting coming from the cell area. His evidence is that he subsequently heard Brian Rossiter, at around 10.50pm, shouting for a cigarette. He told Brian that smoking was not allowed in the cell. Looking into the cell, Garda Downey noticed that Brian had a cigarette lighter in his hand. He demanded this from Brian, who handed it to Garda Downey through the cell hatch. A subsequent examination of the cell revealed that Brian appears to have used the cigarette lighter to burn the word “Krusty” (his nickname) into the ceiling of the cell. The report noted that he could only have done this while standing on the window-sill.

Garda Canty took up duty as member-in-charge at 10pm, relieving Garda Anne-Marie Coogan of that duty. His evidence is that Brian was shouting abuse and insults and that there was a strong smell of alcohol from him through the hatch. He observed Brian Rossiter in his cell at 10pm, 10.05pm, 10.30pm, 10.45pm (when he says that Brian was still roaring and shouting), and 11.21pm. At that stage Garda Canty says that Brian was no longer shouting and was sitting on the bunk plinth (the mattress was on the floor). Garda Canty recalls telling Brian that his father had called to the station, but had not wanted to see him and had consented to his being kept in overnight. He asked Brian if he was alright and whether he wanted anything and said that Brian shook his head. At 11.55pm Garda Canty noted that Brian was asleep. His evidence is that Brian was lying on the bunk with a blanket on him. He was breathing and appeared normal. Garda Canty subsequently checked on Brian at 12.25am, 12.55am, 1.20am, 2.20am, 3am, 3.30am, 4am, 4.30am, 5am, and 5.30am.

While Brian had been asleep up to then, it appears that he woke up around this time, as Garda Elaine Corkery gave evidence that at around 5.45am she heard Brian Rossiter shouting abuse at her through the cell door.

Garda Anthony Flynn came on duty as member-in-charge at 6am on 11 September and relieved Garda Canty. He checked on Brian Rossiter at 6.05am and noted that he was asleep on the bunk, covered with a blanket. He checked Brian again at 7am, 7.25am, 8am, 8.30am and 9am. During those visits he said that nothing had changed.

Garda Flynn went to wake Brian Rossiter at 9.30am. Detective Garda Quinlan was also present. Garda Flynn recollected that Brian was lying on his stomach, facing towards the door. He could hear Brian snoring, and he appeared to be in a deep sleep. He put his hand on his shoulder and shook him, but there was no response. He shook him again and said "come on Brian, get up." There was no movement from Brian.

Garda Flynn decided to get Boy B to see if he could wake Brian up. Boy B's recollection is that he went into Brian's cell, took Brian's shoulder and said "Come on, Krusty. Come on, Krusty. Get up." Brian did not stir and at this point Garda Flynn thought that there was something seriously wrong. He decided to get a doctor. He closed the cell, put Boy B back in his cell and called a doctor (from a medical clinic across the road from the Garda station). He recalled meeting Sergeant Heffernan and telling him that he was not happy with Brian's condition. Sergeant Heffernan asked for the keys of the cell and went there. Garda Flynn recalls Sergeant Heffernan asking him to help bring Brian out of the cell and he did that. Brian was placed on the floor outside the cell.

Garda Flynn went back to the public office and phoned the medical clinic again, indicating that he needed a doctor urgently. He believes that he phoned for an ambulance as well at that stage. He then walked over to the medical centre where he asked for a doctor.

Dr Ann Mulrooney and a receptionist from the clinic, Ms Anna Byrne, went to the Garda Station. Ms Byrne returned to the clinic to obtain an emergency bag and notified Nurse Rita Carroll, who also went to the Station to assist. Dr Mulrooney was also joined by her colleague Dr Bernie Rouse. The doctors attended Brian until the ambulance arrived at around 9.50am and conveyed him to St Joseph's Hospital Clonmel. Due to the severity of his condition he was later transferred to Cork University Hospital where he underwent a CT scan. This scan revealed a large extradural haematoma. He underwent a surgical procedure to remove the haematoma but never regained consciousness. He was pronounced dead at 5.40pm on Friday the 13 September 2002.

Part 3 Conclusions of the Hartnett Inquiry into the death of Brian Rossiter

The first issue the Inquiry was asked to examine was whether the arrest of Brian Rossiter on the 10th day of September 2002 was unlawful. He had been arrested on that date pursuant to the Criminal Justice (Public Order) Act 1994.

The Inquiry identified the following as the appropriate sections of the Criminal Justice (Public Order) Act 1994:

Criminal Justice (Public Order) Act 1994

4.—(1) It shall be an offence for any person to be present in any public place while intoxicated to such an extent as would give rise to a reasonable apprehension that he might endanger himself or any other person in his vicinity.

6.—(1) It shall be an offence for any person in a public place to use or engage in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.

24.—(1) Where a member of the Garda Síochána finds any person committing an offence under a relevant provision, the member may arrest such person without warrant.

(5) In this section "*relevant provision*" means Section 4, 6, 7, 8, 11, 13, 14, 15, 16, 17, 18 or 19.

The Inquiry's report states:

“It is undoubtedly the case that there was a disturbance on the evening of the 10th of September 2002 which would have justified Detective Garda Quinlan in arresting Brian Rossiter and Boy B pursuant to the provisions of the Criminal Justice (Public Order) Act 1994. Detective Garda Quinlan who was present at Marystone Mall and observed this disturbance, pursued Boy B and Brian Rossiter. In the course of this pursuit, these two young men ran across in front of the car in which Garda Jennings was travelling. He decided to follow them and became aware that Detective Garda Quinlan was in pursuit of them. He helped in the arrest of Boy B by Detective Garda Quinlan and Detective Garda Quinlan then asked him to look out for Brian Rossiter and to arrest him for public order offences. Garda Jennings commenced his search and found Brian Rossiter beneath a car. He asked him to come out from under the car, and when he did so he was described as being intoxicated or “high” and there was a smell of alcohol from him. Garda Jennings indicated that he based his arrest not only on the direction from Detective Garda Quinlan, but also because he felt that Brian Rossiter’s intoxication was such that he felt he would be a danger to himself.

Brian Rossiter was fourteen years of age and was under the influence of an intoxicant. It would appear reasonable to believe that a fourteen-year-old who is intoxicated might prove to be a danger to himself. In these circumstances, and having considered all the evidence presented, the Inquiry is satisfied that the arrest was not unlawful.”

The second issue was that the said Brian Rossiter was unlawfully assaulted during the course of his arrest and detention

This section of the Report considers the evidence of the witnesses who claimed to have witnessed Brian Rossiter being assaulted by members of the Garda Síochána during his arrest and detention. It also considers in detail the expert medical evidence which is dealt with extensively below.

The male witness who said that he saw Brian Rossiter being assaulted upon arrest claimed that this happened in Marystone Mall but, as the Inquiry notes, the arrest did not happen there. The Inquiry also took account of the contradictions between his evidence to it and his statements made to Gardaí soon after 10 September 2002. Having considered all of his evidence the Inquiry concluded that the witness *“was so affected by the rumours and speculation concerning the death of Brian Rossiter that he decided to invent a story which was in some way consistent with those rumours.”* The Inquiry said that it was *“satisfied that the evidence of [the witness] is entirely false.”*

As was noted in Part 2, a female witness also alleged that she saw Brian Rossiter being assaulted by a member of the Garda Síochána while being taken to the Garda Station. The Inquiry found that this witness’s evidence *“was unclear and, at times, contradictory”* and *“did not find [her] to be a persuasive or credible witness and does not accept her evidence in relation to the alleged maltreatment of Brian Rossiter.”*

Mr C claimed that he saw Brian Rossiter being assaulted by members of the Garda Síochána in Clonmel Garda Station. Mr C was in custody that night in the Garda Station having been arrested for an unrelated offence. The *“Inquiry found [Mr C] to be*

thoroughly unreliable and lacking in credibility. Moreover, there are glaring inconsistencies in the various versions of events which [Mr C] gave at different times and to different parties since September 2002. These inconsistencies are startling and there is no explanation for them. Even if these inconsistencies were not present, the Inquiry would have grave difficulties in accepting [Mr C's] evidence. His lack of co-operation with this Inquiry from the very beginning was in marked contrast to his willingness to report allegations to other parties in circumstances where he would not be subjected to examination."

Medical Evidence: The Inquiry heard considerable medical evidence in respect of the dating of the internal and external injuries to Brian Rossiter's body. Its report states:

"... medical evidence was heard from those who had attended on Brian Rossiter subsequent to his being found unconscious and on his arrival at hospital. Evidence was also heard from three forensic pathologists and the surgeon who operated on him following upon his admission to Cork University Hospital. This Inquiry was seeking evidence which would help to date the injuries present on Brian Rossiter, both internally and externally. This exercise was complicated by the fact that he had suffered injuries during the assault on the 9th of September and had not attended a doctor in respect of them. There was a further difficulty in that Brian Rossiter had no parental supervision between the 8th of September and his arrest on the 10th of September and had not been seen by his father, Patrick Rossiter, while he was detained in Clonmel Garda Station. Accordingly there is no accurate or reliable history in relation to his symptomology or presentation during this period.

(i) External Injury: Brian Rossiter was assaulted early on the 9th of September and was punched, head-butted and kned. There were obvious injuries to his eyes and lip, and his nose was bleeding. On admission to hospital on the 11th of September he was found to have a bruise on his penis and to be suffering from priapism. At post-mortem the bruising to the penis had a prominent purple colour and showed no signs of yellowing or ageing. The evidence of the pathologists was to the effect that this colouration would usually

suggest a more recent cause than the bruising to the eyes which was showing some signs of yellowing. It was agreed, however, that there is a difficulty in dating bruises and, whereas the colouration suggested a recent cause for the bruise, Professor Milroy was of the view that this bruise could have been up to five days old.

The bruising to the penis could have been caused by a knee, a kick, or a punch and it is undoubtedly the case that Brian Rossiter is quite likely to have received such an injury during the assault of the 9th of September 2002. He may also have suffered injury during the melee at Abbey Street although there is no eye witness account of this.

Priapism is commonly caused by a blow to the perineal region, which could be a punch or a kick or could be caused by someone falling against an object. It appears it could also have been caused as a result of a bladder tube being inserted when Brian Rossiter was admitted to hospital. Professor Milroy was of the view that the most likely cause for the priapism was trauma and it is possible that the bruising to the penis and the priapism were linked. It also appears that priapism may occur up to seventy-two hours after the injury. Again, it seems that the priapism could have been caused by an injury during the assault of the 9th of September or an intervening event.

The grazing injuries that overlay the fracture on the skull and the associated grazing on the left cheek are the injuries which are most important from the point of view of this Inquiry. It was not possible to put a timeframe on these injuries and Professor Busutil was of the opinion that these grazes could have been between twenty-four hours and seven days old. He thought that the abrasions were possibly older than the black eye, however Professor Milroy commented in his report that the area of grazing to the left cheek appeared to have occurred more recently than the black eyes. This conflict is indicative of the difficulty in dating injuries of this type and it did not prove possible to accurately date the time of their occurrence by means of an external examination.

The Inquiry is of the view that the medical evidence does not present any convincing proof that any of the external injuries found on Brian Rossiter supports a contention that there were two separate incidents of trauma to his person.

*(ii) **Internal Injury:** There is no means by which the actual fracture to Brian Rossiter's skull could be dated. It was therefore necessary to enquire as to whether there was any other means of obtaining evidence that could help to fix the time at which the fatal injury occurred. This included an examination of the nature of extra-dural haematomas and their presentation, and an examination of the available histology.*

Following upon an injury to a blood vessel in the skull which causes an extra-dural haematoma there can be a lucid period. This is a period during which the subject shows little or no signs of suffering from such a serious injury and can often go about their normal business. Sometimes the subject will exhibit symptoms and fall into unconsciousness within a very short period of time. In other cases the symptoms will not appear until twelve to twenty-four hours have passed. On rare occasions the "lucid period" can last for forty-eight hours and longer. It appears that this is less likely to happen when an artery such as the middle meningeal artery has been injured. Such an extended period prior to the presentation of symptoms is usually only found in young people. There is some dispute as to what is meant by a "young person" but the majority opinion appears to define it as a person under the age of sixteen years.

In the circumstances of this case both Professor Busuttil and Professor Milroy were of the view that the injury was most likely to have been caused in or about the time that Brian Rossiter was arrested and detained. However, their opinions were based largely on the statistical rarity of an extended lucid period of this type occurring. Dr Cassidy was of the view that it was not possible to date the time of the injury on the basis of the forensic material available. The Inquiry is also of the view that the rarity of such an occurrence must be seen in the light of the well established fact that Brian Rossiter had been severely assaulted to the area of his head on the 9th of September 2002. Histological examination of the blood attaching to the dura and of the brain tissues were carried out. These

examinations showed no signs of the healing responses that occur after injury. Professor Busuttil was of the view that this was evidence that the injuries were caused in or about the time of the arrest and detention. Professor Milroy, on the other hand, was of the view that it was “supportive” of the injury having been caused in or about the time of arrest and detention but not diagnostic of it. He was of the view that there was no histological evidence that the injury had occurred on the 9th of September and that this supported the proposition that it had occurred subsequently. He conceded however, that “absence of evidence was not evidence of absence” and also conceded that he would not be prepared to place much weight on the histological findings in this particular case. Dr Cassidy was of the view that no conclusions could be drawn from the histological findings and that they could not be relied upon to fix the date of the injury.

(iii) Symptomology: There was no evidence of Brian Rossiter suffering from nausea, dizziness or vomiting in the period between the assault on the 9th of September and the time of his arrest. These are symptoms which can be associated with extra-dural haematomas and a contusion to the brain. Brian Rossiter was without parental supervision during this period and there was therefore no single individual who was in a position to observe him over this period of time. There was evidence that he was suffering from headaches which appear to have been significant. On Monday evening he expressed himself unable to eat his portion of a packet of chips because of these headaches. He took painkillers on Tuesday morning and during the course of the day he described his headache as “killing him” He appears to have mentioned headaches and pains in his head to his friends and associates on numerous occasions. Of course, headaches can be caused by many factors and it is not possible to say that these headaches were the result of the fracture to the skull or of bleeding into the skull cavity. However, it must be borne in mind that Mr Marks, the neurosurgeon who operated on Brian Rossiter in Cork University Hospital has said that he had observed cases in the past where young people had been relatively normal for periods of up to three days and more following upon an injury which resulted in an extra-dural haematoma and he was of the view that the headaches could be consistent with such a condition. In this case he would have

expected significant and increasing headaches but there were no absolutes in these matters.

Comment

It would appear that both Professor Busuttil and Professor Milroy formed their view in relation to the likelihood of the injury occurring during custody largely on the basis that an extended lucid period is a rare phenomenon. However, they both agreed that the injury could have occurred on the 9th of September 2002 or in the intervening period. Dr Cassidy was of the view that it was not possible to say when the injury occurred as a matter of certainty.

It is common case that extra-dural haematomas usually manifest themselves in a period of less than twelve hours. Applying this general rule of thumb to the present case then the injury is likely to have occurred in or about the time of Brian Rossiter's arrest or subsequently. However, there are unusual cases where there is no manifestation until forty-eight hours or more have passed. This is more likely to have been the case with a young person such as Brian Rossiter.

It is also the case that the injury could have been caused by trauma other than an assault. Professor Milroy agreed that the trauma could have been caused by his falling to the ground or falling from the window sill on which he was noted to be sitting and on which he must have been standing in order to burn his nickname onto the ceiling.

The Inquiry is of the view that the medical evidence does not establish that the injury which caused the extra-dural haematoma in Brian Rossiter was caused by an assault in the course of his arrest or during the course of his detention, but only that it is statistically more likely to have occurred during this period. This evidence must also be seen in the light of there having been a serious assault on Brian Rossiter early on the morning of the 9th of September wherein he suffered damage to his head and where it is

possible that his head was struck against the concrete doorway in which he was standing”.

The Inquiry then made observations as to the presence or absence of grazing on the cheek and temple of Brian Rossiter following upon the assault of the 9th September 2002

The Inquiry Report states: “Much of the evidence heard during this Inquiry was concerned with investigating whether there was evidence to show that the grazing on Brian Rossiter’s cheek and temple was present in the days following upon the assault of the 9th of September 2002 and as to whether there was evidence of fresh grazing in these areas following upon his admission to hospital. The importance of this evidence is obvious. The grazing on the cheek and temple area appear to have been incurred in the one incident and the graze to the temple overlay the fatal injury.

There were obvious difficulties in requiring witnesses to remember details of Brian Rossiter’s injuries after a lapse of years. The task was further compounded by the fact that the witnesses had not been asked specifically in the course of the Garda investigation as to whether there was grazing on the cheek and temple but were only asked in general terms as to their observations of his injuries.

The overall impression from nearly all of the witnesses who had been in his company in the days following upon the assault of 9th September 2002 was that their attention had been drawn to his black eyes which appear to have had a very striking appearance. Many of the witnesses commented on this. It was noteworthy that few of these witnesses could remember that he had damage to his lip and a further difficulty was presented by the fact that Brian Rossiter had worn a baseball hat in order to render his injuries less obvious because of his embarrassment about them. This undoubtedly would have made observation of any injuries on the left temple more difficult.

Unfortunately, the CCTV footage of the Spar shop to which he went on 9th and 10th September was of very poor quality. It did not show any definite grazing on the cheek or temple but the expert witness, Mr Platts, was of the view that the quality of the footage was such that one could not rely upon it.”

Several witnesses referred at the Inquiry to there being marks on Brian Rossiter’s cheek and forehead. No witness to the assault on Brian Rossiter by Noel Hannigan observed Brian Rossiter’s head being struck against the doorway. However, there is evidence to the effect that Brian Rossiter told one person that his head had been struck against a wall in the course of the assault. The Inquiry states *“If that was the case, then the pathologists have agreed that there is no other injury to the head that could have been caused by such a blow other than the grazes on the temple and cheek”*. The Inquiry concluded that if this evidence was correct *“then it would seem near certain that the injury was caused early on the morning of the 9th of September 2002.”*

The Report goes on to state *“On arrival at the Garda station Brian Rossiter was noted to have two black eyes. No grazing to the temple or cheek was noted. However, neither was there a note of an injury to his lip which had undoubtedly been there since the assault on 9th September. It is unfortunate that there was no detailed description of the injuries noted by the member in charge.*

None of the doctors who attended at Clonmel Garda station and none of the doctors who examined him at St. Joseph’s Hospital noted any grazes to his cheek or temple. The only injuries that were noted were his black eyes. Whereas the pathologists have indicated in evidence that clinicians often fail to note injuries, one might have expected clinicians who were seeking an explanation for the unconscious condition of this boy to have noted if there was fresh grazing. On the other hand, it should be noted that grazing in its early stages is less noticeable than in its later stages when it adopts a darker colour.

The grazing seen in the post-mortem photographs is of a dark colour and would be distinctive. However, it is accepted that grazing becomes darker and more distinctive as

healing progresses and even after death. The post-mortem was carried out on the 14th of September 2002 and this process would have been taking place for a number of days.

In light of the foregoing the Inquiry does not think it is possible to conclude from this evidence that the grazing occurred after Brian Rossiter was taken into Garda custody. “

The Inquiry also considered the Forensic Examination of Brian Rossiter’s Clothing and Preserved Scenes. The Report states:

“Forensic examination was carried out of the cell in which Brian Rossiter was detained, the site of the assault at Cashel St on the 9th of September 2002, and the flat at Abbey St. Brian Rossiter’s clothing was also forensically examined and blood stains found on them were DNA tested.

Brian Rossiter’s blood was found at the scene of the assault in Cashel St. However, this blood most probably came from his nose or lip because it appears that the grazing injuries to the temple and cheek would not have bled in such a manner as to leave droplets of blood. There was blood staining found on the wall of the cell in which Brian Rossiter was detained but this was proved to have come from a source other than Brian Rossiter.

Testing indicated the presence of blood and a large area of staining on both the right and left shoulder of his t-shirt. These stains were brownish in colour and a constituent of amylase was also detected in these stains. Staining was also found on the back of the t-shirt in the shoulder area and was also found on the mid to lower back of the t-shirt also. The stain which was mid-way to two thirds of the way down the back of the t-shirt was heavier and had no indication of saliva in it. The staining which contained traces of blood and amylase could be consistent with liquid vomit. The stain to the right shoulder of the t-shirt was visible to the naked eye.

It appears from the condition of the t-shirt that it had not been washed since the staining was deposited. There was also a small amount of staining on the lower leg of the track suit bottoms and a very small blood stain on the sole of one of the socks which were heavily soiled. The tracksuit bottoms were grubby. DNA profiling showed that the staining on the shoulders and front left sleeve of the t-shirt and the sock matched the blood of Brian Rossiter. “

Despite conflicting evidence the Inquiry formed the view that it was unlikely that Brian Rossiter’s clothes had been washed after the assault. The Inquiry noted that his socks were heavily soiled and the tracksuit bottoms were grubby.

The Inquiry Report went on to comment that *“the grazing to Brian Rossiter’s cheek and temple would not have led to bleeding which would have left blood staining on his clothing. There is no evidence from the hospital notes or the post-mortem that indicates a fresh wound to Brian Rossiter that would have bled. In these circumstances, the Inquiry is of the view that the staining on his clothing probably resulted from the assault of the 9th of September 2002. The traces of blood and amylase are consistent with vomit deposited on his clothing.*

The Inquiry is of the opinion that the forensic findings do not provide any support for the contention that there was an assault on Brian Rossiter while he was in Garda custody. “

Final Conclusions: In its final conclusions on the allegations of assault the Inquiry Report noted that *“the Rossiter family have submitted that the evidence heard at this Inquiry establishes that Brian Rossiter was assaulted while in Garda custody. They rely on the medical evidence in relation to the rarity of a delayed presentation of an extra-dural haematoma, the apparent lack of any symptomology in the days following the assault of the 9th of September 2002 and the fact that there is no proof of Brian Rossiter having grazing on his cheek or temple following upon the assault of the 9th of September 2002. They also rely on there being blood stains and traces of blood on his clothing and the fact that his track-suit top, which he may well have been wearing, has never been*

accounted for. They rely on the evidence of [Boys A and B] who alleged that they were assaulted in Garda custody.

The Inquiry is conscious that when looking at the issue of whether Brian Rossiter was assaulted in Garda custody, it must look at all the evidence in the round and not merely look at each thread of evidence to see whether it can be relied on or dismissed.

There is a basic difficulty in relation to the evidence of certain of the witnesses. The Inquiry is satisfied that the effect of rumour and speculation and dislike of An Garda Síochána influenced witnesses in their recollection and views. Those witnesses who have said they witnessed assaults on Brian Rossiter are either deliberately untruthful or unreliable and lacking in credibility. [A male witness] undoubtedly fabricated a story in which he recounted witnessing [Brian Rossiter being assaulted] at Marystone Mall. [Mr C's] evidence is entirely without credibility, not only because of his condition on the night of the 10th of September 2002, when he allegedly witnessed an assault on Brian Rossiter in Clonmel Garda Station, but because of the extraordinary differences in the accounts of this assault which he has given at various times. [A female witness] described an assault at the Piper Inn, albeit not a serious one, but her evidence, as has been previously outlined, is not credible.”

As regards Boys A and B, “ *this Inquiry does not find their evidence to be reliable.*” .

This Inquiry is satisfied that there is no conclusive medical means of establishing when Brian Rossiter incurred the fracture of his skull or the damage to the middle meningeal artery or whether the injury was the result of a fall or an assault. It has, however, established that a delayed presentation of fifty-two to fifty-six hours would be a most unusual event.

The medical evidence, the forensic evidence and the observations of others in relation to Brian Rossiter's condition following upon the assault of the 9th of September 2002 is circumstantial evidence and it is argued that this Inquiry should find from it that there

was an assault on Brian Rossiter. It has traditionally been explained that circumstantial evidence “works by cumulatively, in geometrical progression, eliminating other possibilities”.² The question arises as to whether the available circumstantial evidence is consistent only with a second assault on Brian Rossiter having occurred while he was in Garda custody.

There remains the unimpeachable fact that Brian Rossiter was viciously assaulted on the morning of the 9th of September and was kneed, head-butted and punched. The bruising to his penis was consistent with his being kneed. The grazing to his cheek and temple was consistent with his head being struck against the concrete doorway at which he was standing in the course of the assault... Witnesses have referred to swelling and marks on his forehead. The Inquiry is also satisfied that Brian Rossiter’s black eyes and swollen facial appearance would have deflected attention from any grazing that was present.

The Inquiry is satisfied that he was suffering from significant headaches following upon the assault of the 9th of September 2002 and that he continued to complain of these during Tuesday the 10th of September 2002 when he sought painkillers for them. Headaches can have a variety of causes but could have been the result of the fracture to the inner plate of his skull and subsequent complications. It is also satisfied that the pain in his head was such that he expressed himself unable to eat on the evening of the 9th of September 2002.

The Inquiry finds that the forensic findings from Brian Rossiter’s clothing and from the cell provide no support for the proposition that Brian Rossiter was assaulted during arrest or in custody.

In these circumstances the Inquiry is not satisfied that the evidence establishes that the injury to Brian Rossiter’s cheek and temple occurred during his arrest or detention. Accordingly, the Inquiry is not satisfied that Brian Rossiter was assaulted in the course of arrest or when he was in custody.”

² *DPP v Kilbourne* [1973] A.C. 729.

The Inquiry considered whether the Criminal Justice Act, 1984, (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 (S.I. No. 119/1987) were infringed in relation to the detention of the said Brian Rossiter.

The Report stated *“the Rossiter family submit that there were breaches of the following provisions of the Custody Regulations: Articles 3, 5, 6, 8, 9, 10, 11, 17, 19, 21 and 23.*

Regulation 3: *Regulation 3 requires members of An Garda Síochána to act with due respect for the personal rights of a person in custody and their dignity as human persons and requires persons to have regard for the special needs of a person in custody who may be under a physical or mental disability. Section 3(2) requires that there shall be no unnecessary delay in dealing with persons in custody.*

It has been submitted that Brian Rossiter was assaulted whilst in custody, that no regard was had to his physical condition prior to his being placed in a cell and subsequent to his being placed in a cell and that no appropriate regard was given to his age. It is further submitted that there was delay in providing him with medical assistance until he was unconscious almost twelve hours after being taken into custody. It is also submitted that there was a delay of approximately one hour in making contact with his parents following upon his arrest.

This regulation is a general one and the Inquiry is of the view that there was no evidence of an infringement of it. In particular it has been submitted that there was a delay of approximately one hour before any contact was made with either of Brian Rossiter’s parents. It is undoubtedly the case that Detective Garda Quinlan had undertaken to the member-in-charge that he would contact his parents but that he went to the scene of the broken window in Marystone Mall prior to doing this. This took somewhat in excess of twenty minutes. He then proceeded to Brian Rossiter’s family home and found that there was nobody there. He then put out a call indicating that a look at should be kept for his parents in order that they could be informed.

In these circumstances, the Inquiry believes that the delay in contacting his parents was not unreasonable.

Regulation 5: *This Regulation requires that the member-in-charge shall be responsible for the overseeing of the regulations in relation to persons in custody and shall visit them from time to time and make any necessary enquiries for the purpose of overseeing the regulations.*

Regulation 5(3) also requires a member-in-charge, where he is of the view that a direction given by a member of higher rank is inconsistent with the proper application of the regulations, to inform that member accordingly and to report it without delay to another member of or above the rank of superintendent unless the matter has been resolved.

It has been submitted that the members in charge during Brian Rossiter's detention acted on directions given by Detective Garda Daniel Quinlan and that those directions were inconsistent with the proper application of the regulations and that the members in charge failed to inform Detective Garda Quinlan accordingly and failed to report the inconsistencies to another member of or above the rank of Superintendent. In particular it is submitted that Detective Garda Quinlan directed that Brian Rossiter be detained where there was no lawful authority to detain him and that Detective Garda Quinlan procured an illegal consent from Brian Rossiter's father to his detention when there was no lawful basis for that detention.

It has already been found that there was no lawful authority for the detention of Brian Rossiter. However, the Inquiry is of the view that this failure of authority does not constitute a breach of the obligations of a member-in-charge pursuant to Regulation 5. If a direction was given, as is submitted, by Detective Garda Quinlan it is apparent that he was not a member of higher rank than the member-in-charge. The Inquiry is also of the view that there is no evidence to support the submission that the members in charge were

of the view that any direction which might have been given was inconsistent with the proper application of the regulations.

Regulation 6: *Regulation 6 requires that a record shall be kept of any person who is kept in custody. The member-in-charge is required to record in the custody record, as soon as is practicable, all information that is required to be recorded by the Regulation. Section 6(4) states that the member-in-charge shall be responsible for the accuracy and completeness of all entries made in the custody record while he is the member-in-charge”*

Comment was made earlier in this Report in respect of the various inaccuracies in the custody records concerning Boy A and Boy B. The Inquiry report goes on to state:

“It is clear that many of the entries in respect of the time of arrival and giving of notices of rights of persons who were in custody can not be correct and it appeared to the Inquiry that this was conceded by Garda Anne-Marie Coogan, who was member-in-charge at the time of their arrival at the Garda station.

This Inquiry was limited to an examination of whether the regulations in respect of Brian Rossiter had been breached. The Inquiry finds that there was a failure to accurately record the times at which Brian Rossiter was given information pursuant to Article 8(1) of the Custody Regulations and the receipt of the Notice of Rights.

Garda Canty took over the role of member-in-charge at 10pm on the night of the 10th of September 2002. His obligations were to check the prisoners every fifteen minutes for the first two hours of their detention. The custody record discloses that there was a period of thirty-five minutes during this initial two hour period in which Brian Rossiter was not checked upon. This was not addressed in the course of the Inquiry by any of the parties, and following upon the completion of evidence, the Inquiry wrote to the solicitors for the relevant Gardai indicating this. Garda Canty’s solicitors indicated, in correspondence, that he had checked on Brian Rossiter during this period but had failed to enter it in the

custody record. It is not proposed to make any finding in relation to this in view of the fact that it was not referred to in the course of the hearing.

Regulation 8: *Regulation 8 requires that a member-in-charge shall, without delay, inform an arrested person in ordinary language of the fact that he is entitled to consult a solicitor and, in the case of a person under the age of seventeen, that a parent or guardian was being given notification of his being in custody.*

It was submitted on behalf of the Rossiter family that the first contact with a parent of Brian Rossiter was made when his father was stopped in the street by a member of An Garda Síochána over an hour after his being taken into custody, when the address and phone number of his parents and older sisters were known to the Gardaí. As previously stated, Detective Garda Quinlan had indicated to the member-in-charge that he would inform Brian Rossiter's parents of the fact of his arrest. He went to Marystone Mall prior to doing this and subsequently discovered that Brian Rossiter's former address was unoccupied. He then issued a request to other members of An Garda Síochána that an attempt should be made to locate Brian Rossiter's parents.

In the view of this Inquiry, reasonable attempts were made to contact Brian Rossiter's parents and there has been no breach of this regulation.

Regulation 9 and Section 5(2) of the Criminal Justice Act, 1984: *This section of the Criminal Justice Act, 1984 and Regulation 9 of the Custody Regulations, requires that when an arrested person is under the age of 17 years the member-in-charge shall inform a parent or guardian of the person of his being in custody in the station, the offence in respect of which he has been arrested and his entitlement to consult a solicitor. The member-in-charge must also request the parent or guardian to attend at the station without delay. It is further required that the member-in-charge, if unable to communicate with a parent or guardian, shall inform the arrested person of that fact and of his entitlement to have notification of his being in custody sent to another person named by him.*

It was submitted on behalf of the Rossiter family that the member-in-charge failed to inform Brian Rossiter's parents that he was in custody, the reason he was arrested, his entitlement to consult a solicitor or that they should attend the station without delay. It was further submitted that when Patrick Rossiter arrived at the station he was not given this information and that Brian Rossiter's mother was not given this information when contact was made with her.

The member-in-charge, Garda Coogan, was informed by Detective Garda Quinlan that he would inform Brian Rossiter's parents of the fact that he was in custody. Detective Garda Quinlan went to Wilderness Grove where the Rossiters had lived until a short time beforehand. The house was unattended and he instructed other members of An Garda Síochána to seek out the parents. The member-in-charge, Garda Coogan, had caused Brian Rossiter's parents to be informed of the fact of his arrest. In these circumstances the Inquiry was of the view that she had carried out her obligations. When Patrick Rossiter arrived at the garda station, Garda Canty was the member-in-charge. There was a discussion during which it was explained to Mr Rossiter that his son was in custody and he was told the reasons why. He was also told of his right to call a solicitor by Garda Canty. In these circumstances this Inquiry is of the view that there was no breach of Regulation 9.

Regulation 10: Regulation 10 of the Custody Regulations requires the member-in-charge to notify the district headquarters for the district in which the person in custody resides of his detention. It was submitted on behalf of the Rossiter family that there was a failure to inform the district office in Wexford of the fact that he was taken into custody. It is submitted that no evidence was given that Wexford district headquarters were informed of this.

This was a matter not addressed or canvassed in the course of the Inquiry by the representatives appearing on behalf of the Rossiter family and accordingly no evidence was presented in relation to it and no opportunity was given to the relevant members of An Garda Síochána to address the complaint. Accordingly, it is not proposed to address this submission.

Regulation 11: Regulation 11 concerns the right of reasonable access to a solicitor of the detained person's choice and the right to communicate with them privately.

It was submitted that access to a solicitor was not provided to Brian Rossiter during his detention and that he was not given the opportunity to make a telephone call.

There was no suggestion that Brian Rossiter asked for a solicitor or asked to make a telephone call, despite having been given a notice of rights. In these circumstances, the Inquiry was of the view that there has been no breach of Regulation 11.

Regulation 17: Regulation 17(7) requires that particulars of any property taken from or handed over by a person in custody shall be recorded.

It was submitted that the whereabouts of the sweatshirt of Brian Rossiter at the time of his arrest and detention has been a breach of Regulation 17.

There was no evidence given in relation to Brian Rossiter wearing a sweatshirt. There was reference to his wearing a tracksuit top earlier in the day and a reference to a

jumper or top having been seen outside a particular cell on the morning of the 11th of September. It seems likely that Brian Rossiter was wearing some form of outer garment such as a tracksuit top on the night of his arrest but it is not certain.

The Inquiry is not satisfied that any of the named Gardai removed the clothing of Brian Rossiter or received it and accordingly, finds that there has been no breach of this regulation.

Regulation 19: *Regulation 19 deals with the conditions of custody and imposes various obligations upon those in charge of a garda station. Regulation 19(6) requires that where a person is kept in a cell, a member of An Garda Síochána shall visit him at intervals of approximately half an hour. It further requires that if a person is drunk or under the influence of drugs, that he shall be visited and spoken to, and if necessary roused, for that purpose at intervals of approximately a quarter of an hour for a period of two hours or longer should his condition warrant it. Section 19(8) requires that a person under the age of seventeen years should not be kept in a cell unless there is no other secure accommodation available.*

It should be noted that the custody regulations do not require the member-in-charge to call a doctor where a person is showing signs of intoxication or drug-taking or both, even where that person is under seventeen years of age. The regulation insists that for a period of two hours, such a person should be visited and spoken to and, if necessary, roused for this purpose. If the condition of the detained person warrants it, then he should continue to be visited and spoken to beyond the period of two hours.

The intention of the regulation is clearly to ensure that there is no danger to the health of the detained person through the effects of drink or drugs or a combination of both. The regulations appear to envisage that a period of two hours is a sufficient one for the purposes of close observation of the detained person and that visits at half hour intervals are sufficient after that period unless the condition of the detained person is such that more frequent visiting is warranted.

It has been submitted that there was a breach of this regulation because from 11.55pm on the 10th of September 2002 until 9.30am on the 11th of September 2002, Brian Rossiter was merely observed through the door of the cell and was not roused or spoken to. During much of this period he was sleeping, although there is evidence that he was awake and aggressive at 5.45am.

Had attempts been made to rouse Brian Rossiter during the night, and in particular after 5.45am when he was seen to be conscious and capable of speech, it is probable that his deteriorating condition would have been noticed and that there could have been medical intervention. Whether this would have been successful in saving his life is unclear. However, this Inquiry is of the view that his condition on that night was not such as would have obliged a member-in-charge to continue rousing him every 15 minutes for the purposes of checking his condition. He was capable of walking and talking and of climbing onto the window sill in the cell and was not showing signs of somebody who was succumbing to, or about to succumb to the effects of drink or drugs.

In these circumstances the Inquiry finds that there has been no breach of the obligations pursuant to 19(6) of the Custody Regulations.

It is further submitted that there has been a breach of Section 19(8) in that Brian Rossiter, being a person under the age of 17 years, was kept in a cell which is only allowable under the Regulation when there is no other secure accommodation available.

The Inquiry is satisfied that there was no other secure accommodation available in the Clonmel garda station on that evening and that accordingly there has been no breach of this regulation.

Further submissions have been made in relation to the fact that Brian Rossiter was left in his cell for approximately ten minutes after he was discovered in an unconscious condition. During this time attempts were being made to require a doctor to attend at the

garda station. It is submitted that there were three gardaí in attendance and that at least one of them should have remained with Brian Rossiter. It is submitted that to leave him in his cell alone showed a lack of regard for his treatment and wellbeing.

Whereas in hindsight it would appear advisable that somebody should have remained with Brian Rossiter during this short period of time, the failure to do so is not a breach of Regulation 19 of the Custody Regulations.

Regulation 20: *Regulation 20 forbids the members of An Garda Síochána from subjecting a person in custody to ill treatment or from using force against a person in custody, except where such force is reasonably necessary.*

It is submitted on behalf of the Rossiter family that Brian Rossiter's death was caused by the wrongful acts of An Garda Síochána.

The Inquiry is not satisfied that Brian Rossiter's death was caused by the wrongful acts of An Garda Síochána and accordingly does not find that there has been a breach of Regulation 20.

Regulation 21: *Regulation 21 requires that if a person in custody -*

(a) is injured

(b) is under the influence of intoxicating liquor or drugs and cannot be roused

(c) fails to respond normally to questions or conversation (otherwise than owing to the influence of intoxicating liquor alone)

(d) appears to the member-in-charge to be suffering from a mental illness, or

(e) otherwise appears to the member-in-charge to need medical attention

the member-in-charge shall summon a doctor or cause him to be summoned unless the person's condition appears to the member-in-charge to be such as to necessitate removal to a hospital or other suitable place.

It is submitted that on arrival at Clonmel Garda station, Brian Rossiter was under the influence of an intoxicant and had two black eyes. It is further submitted that if Brian Rossiter was in the condition alleged on arrival at the station this should have led the member-in-charge or other member to arrange for medical assistance or to have adopted a high level of surveillance which would have led to the calling for medical assistance at some time.

Undoubtedly, Brian Rossiter was showing signs of injuries when he arrived at the garda station. He had two black eyes which were very apparent. He also had damage to his lip which was not recorded in the custody record. These injuries were not fresh and had been caused in the assault on the 9th of September, nearly 48 hours prior to his arrival at the station. In the view of the Inquiry, the regulation is not such as to impose an obligation on the member-in-charge to call a doctor where the injuries are not fresh injuries and do not appear to present any immediate danger to the detained person's health.

The Inquiry is also of the view that there was no failure on Brian Rossiter's part to respond normally to questions or conversation and that his appearance and condition were not such as would have required the member-in-charge to call for medical assistance.

Regulation 23: *Regulation 23 addresses the various matters which have to be recorded in relation to a detained person. These include visits to the person in custody by the member-in-charge or other members, any other visits, telephone enquiries concerning them, telephone calls made or letters sent by them, requests made by them or persons attending the station and seeking to visit them, meals supplied to them and the ending of their custody.*

It is submitted that because contact was made with Brian Rossiter's mother by telephone during his detention that this should have been recorded.

Undoubtedly, this regulation requires that this telephone call should have been recorded and failure to do so is a breach of this regulation. The Inquiry is of the view, however, that this breach must be seen in the light of the fact that Patrick Rossiter was present during this telephone call and that his arrival and departure from the garda station was recorded.”

The next issue examined by the Inquiry was whether the the detention in Clonmel Garda Station of the said Brian Rossiter was unlawful

The Report sets out the context within which Brian Rossiter was detained in the following manner: *“Brian Rossiter was detained in Clonmel Garda station on the night of the 10th/11th of September 2002 having been arrested under the Criminal Justice (Public Order) Act 1994. There is no statutory power of detention pursuant to the Criminal Justice (Public Order) Act 1994 and no case has been made that the detention was justified by this or any other statute.*

Ordinarily, a person arrested under the Criminal Justice (Public Order) Act 1994 would be charged or released without charge.

The present situation is complicated by the fact that:

- (i) Brian Rossiter was a child of 14 years of age,*
- (ii) Patrick Rossiter, his father, had signed a consent to his son being kept in custody.*

It has been submitted by the representatives of the Rossiter family that Detective Garda Quinlan had a clear intent to keep Brian Rossiter and his two friends in custody overnight and that he acted deliberately to ensure their overnight detention. It is further submitted that this intention of Detective Garda Quinlan’s was unchallenged and unquestioned by the member-in-charge of the station.

The submissions on behalf of the named Gardaí accept that there was no statutory power of detention in relation to a person who had been arrested in these circumstances but submit that there was authority for the following reasons:

- (i) The parent, who had authority over Brian Rossiter, had directed that he stay in the Garda station.*

- (ii) *The Gardai were under a duty of care that prevented them from releasing him onto the street.*

Evidence has been given by various senior members of An Garda Síochána in respect of the attitude that is adopted towards juveniles and their custody. The policy of An Garda Síochána is not to release a child from custody unless there is a responsible adult willing and able to take custody of them. It is also the case that all effort should be made to ensure that a child is not left in custody and that the detention of a young person in a Garda station over night in a cell should only be considered as the last possible resort.

Sergeant Paul Heffernan told the inquiry that he had never witnessed a situation before where juveniles were detained on the basis of parental consent. He was of the view that a juvenile should only be kept in custody after a full appraisal and a full overview of the situation. He described such a situation as a last resort even if there was parental consent to the detention. He took the view that the member-in-charge should make efforts to see whether some responsible adult could take custody of the juvenile irrespective of the fact that the parent did not wish to take them into their custody. He suggested, as alternatives to the parents, that uncles, aunts or an older brother or sister or a social worker would be appropriate.

A dispute exists as between Detective Garda Quinlan and Patrick Rossiter in relation to the detention of Brian. Detective Garda Quinlan was firm in his view that Mr Rossiter had adamantly refused to take his son home and, therefore, there was no option but to detain him over night. Mr Rossiter, on the other hand, appears to suggest that he was not offered the option of bringing his son home and that the idea of a letter of consent came from Detective Garda Quinlan in the context of Garda Canty having said that the boys could not be kept until the morning.

There is no doubt that a discussion took place with Mr Rossiter in relation to the difficulties of his taking custody of his son. This is manifest from the fact that he discussed the difficulties of bringing his son back to his apartment because it was four

stories up and that he also made a reference to the windows of the apartment. There was also some discussion in this context about Mr Rossiter having an early morning appointment the following day.

Mr Rossiter was given the opportunity, on more than one occasion, to visit his son in the cells but he declined. He candidly and honestly conceded that he was in very bad form that night and has also admitted that after approximately 20 minutes in the Garda station that he had indicated that he was going for a drink and that he had looked at his watch because it was nearing closing time. He has also been candid in relation to his view that a night in custody might do his son no harm. Mr Rossiter has explained his attitude as being the result of being told that his son and his friends were entirely out of control on the evening.

Siobhán Rossiter had been contacted but clearly there was nothing that she could do since she lived in Wexford. Detective Garda Quinlan did not know that Brian had been staying with Sharon Rossiter and he was not told that by Mr Rossiter. Mr Rossiter was of the view that it would have been inappropriate to allow his son to return to Sharon Rossiter's house because it was clear that she was not supervising him. Detective Garda Quinlan indicated that he would have held the same view had he been so informed.

This decision to detain Brian Rossiter must be seen in the light of the extraordinary coincidence of three such decisions being made on the one night. In the case of Boy B it does appear that his father took a very definite view from the start that he was not willing to address the issue of his son being in custody and wished him to be detained. However Bay A's father had arrived back to the Garda station at approximately midnight and this can only have been for the purpose of addressing the question of his son's detention. He indicated in evidence that he was told by a member of An Garda Síochána that it might be better for his son if he were to remain in custody over night. This may well be indicative of an attitude which was present in the Garda station at this time.

The Inquiry is struck by the fact that the member-in-charge played no role whatsoever in relation to the decision to detain Brian Rossiter. It is remarkable that he had no conversation with Patrick Rossiter in relation to this decision and that no inquiries were made by him as to whether there might be alternatives. Garda Canty accepted with extraordinary lack of curiosity and inquiry the statement from Patrick Rossiter indicating that he wished his son to be kept in custody even though it had not been made in his presence. His comment, as described by Detective Garda Quinlan, when presented with the letter of consent, was “Ok so.” This fits uneasily with Sergeant Paul Heffernan’s observations in relation to the role of the member-in-charge in respect of young people who are or may have to be detained. While Mr Rossiter may have left the Garda station at that stage no inquiry appears to have been made by Garda Canty of Detective Garda Quinlan as to whether there were alternatives to this course of action. Detective Garda Quinlan appears to have usurped the role of the member-in-charge, who acceded to this.

The Inquiry is driven to the conclusion that both Garda Canty and Detective Garda Quinlan were of the view that it would be better for the town of Clonmel and for these young boys were they to be kept in custody overnight. If they had been concerned with the detention of juveniles in these circumstances then one would expect to see evidence of further discussion and further inquiry and attempts being made to facilitate a situation whereby the parents would take charge of the juvenile.

In legal terms, the issue at hand is whether the consent given by Patrick Rossiter to the detention of his son was sufficient to render his otherwise unlawful detention legal. Since Patrick Rossiter was the person who was ultimately responsible for his son Brian it might be said that he was consenting on Brian Rossiter’s behalf to his being detained overnight and that the Gardaí were acting in “loco parentis.” This raises the question as to whether a person can consent to their being held in custody where there is no power of detention and no apparent intention on the part of the Gardaí to charge them with the offence for which they have been arrested.

The Inquiry is of the view that the consent of a parent cannot legitimise an otherwise unlawful detention. This view is strengthened by the finding that there was no appropriate enquiry by either Detective Garda Quinlan or Garda Canty as to whether there were alternatives to the detention of a child overnight in a cell and that their attitude was consistent only with a view that it was appropriate that these boys be detained.

Accordingly, this Inquiry is of the view that detention of Brian Rossiter was unlawful.”

The next issue examined by the Inquiry was whether ambulance personnel, medical personnel and / or Dr Marie Cassidy were wrongfully given incorrect information concerning the consumption of alcohol and drugs by Brian Rossiter.

The Inquiry broke this aspect down into two specific parts:

- (a) Was incorrect information wrongfully given to ambulance personnel and medical personnel concerning the consumption of alcohol and drugs? And;
- (b) Was incorrect information wrongfully given to Dr Marie Cassidy concerning the consumption of alcohol and drugs by Brian Rossiter.

Part 1: That ambulance personnel or medical personnel were wrongfully given incorrect information concerning the consumption of alcohol and drugs by the said Brian Rossiter

The Report of the Inquiry states:

“ There is no doubt that ambulance personnel and medical personnel were given information in relation to the possibility that Brian Rossiter had consumed alcohol and drugs and that this reference to drugs included a reference to ecstasy. It has been submitted by the Rossiter family that this was done wrongfully in order to attribute the cause of Brian Rossiter’s condition to his own behaviour and wrong-doing.

The allegation is that there was an attempt to mislead the various parties who came in contact with Brian Rossiter in relation to the issue of alcohol and drugs.

It has proven difficult in examining the evidence to attribute the information received by the various parties to any particular member of An Garda Síochána. This is understandable in view of the length of time between these events in September 2002 and an Inquiry commencing in the year 2005.

There is no doubt but that members of An Garda Síochána raised the question of Brian Rossiter having consumed alcohol and drugs, including ecstasy and hash, with the medical personnel. A question arises, however, as to whether the information was incorrect and, if incorrect, as to whether this information was wrongfully given.

In order for incorrect information to be considered as having been wrongfully given, the Inquiry is of the view that there would have to be an intention on the parties passing on this information to knowingly mislead the parties who were receiving it.

The following is a synopsis of the evidence that was given to medical personnel:

- 1. Dr Anne Mulroony was a general practitioner in the local medical practice who was called to Clonmel Garda Station on the morning of the 10th of September 2002 to attend on Brian Rossiter. She described being informed of an emergency in the Garda station and then meeting a member of An Garda Síochána in the corridor outside her room. On the way to the station she asked him what was the emergency. She was told generally to the effect that a young boy had collapsed and that “we think there may be either drugs or alcohol involved.” No particular drug was mentioned.*
- 2. Detective Garda Quinlan was present during the attempts to revive Brian Rossiter in the Garda station. He says that he had informed one of the ambulance assistants that he suspected that Brian Rossiter might have consumed some type of intoxicant and that it could have been ecstasy.*
- 3. Declan Harte, the emergency medical technician who had come to Clonmel Garda Station with the ambulance, filled out an ambulance form which indicated in respect of Brian Rossiter “collapsed - ? OD ecstasy.” Declan Harte indicated that Detective Garda Brendan Franklin, who had accompanied the ambulance, had referred to an overdose.*

4. *The hospital chart from St Joseph's Hospital Clonmel has a number of references to alcohol and drugs. The chart includes a reference to a 15 year old having been brought in by ambulance having being found collapsed in the Garda station. It includes the following:*

"Diagnosis ? head trauma.

? Drug overdose

5. *Page 10 of that chart contains a note in the case history and refers as follows:*

"11/09/02 10.30

Fifteen year old.

Brought by ambulance in deep coma.

According to ambulance crew – due to Garda verbal report:

- he was involved in fight four days ago. ALS there is saying of joining group of friends using drugs and drink for last four – five days in daily basis."

6. *The record also refers to the following:*

"H-O drug overdose +"

7. *There is also a reference to:*

"IMP: Resp. Arrest? Drug Overdose? Head Injury?"

8. *There are three biochemistry and toxicology reports on blood specimens taken from Brian Rossiter in St Joseph's Hospital. Two of these reports bear a reference to respiratory arrest and "?E's." This is clearly a reference to ecstasy.*

9. *Brian Rossiter was referred from St Joseph's Hospital Clonmel on foot of a referral letter written by Dr Babiker. This states as follows:*

“GP and family thought that the patient took Δ - 16 tab ecstasy and other drugs and involved in a fight few days ago.”

There is also a reference to: “Father stated that he was involved in a fight few days ago,” and this is asterisked to a further reference at the bottom of the page which states as follows: “Gardaí stated that pt he was taking ecstasy and smoking hash last 6 days plus he was involved in a fight 3 – 4 / 7.”

10. *Dr Moawia Babiker was of the view that he had not spoken to any member of An Garda Síochána and that he had picked up this information from somebody else.*

11. *Dr Tom Coll was the locum consultant physician on call on the 11th of September 2002. He was called from his rounds by his registrar, Dr Babiker, to attend on Brian Rossiter. He was given information by the ambulance crew and they said that he had been on a binge with alcohol and maybe drugs for the previous three or four days. He did not recall any mention of any specific drug.*

12. *It is clear that the possibility of a drugs overdose was mentioned by members of An Garda Síochána soon after the discovery of Brian Rossiter in an unconscious state. This is clear from the evidence of Dr Anne Mulroony, who was referred to this possibility when she was making her way to the Garda station from the local medical centre. It is also clear from the evidence of Detective Garda Quinlan, who alerted one of the ambulance men to the possibility of Brian Rossiter having consumed ecstasy.*

13. Dr Moawia Babiker agreed that it is important to know the history of any patient and that would include references to his past medical history and the possibility of drinking, taking drugs or involvement in a fight. This would be of help to those who were eventually obliged to carry out a diagnosis. Dr Tom Coll was also of the view that it was important that hospital staff be informed of any possibility of drug-taking.

It was known to members of An Garda Síochána that drugs, including ecstasy, were being taken by young people in Clonmel. The youths with whom Brian Rossiter was associating were known to be involved in drinking and drug taking. Brian Rossiter had been stopped and brought to his home under suspicion of possession of ecstasy. His mother, Siobhán Rossiter, had suspected that he had taken ecstasy on an occasion in the past.”

The Report notes that the evidence presented to the Inquiry suggests that from approximately 9am on the morning of the 11th of September there was alcohol and hash being consumed in the flat where Brian Rossiter was present and there was a reference to an ecstasy tablet. In these circumstances the Report concludes that a reference to the possibility of ecstasy having been taken, and the possibility of an overdose, can not be seen as an attempt to put into circulation information that had no grounding.

The Report goes on to state: *“There is a reference in the letter of referral to Cork University Hospital written by Dr Babiker to the GP and family indicating that it was thought that Brian Rossiter had consumed 16 tabs of ecstasy and that he was involved in a fight a few days previously. This note also refers to Brian Rossiter taking ecstasy and smoking hash for the previous six days and being involved in a fight three to four days previously. It is unclear where the above information emanated from and if there may have been certain misunderstandings in transmission. The Inquiry sees no evidence proving that there was an attempt made to mislead medical personnel wrongfully with incorrect information.”*

Part 2: That Dr Marie Cassidy was wrongfully given incorrect information concerning the consumption of alcohol and drugs by the said Brian Rossiter

The Report states:

“Dr Cassidy completed a form for the toxicology laboratory at Beaumont Hospital which is described as a “post-mortem sheet.” Under the heading “clinical details” Dr Cassidy has recorded the following words: “Known IVDA, supposedly Hep C + HIV positive – not verified.” This was clearly a reference to Dr Cassidy noting that Brian Rossiter was a known intra-venous drugs user and was supposedly suffering from Hepatitis C and was HIV positive.

The Inquiry wrote to Dr Cassidy enquiring of her in relation to this and by letter dated the 16th of March 2006 Dr Cassidy indicated that she must have been given this information at the time of the post-mortem by An Garda Síochána. When questioned in relation to this Dr Cassidy indicated that she probably filled out the form the following day. She could not say where this information came from and could not say that anybody had definitely given it to her.

She explained its presence by saying that normally the laboratory would want to know whether or not the person from whom samples had been taken was a drug user and could be potentially infectious. She thought that she had probably written down this information without thinking very much about the background to it and that it was a normal shorthand way of informing the laboratory that “there’s drugs in this person, it’s possible that they could have some of these infectious diseases.”

Detective Sergeant O’Riordan was present at the post-mortem, as was Garda Franklin. It appears that Garda Franklin had no communications with Dr Cassidy. He had outlined to her the circumstances of the incident on the Sunday night where Brian Rossiter was assaulted and outlined that there was a question of alcohol, ecstasy and cannabis having

been used. He had also referred to the incident at the flat at Abbey St, prior to Brian Rossiter's arrest where there was an alleged assault. He also told Dr Cassidy that Brian Rossiter had been complaining of headaches. Detective Sergeant O'Riordan was referred to the post-mortem sheet prepared by Dr Cassidy. He was adamant that he had no discussion with Dr Cassidy as to whether or not Brian Rossiter suffered from Hepatitis C or was HIV positive. He was unaware of any other source where that information could have come from.

It should be noted that the post-mortem date recorded on the post-mortem sheet already referred to is the 7th of September 2002. This date is clearly incorrect. This was clarified by Dr Cassidy in her letter of the 16th of March 2006 where she indicates that it should state the 14th of September 2002.

The information contained on the post-mortem sheet is clearly incorrect. Brian Rossiter was not an intravenous drug user and was not HIV positive although there is some evidence to suggest that he had suffered from Hepatitis as a child. The conflict between Dr Cassidy's letter of 16th March 2002 and her evidence raises a question as to whether she was misinformed by Detective Sergeant O'Riordan in relation to Brian Rossiter's background. However, in the absence of other evidence this Inquiry is inclined towards accepting Dr Cassidy's explanation as to why these comments were included on the post-mortem sheet."

The final issue examined by the Inquiry was that all the circumstances of the death of the said Brian Rossiter were not fully investigated and all witnesses were not interviewed.

The Report states:

“At the time of Brian Rossiter’s detention, and subsequent death, there was no system in place whereby the death of a person in custody or the fact of a person becoming unwell in custody and subsequently dying, triggered an independent investigation by an independent body or by members of An Garda Síochana other than those attached to the relevant station. This was an unsatisfactory situation where members of An Garda Síochana could be involved in investigating themselves or their immediate work colleagues. The situation has changed since then and in circumstances such as these there would be an investigation by an independent body.

The documentation produced in the course of the investigation into the death of Brian Rossiter and the evidence heard at this Inquiry does not show any indication of there being any real investigation in relation to the possibility of Brian Rossiter having been assaulted or his having received his fatal injury while in custody. None of the members involved in the investigation were directed to this possibility and this line of enquiry does not appear to have been discussed at the case conferences. This is despite the assertion by Superintendent Burke that the possibility of such an assault became a line of enquiry when the statement of [Boy B] was received.

The possibility of an assault on Brian Rossiter by members of An Garda Síochana was first raised as early as the 19th of September 2002 when the statement of [Boy B] was received at Clonmel Garda Station. This statement contained a reference to Brian Rossiter having indicated that the Gardaí had “killed” him. Subsequently, it appears that rumours were circulating in Clonmel to the effect that Brian Rossiter had been assaulted by members of An Garda Síochana and the Inquiry has no doubt but that

Superintendent Burke must have been aware of this. It would appear that these rumours may have emanated from [Mr C].

Superintendent Burke indicated in evidence that he adopted a mode of investigation whereby he waited to see if there was any evidence of such an assault and if there was then he would have advised an independent investigation. This would appear to be a somewhat lethargic approach to take to a specific line of enquiry.

He also indicated that he wished to interview [Boy B] in relation to his statement and in relation to what he had reported Brian Rossiter as saying but that following upon the decision by [Boy B] not to proceed with his complaint against Detective Garda Quinlan he was not in a position to do so. This Inquiry can not see how this decision by [Boy B] could have prevented Superintendent Burke from making a request to interview [Boy B] in respect of this aspect of his statement if there was any reality to the suggestion that an assault on Brian Rossiter by members of An Garda Síochana was a line of enquiry.

This must be seen in the light of the failure to make any enquiry of [Boy A] as to whether he had witnessed any assault or heard any reference to an assault. It must be remembered that [Boy A] was in the cell next to Brian Rossiter and would have been in a better position than [Boy B] to hear what was shouted by Brian Rossiter. He would also have been in a position to confirm whether he had seen or heard an assault on Brian Rossiter. It is surprising therefore that no questions were directed to [Boy A] in relation to his time in custody when he was interviewed during the investigation and that no direction was given that he be re-interviewed when his initial statement was returned to the investigation room. Again, this must be seen in the context of Superintendent Burke's evidence that he had directed an interview of [Mr C] simply because his presence in the cells that evening made it important that he be interviewed.

An interview with [Mr C] was directed but he refused to make a statement and said that he would make one to the Rossiter's solicitor. [Mr. C] reported to Mr Cian O'Carroll, the Rossiter's solicitor, what he had allegedly witnessed. However, it appears that Mr

O'Carroll was sceptical of him and after taking brief attendances on two occasions he appears to have dismissed him as being of no importance. However, no enquiry was ever made of Mr O'Carroll by Superintendent Burke as to whether such a statement had been made and no second attempt to interview [Mr C] was directed. Sergeant O'Riordan said that he did mention the issue to [Witness C] again when he was meeting him for other purposes but [Mr C] expressed no interest.

Following upon the receipt of the serious allegations contained in the letter of the 17th of December 2002 from the South Eastern Health Board Superintendent Burke did make contact by letter with [Mr C] and gave him two telephone numbers at which the Superintendent could be contacted. He did not, as requested in the letter, arrange for a statement to be taken by members of An Garda Síochana other than Clonmel members and seems to have taken the job of interviewing [Mr C] upon himself. Undoubtedly he made contact with [Mr C] and there was discussion in relation to a meeting. A meeting never took place. According to Superintendent Burke there was no meeting because [Mr C] was equivocating and eventually declined to meet. On the other hand, [Mr C] indicated that a meeting did not take place because the Superintendent had not allowed him to have an independent person present. However, he also indicated that the Superintendent was unable to attend an arranged meeting in Cahir Garda Station because of a suspicious death in Clonmel. Superintendent Burke said that he requested [Mr C] to contact the Complaints Board, the Minister for Justice or a solicitor in order to give his version of events when [Mr C] declined to meet him. No letter to this effect was ever sent to [Mr C].

If Superintendent Burke was of the view that [Mr C]'s statement was of such importance that he had urged him to make contact with the Complaints Board or the Minister for Justice then it seems strange that the letter from the Health Board and its contents were not included in the investigation report which was to be sent to the Director of Public Prosecutions, the State Solicitor and others. Superintendent Burke agreed that it should have been included in the investigation report in order that the Director of Public Prosecutions could, if he saw fit, direct further enquiries based on it. The failure to

include it in the investigation report and the failure to notice the fact that it was not included has been described by Superintendent Burke as “an omission.”

The Inquiry is of the view that the importance of the document was such that a failure to include it in the Garda investigation file was significant and a neglect of Superintendent Burke’s obligation to include all relevant matters in the investigation report. This is particularly so in circumstances where a recommendation was made by Superintendent Burke to prosecute Noel Hannigan for manslaughter. This information might have been relevant to Mr Hannigan’s defence but if not included in the Garda investigation file or report The Director of Public Prosecutions and Mr Hannigan or his advisers might have been deprived of knowledge of it. It has been argued that [Mr C] is not a reliable witness and that he refused to co-operate with the investigation and therefore that his statement could not have contributed to the investigation. Undoubtedly [Mr C] is not reliable as a witness but this does not excuse the failure to include such important material on the investigation report.

There was an initial direction to interview [Boy B] but he declined to be interviewed and indicated that he would provide a statement through his solicitor. This was done. Superintendent Burke indicated in evidence that he had contacted [Boy B]’s solicitor, Mr O’Connor, following upon receipt of the statement, in order to arrange a meeting with [Boy B]. Mr O’Connor has no memory of this. This Inquiry is not satisfied that Superintendent Burke is correct in his memory of this and is further of the view that no attempt was made by Superintendent Burke to interview [Boy B] following upon the receipt of his statement. The statement was included on the investigation file and subsequently on the investigation report sent to the Director of Public Prosecutions. However, the failure to seek an interview following upon the receipt of this statement is a further indication that there was no real investigation of the possibility that Brian Rossiter had been assaulted while in Garda custody.

At no time did Superintendent Burke make enquiry of the State Pathologist, Dr Marie Cassidy, as to the possibility that there had been a second assault. If the possibility of a second assault was a line of enquiry as indicated by Superintendent Burke, one would expect that enquiry would have been made of Dr Cassidy as to whether the injury that caused Brian Rossiter's death or any of his injuries could have occurred at a time other than the assault by Noel Hannigan. The Inquiry accepts that Dr Cassidy's initial report indicated that all the injuries apparent on Brian Rossiter appeared to have occurred at the same time and that death resulted from an injury incurred on the 9th of September but Superintendent Burke was aware that Dr Cassidy had only been informed of one assault and no enquiry had been made of her in relation to the possibility of there having been a second one. If the possibility of a second assault was being enquired into one would have expected that a simple enquiry would have been made to ascertain whether any of the injuries could have been caused while Brian Rossiter was in Garda custody or whether such an injury could be ruled out. Such an enquiry would have elicited an answer that the grazing on the cheek could have been caused while he was in custody and might have pointed to the rarity of extra-dural haemorrhages manifesting themselves after a period of 48 hours or more. However, it should be noted that Dr Cassidy's opinion in relation to the age of the grazing was made available to the prosecuting authorities following upon an enquiry by them in the course of their consideration of the investigation report.

Forensic examination of the clothing of Brian Rossiter was carried out, as is usual in cases where there is an investigation into a death. It is important that a deceased's clothing be examined forensically for any traces that might be relevant in relation to the investigation. No enquiry was made in relation to the whereabouts of the tracksuit top that Brian Rossiter had been wearing on the afternoon of the 10th of September and there appears to have been no mention of it at any of the conferences during the investigation. The failure to follow this as a line of enquiry has been criticised and it is undoubtedly the case that this line of enquiry should have been pursued. The Inquiry, however, is not satisfied that there was any deliberate attempt to suppress this matter and is of the view that this was probably inadvertence.

The CCTV footage which showed Brian Rossiter wearing the long sleeved top was not listed as an exhibit in the investigation report as would usually be done. This footage was of little or no relevance to the prosecution against Noel Hannigan but would be of relevance if there had been an active investigation into the possibility of Brian Rossiter having suffered injuries subsequent to the assault by Noel Hannigan. The failure to pay attention to it or to have the images on it enhanced is yet a further indication that there was no investigation into the possibility of Brian Rossiter having been assaulted while in Garda custody.

The question of the appropriate preservation of the scenes at Cashel St, Abbey St and the cell at Clonmel Garda Station has been raised. There were undoubtedly delays in the preserving of the scenes at Cashel St and Abbey St but the Inquiry is satisfied that they are of little significance. The cell at Clonmel Garda station was not taped over with official Garda tape until some hours had passed and it was preserved only by means of the locking of the door and the placing of a note on the door. Superintendent Burke, however, said that he entered the cell prior to the arrival of a Garda forensic team and this is clearly not desirable. However, this Inquiry is not satisfied that this was of itself a failure in the investigation.

It has been argued by the representatives of the Rossiter family that the delay in preserving the scenes at Abbey St and Cashel St was a failure to investigate fully the circumstances surrounding the death of Brian Rossiter. Although there was a certain tardiness to the preservations of the scenes the Inquiry does not consider that to be of any significance and the Inquiry does not consider this to be a failure in the investigation.

On examining the evidence of all witnesses and the documentation available it appears that the investigation was directed entirely to the assault by Noel Hannigan and there is no indication that the possibility of an assault by members of An Garda Síochána on Brian Rossiter was ever seriously considered despite Superintendent Burke's evidence to the effect that it was a line of enquiry. The Inquiry believes that the combination of the matters expressed in [Boy B]'s statement and the letter of the 17th of December 2002

from the South Eastern Health Board should have been sufficient to warrant an investigation of this possibility. The Inquiry is also of the view that it would have been appropriate that the investigation be carried out by members of An Garda Síochána other than Gardai based in Clonmel. It should be noted however that there was no formal system for the setting up of such an investigation in the event of a death in custody or immediately following custody. The failure to include the letter from the South Eastern Health Board in the investigation report can only have had the effect of lessening the possibility of such an enquiry occurring. The Inquiry is of the view that the failure to have an independent investigation is the result of a failure in the system rather than a failure of Superintendent Burke's duty.

In the overall context of the investigation, and particularly in light of the evidence given by Superintendent Burke, the Inquiry is satisfied that there was a failure to have any real investigation into the possibility of an assault on Brian Rossiter having occurred while he was in Garda custody. It is the impression of this Inquiry that Superintendent Burke was not anxious to follow this possibility as a line of enquiry.

The Inquiry accepts that the existence of the letter of the 17th of December 2002 was known to Superintendent Liam King and at least one other senior member of An Garda Síochán. The Inquiry also accepts that [Mr C] is a difficult person who people may not have treated with any great seriousness. In this regard it should be noted that Mr Cian O'Carroll had placed little or no importance on [Mr C]'s version of events when [Mr C] alleged to him that he had witnessed an assault on Brian Rossiter. The Inquiry also accepts that [Mr C] may very well have failed to meet Superintendent Burke for reasons other than those given by [Mr C]. However Superintendent Burke was the member in charge of the investigation and he has accepted that the letter of the 17th of December 2002 should have been sent to the investigation room and should have been included in the investigation report which was sent to the Director of Public Prosecutions and his superiors. This would have enabled the prosecuting authorities to consider the matter and to direct further enquiries.

Despite the evidence of Superintendent Burke to the effect that the possibility of an assault on Brian Rossiter during his arrest or detention was a line of enquiry, this Inquiry finds that there was no adequate investigation of this possibility. The Inquiry is anxious not to consider the conduct of the investigation with the benefit of hindsight. However certain investigative steps were not taken after the possibility of an assault in custody was raised. In particular the Inquiry finds that there was a failure to direct that [Boy A] be interviewed in relation to what he had seen or heard while in custody and a failure to enquire of Dr Marie Cassidy as to whether any of Brian Rossiter's injuries could have been incurred in an assault other than that of the 9th of September 2002. Moreover, while the failure to make these enquiries prior to the receipt of the letter of the 17th of December 2002 might be understandable, the Inquiry finds that the failure to make them after the receipt of the allegation contained in that letter is inexplicable.

Furthermore the subsequent failure to include the letter or any reference to it in the investigation report deprived the prosecuting authorities of the opportunity of reviewing the allegations and of directing further enquiries.

Accordingly this Inquiry finds that there was a failure to investigate all the circumstances surrounding the death of Brian Rossiter and that this was a neglect of duty on the part of Superintendent Burke.