



AN CHÚIRT UACHTARACH
THE SUPREME COURT

[2024] IESC 23

O'Donnell C.J.
Barniville P.
Dunne J.
Charleton J.
O'Malley J.
Hogan J.
Collins J.

Between:

THE PEOPLE (DIRECTOR OF PUBLIC PROSECUTIONS)

Respondent

AND

GARY MCAREAVEY

Appellant

JUDGMENT of Mr. Justice Gerard Hogan delivered the 17th day of June 2024

1. The facts of this appeal have already been set out in some detail in the judgment of Collins J. for the majority of the Court. It is sufficient to record here that this appeal arises from a ruling of the Special Criminal Court on 22nd October 2020 admitting key telephone metadata evidence which was connected with Mr. McAreavey; its subsequent judgment

of 5th January 2021 convicting the accused and the subsequent decision of Birmingham P. for the Court of Appeal of 28th July 2022 affirming that conviction.

2. Two issues arise in this appeal. First, was the telephone metadata in this case accessed by the Gardaí in a manner which amounted to a breach of Article 8 of the EU Charter of Fundamental Rights and Freedoms? Second, what is the proper construction of s. 7(2) of the Criminal Law Act 1997?
3. So far as the metadata issue is concerned, I respectfully adhere to the views expressed in the judgment I have just delivered in *The People (DPP) v. Smyth* [2024] IESC 22. I would accordingly allow the appeal on this ground.
4. In relation to the proper construction of s.7(2) of the Criminal Law Act 1997, however, I fully agree with the judgment of Collins J. on this point and the order he proposes.