



# THE COURT OF APPEAL

Court of Appeal Record No. [86/2020]

Neutral Citation No: [2021] IECA 348

**Birmingham P.**

**Edwards J.**

**McCarthy J.**

**BETWEEN**

**THE PEOPLE (AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)**

**PROSECUTOR/RESPONDENT**

**-AND-**

**C.K.**

**ACCUSED/APPELLANT**

**JUDGMENT of the Court delivered by Mr. Justice McCarthy on the 21st day of December 2021**

**Introduction.**

1. After a trial at Cork Circuit Criminal Court, the appellant was convicted on the 21st of February 2020 of seven counts of indecent assault. The complainants were children at the time of the offences and the offences were alleged to have occurred or, by verdict of the jury, in fact occurred between 1985 and 1989. Four of these related to M.B. who was born on the 12th of December 1977 and three to S.B. who was born on the 22nd of August 1980; those injured parties are brothers. The appellant was at the relevant times the boyfriend of their

aunt. To put the matter shortly, the offending took the form of touching of the complainants' in the genital area at various locations.

2. The issues which have arisen on this appeal include a number pertaining to various amendments to the indictment and its state when the case went to the jury; it was amended on three occasions. This gave rise to what are described by the parties, for the sake of convenience, as the first – which was the original on which the appellant was arraigned – and the second, third, fourth (and final) indictments respectively; we will use this nomenclature even though in strictness there was only one, albeit amended. Those amendments (including amendments made by reason of a number of acquittals by direction – a somewhat unusual practice but one which did not prejudice the appellant) meant that the first indictment was reduced from 30 counts to 15 (on the fourth) and the 7 convictions were amongst those 15. By way of an aside we might add that the appellant had been sent forward for trial on up to 175 counts (various numbers are referred to in the papers). The four indictments are annexed hereto; from them will be seen the course of events – it is with the fourth, however, that we are concerned so we have set out below the charges on it for ease of reference.

3. A number of the offences charged on that fourth indictment were the subject of so-called “alternative counts”. This course was based on the concept that the times during which a number of the offences were committed were uncertain: the same offence was charged more than once but each count dealing with it pleaded different dates. If the jury were satisfied that a particular offence had been committed, they were invited to choose one of those counts viz. – that which identified the “correct dates” and acquit on the remaining count or counts charging the same offence. The multiple counts, each charging the same offence, were thus described as alternatives. This in our view is the core issue on this appeal as far as the indictment is concerned; surprisingly, there was no objection in point of law to the concept of alternative counts, per se, in the trial court, that is to be distinguished from

submissions which were made on fact to the effect that some one or more such counts could not be sustained. However, the court considered that it arose by implication in the first ground of appeal and having regard to its fundamental nature we think it right that it must be addressed in the context of the first ground.

4. Four offences or individual instances of offending were particularised on an alternative basis, involving a total of 9 of the 15 counts on the fourth and final iteration of the indictment. The first of these was the subject of counts 2 and 3, respectively, with the jury acquitting on count 2 and convicting on count 3. The second involved counts 6 and 7, respectively, with the jury convicting on count 6 and acquitting on count 7. The third involved counts 10 and 11, respectively, with the jury acquitting on both of these counts. As there were acquittals in respect of both alternatives we do not therefore need to be further concerned with counts 10 and 11. Finally, the fourth (offering not one, but two possible alternatives) involved counts 13, 14 and 15, respectively, with the jury acquitting on counts 13 and 14 and convicting on count 15.

5. Counts 1, 4, 5, 8, 9, and 12, respectively, were all freestanding counts and so no complication, so to speak, arises with them.

6. We set out below each count as particularised on the fourth indictment numbered in accordance with it, together with the verdicts. For ease of reference we have also sought to show those counts which purported to be alternatives or freestanding: -

### **Freestanding**

(1) On a date unknown between the 1st of May 1986 and the 31st of October 1987 both dates inclusive at [a certain public house] indecently assault M.B., a male, by putting his hand on M.B.'s penis when they shared a double bed. [**Guilty**]

**Counts 2 and 3 purported alternatives**

- (2) On a date unknown between the 1st of January 1986 and the 31st of December 1986 both dates inclusive at the TV room at [M.B.'s home], indecently assault M.B., a male, by touching his penis with his hand in the course of or having watched a movie. [**Not Guilty**]
- (3) On a date unknown between the 1st of January 1987 and the 31st of December 1987 both dates inclusive at the TV room at [M.B.'s home] indecently assaulted M.B., a male, by touching his penis with his hand in the course of having watched a movie (*sic*). [**Guilty**]

**Freestanding**

- (4) On a date unknown between the 1st of January 1988 and the 31st of December 1988 both dates inclusive in M.B.'s bedroom at [M.B.'s home] indecently assaulted M.B., a male, by rubbing his penis with his hand and forcing him to lean on the bed with his bare bottom in the air. [**Guilty**]
- (5) On a date unknown between the 1st of January 1988 and the 31st of December 1989 both dates inclusive at [M.B.'s home] indecently assaulted M.B., a male, by touching his penis with his hand while M.B. was wearing Santa Claus boxer shorts. [**Not Guilty**]

**Counts 6 and 7 purported alternatives**

- (6) On a date unknown between the 1st of January 1984 and the 31st of December 1988 at [M.B.'s grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs". [**Guilty**]

- (7) On a date unknown between the 1st of January 1988 and the 31st of December 1988 at [M.B.'s grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs" [**Not Guilty**]

**Freestanding**

- (8) On a date unknown between the 22nd of August 1984 and the 22nd of August 1985 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching his penis and putting his finger in his anus. [**Guilty**]
- (9) On a date unknown between the 22nd of August 1986 and the 21st of June 1987 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching and stroking his penis and putting his hand over his mouth. [**Not Guilty**]

**Counts 10 and 11 purported alternatives**

- (10) On a date unknown between 1st of January 1987 and the 31st of December 1987 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by putting his hand on his penis and while S.B. was sitting in a box. [**Not Guilty**]
- (11) On a date unknown between 1st of January 1988 and the 31st of December 1988 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by putting his hand on his penis while S.B. was sitting in a box. [**Not Guilty**]

**Freestanding**

- (12) On a date unknown between the 1st of May 1986 and the 31st of October 1987 both dates inclusive in a bedroom at [a certain public house] indecently assault S.B., a male,

by kneeling over him while C.K. was naked and pinning his arms to the bed in the bedroom. [**Guilty**]

**Counts 13, 14 and 15 purported alternatives**

(13) On a date unknown between the 1st of January 1984 and the 31st of December 1984 at [S.B.'s grandparents' home] indecently assault S.B., a male, by touching his penis with his hand whilst playing Subbuteo in the room known as "A.B.'s room downstairs" [**Not Guilty**]

(14) On a date unknown between the 1st of January 1985 and the 31st of December 1985 at [S.B.'s grandparents' home] indecently assault S.B., a male, by touching his penis with his hand by playing Subbuteo in the room known as "A.B.'s room downstairs". [**Not Guilty**]

(15) On a date unknown between the 1st of January 1988 and the 31st of December 1988 at [S.B.'s grandparents' home] indecently assault S.B., a male, by touching his penis with his hand while playing Subbuteo in the room known as "A.B.'s room downstairs" [**Guilty**]

**Grounds of Appeal.**

7. The grounds of appeal are as follows: -

(1) *The honourable trial judge erred in permitting amendment to the Indictment so as to allow alternative counts relating to the same alleged offence but over 3 successive years with the effect that:*

(a) *These counts were without evidential foundation and/or;*

(b) *The span of 3 years was wrongly permitted for each such alleged offence.*

- (2) *The honourable trial judge erred in permitting substantial and repeated amendments over the course of the trial in order to refine the Indictment thereby depriving the Accused of procedural fairness including his right to a fair trial under Article 38 of the Constitution and Article 6 of the European Convention on Human Rights.*
- (3) *The honourable trial judge erred in refusing to accede to an application pursuant to D.P.P. v. PO'C [2006] 3 I.R. 238 having regard to (a) the effects of the delay between the date of the alleged offences and the trial and/or (b) the lack of particularity in the Indictment as originally served and on foot of which the trial substantially (sic).*
- (4) *The honourable trial judge erred in refusing to hear a renewed application on the above ground after the final amendment of the Indictment.*
- (5) *Alternatively, the honourable trial judge erred in failing to direct an acquittal on all remaining counts on the Indictment.*
- (6) *Alternatively the honourable trial judge erred in failing to direct an acquittal on the counts concerning the game of Subbuteo, having regard in particular to (a) the lack of particularity of those counts as to time or location and/or (b) the confusion which had arisen in the course of the trial on the relevance of football allegiances and the Jury's manifest misunderstanding of this issue.*
- (7) *The honourable trial judge erred in making a comment, in addition to the Jury warning about the risks of delay, to the effect that it would be impossible not to have sympathy for the complainants, thereby undermining the efficacy of that delay warning and/or unduly influencing the Jury's view of their testimony.*
- (8) *The verdict of the jury was perverse or alternatively so logically inconsistent that it should not be permitted to stand.*

## **Evidence**

8. We think it necessary to refer to the evidence in a degree of detail, beginning with that of the complainants and thereafter members of their family, followed by that of the appellant and witnesses called on his behalf.

### **The older complainant M.B.**

9. M.B. was born on the 12th of December 1977. It is not disputed in the case but for a period from May 1986 to October 1987 his grandparents, with the assistance of members of their family, ran a public house some distance from their family home. The witness said that, there, he was shown a so-called Page Three photograph (involving female nudity) from The Sun newspaper or some other equivalent red-top tabloid. He told the appellant that unless he stopped doing *“that”*, and as he put it, *“feeling us and showing us pictures of Page Three and all of that kind of stuff I’m going to tell someone”*. The witness stated to prosecuting counsel during his examination in chief that in *“the various different places you mentioned”* (i.e., that had been mentioned by counsel at an earlier point during the trial) the appellant would *“kind of feel my private parts and do, you know, pull my pants down or peel back my foreskin on occasion and things like that. That kind of stuff”*. When asked explicitly to recall any such events at the public house he said that he shared a room with the appellant on some nights. Effectively, he said that every incident which he could remember as having occurred at the public house, occurred in that room, which contained a double bed and which he shared with the appellant from time to time. On an occasion in 1986 or 1987 the appellant had twice played for this complainant a particular song that was then popular (known as *“the Chicken Song”*). The appellant later made a remark along the lines that: *“I didn't play it twice for my health”*. That night the appellant had proceeded to touch this complainant in the genital area; which occurrence, the complainant said, strengthened his belief that if the appellant did

“anything nice” [for him], there would be, implicitly, an expectation of “payback” in the form of submission to molestation. M.B. further stated that there were “*other times*” when what he described as “*the same thing or[a] similar thing happened*” and these largely involved threats also. He also said that “*basically, every opportunity he got me alone he would do, you know do, something...*” and repeated, at a given stage in his evidence, that due to threats he kept quiet about being sexually assaulted on a regular basis and being shown pictures of the so-called “Page Three” variety as well as having conversations with sexual implications initiated by the appellant. The appellant took the opportunity, “*if we were alone basically, he would try something*”.

10. M.B. also referred to offences as having taken place at his own home where the appellant would often visit since he was his aunt’s boyfriend – whenever there was an opportunity to get him or his brother alone “*that would kind of happen*”. He identified a particular day when a film called “Cocoon” was being shown and when his penis was fondled, and he declined to touch that of the appellant at his request; he thought that this occurred in the mid-eighties “*maybe 1986 or 1987*”. Another incident was referred to when what he characterised as the “*usual*” fondling took place and he was ordered to lie face down on his bed and pull down his trousers when the event was interrupted by the arrival of his father.

11. At his grandparent’s house during the Christmas period of 1988, the complainant said that the appellant gave gifts of boxer shorts to himself and his brother and urged them to put them on. Thereafter, the appellant proceeded to chase himself and his brother about the room whilst alone with them, putting his hand inside their clothing and rubbing their private parts, supposedly in the course of a game.

12. M.B. said repeated incidents took place at his grandparent’s home during the course of games of the then popular board game “Subbuteo” (in the course of which, supposedly in fun,

the appellant shoved the “soccer” ball used therein down the trousers of the complainant and fondled him). He thought that this occurred in the mid to late eighties and such events occurred “*lots of times*” – on at least ten occasions. In the course of his evidence on this topic a number of references were made to various soccer teams and their colours with particular reference to Everton (and allegiance to various clubs); the witness was effectively taxed in his evidence about the board game by reference to his ignorance or supposed ignorance about teams, football allegiances, and colours. Similarly, this topic was canvassed in cross-examination of the complainant’s brother. We mention this only because in submission at the trial it was in some sense relied upon as going to credibility. We are wholly unimpressed by its evidential significance.

**13.** The witness also gave evidence about an event which he says occurred at the appellant’s home which he visited with his sister, and his brother S.B.; a film called “Superman III” was being played and he thought that the relevant incident occurred in 1987-1988, but the count based on that incident was the subject of a direction.

**14.** In cross examination it was put to him that his mother was present when the appellant showed him a so-called “Page Three” picture of a semi-naked woman in “The Sun” newspaper rather than, as he contended or at least recollected, only his younger sister M. (born in 1983) had been present; this is of significance in the light of the appellant’s denial in evidence that he had ever done such a thing. It was explicitly put to him that the appellant was “*giggling about a picture to you and that was the end of it, there was nothing more to it than that*”. It was also put to him that he had not told the Gardaí in his statements of the appellant peeling back his foreskin, as alleged in evidence by him, which he accepted. He also agreed that when the appellant visited the public house he did so in company of the complainants’ aunt, and that they often took the same shifts. M.B. also accepted that he slept in the same room as his brother S.B. but insisted that on occasion he had slept with the

appellant alone. Effectively it was suggested to him that his aunt or his parents would always have been present when the appellant was there, a proposition he further rejected. He repeatedly rejected suggestions that the events which he had outlined had not occurred and the sequences of events, as elaborated by him, were closely tested. He repeatedly stressed in cross-examination that he was in fear of the appellant because of his threats, and that the appellant was trusted by other members of the family to be in company with him alone.

**The younger complainant S.B.**

15. S.B., the younger of the complainants was born on the 22nd of August 1980. He recalled that the appellant urged him to play a game of “Doctors and Nurses” which involved inspecting, as the appellant described it, the body of others and indeed having engaged in it with a neighbour the witness found that he got into trouble. At an early stage in his evidence he stated that in his bedroom in his own home, the appellant “...*basically, he used to put his hands down your pants and rub around your genitals and stuff, do you know, fondle your penis*”. He went on to say that the appellant “...*used to put his hands down your pants and rub around your genitals and stuff and, do you know, fondle your penis*”. On another occasion in that bedroom, the appellant put his finger into that complainant’s anus – one might add that he was cross-examined to the effect that he had told the Gardaí (as he had) that the appellant *tried* to do so rather than did so. S.B. thought that he was about four at that time (meaning that the incident occurred in 1984). He recalled another incident when he was aged six or seven of being awakened at his home by the appellant to find him fondling his genital area; in retrospect he thought that the appellant was attempting to masturbate him and was probably masturbating himself given that he used the same hand placed upon the complainant’s genitals to cover his mouth upon his awakening. S.B. described that incident as having occurred when his aunt and the appellant returned one evening from a trip to England

(which, if the incident occurred or at least occurred then), must have been a visit made by them to the appellant's sister in an English city. The morning after the incident he had received a gift from the appellant and his aunt which he destroyed to the distress of his aunt. Whilst the appellant denied that any such incident occurred it seems clear from the evidence that insofar as any trip was made to England by the appellant and the complainant's aunt, it was to the appellant's sister's home in that city (one P.H., to who's evidence we refer below), and was so made in late 1988; inasmuch as the witness's evidence was to the effect that such incident had occurred when his aunt was living in his home, and all agreed that that was between the 1st of May 1986, and a date in late 1987 or early 1988, the timing of that incident was open to debate. Ultimately, indeed, because of this discrepancy the count pertaining thereto was the subject of a direction at the conclusion of the defence case. The witness also recounted an event in 1988 when, having returned from a visit to Dublin, he played with his brother in an empty box and in the course of which again he was so fondled, but he responded by kicking the appellant.

16. So far as the public house was concerned, he on occasion shared a room with his brother and the appellant. He very frequently went there especially at weekends and during school holidays and the appellant assaulted him on a number of occasions at and around the public house. He referred to one such summer incident occurring on a bridge over a river near the public house when he was seven or eight, but a count pertaining thereto was the subject of a direction also. He described the incidents as happening "*all of the time, any chance he got he'd... he'd do it*". On one occasion the appellant touched him in a sexual manner whilst he was sharing a room with the appellant (though not a bed) whereupon he screamed, thereby alerting his paternal grandfather who came into the room seeking to ascertain what had occurred – the appellant had had time to return to his own bed – and S.B. told his grandfather, effectively, that he and the appellant were "*only messing*" because "*I was absolutely terrified*

*that C.K. was going to kill my family because he's always threatening to kill my family*". The grandfather is now deceased. He rejected the proposition that it seems rational to infer that such incidents, on his evidence, occurred during the period when the family were engaged in running the public house in question.

17. He too recalled incidents of a similar kind to those about which his brother gave evidence when playing Subbuteo at his grandparent's home and he recalled sexual assaults of this type as having occurred 10 to 15 times, both before and after the period during which the public house was open. The assaults stopped around 1989.

18. In cross-examination S.B. was taxed about his evidence concerning an incident where his grandfather had entered the bedroom, on the premise that if it had occurred his grandfather would have taken action of some kind, and would have rightly spoken out about the subject matter of what he had seen. The witness said the grandfather had not seen what had occurred because the appellant had successfully returned to his own bed before his grandfather entered. He did not dissent from the proposition that after his aunt's relationship with the appellant ceased there would not have been any reason for him to be about his home as he contended the appellant had frequently been during the currency of that relationship. Insofar as the incidents which he alleged occurred on the occasion of the appellant's return from the visit to England with his aunt were concerned; apart from the fact that it was put to him that this had not occurred, it was suggested to him that this incident could not have occurred when he said it did in his own home because the visit to the English city was towards the end of 1988. In response, he insisted that the incident had occurred. He too said that he was segregated from his brother in the course of the so-called Subbuteo incidents. His evidence ultimately was that the assaults took place between the ages of four and eight and a half.

**A.B.**

19. A.B., the complainant's aunt was between 1983 or 1984, and 1990, in a relationship with the appellant. Much of her evidence was not in dispute. When her family were running the public house in question she stayed with her brother and sister in law. She visited the public house often, at weekends, accompanied, on any view of the evidence, very frequently by the appellant. He spent a great deal of time at the complainants' home and would frequently have been there on his own; for example, waiting for her to come from work. Her nephews often went to that public house also and were there at weekends and during summer holidays. On occasion, they shared a bedroom with the appellant especially when, as A.B. put it, "*there was [sic] too many people around*". Her nephews spent a great deal of time in her family home there too as they were looked after on occasion by her mother. When students, both before and after the establishment of the public house business, she and the appellant similarly spent a great deal of time at her family home. She babysat the complainants from time to time, effectively on an ad-hoc basis, both at her brother's home or that of her parents. She recalled babysitting in the company of the appellant. They visited the appellant's home, as she put it, "*once or twice*". The appellant was cautious after he was diagnosed with epilepsy, a condition which emerged during the time that he was studying after his Leaving Certificate. The witness recalled the visit to an English City; she did not dissent from the fact that it occurred in late 1987 or early 1988. She recalled that the appellant was not someone who used foul language and was to her mind, at the time, a pleasant person.

**D.B.**

20. D.B., the complainants' father, said that he would take his sons to the public house every second weekend – his sister and the appellant were there frequently, indeed, most weekends. They each had their own bedroom as did his sons but on occasion the appellant

shared sleeping accommodation with D.B.'s sons in their room which contained a double bed and a single bed. In D. B's house, the appellant was regarded as a member of the family – in the position of an uncle or older brother of his sons. The appellant had full access to it and did not have to be invited there. He was there, it appears relatively often – that is our inference on that evidence – waiting for his girlfriend who might perhaps be delayed. When in the house he recalled that the appellant would “*kind of go off playing with the lads because he was like, kind of a big uncle if you know... he'd head off with them, you know, we never took any notice for one minute that anything was happened [sic] we just left them off*”; he said that this extended to the fact that he went into the children's bedroom with them. It was for, as he put it, “*messing around or playing Subbuteo*”. He referred also in his evidence to the fact that the appellant might have watched video tapes there with his sons.

### **The Mother [identified as such to avoid confusion and achieve anonymisation]**

21. This witness was the complainants' mother. She recalled an occasion when the appellant had shown a so-called “Page Three” to her sons. She stated that the appellant would visit their home both on his own and in the company of her sister-in-law, and that he babysat for them. She also agreed that the appellant had free reign of the whole house.

### **The Appellant**

22. The appellant's evidence can be properly characterised as comprehensively rejecting all of the allegations made by the complainants. He was born in the mid 1960's and completed his Leaving Certificate in 1984. He began going out with A.B. in or around 1983. Both began third level education in the same year. In the early years of his employment he worked from 9am to 5:30pm on Mondays to Fridays in a city centre store and thereafter in their suburban stores until 9pm on Thursday or Friday nights – he worked five days and undertook overtime.

The thrust of his evidence was that he and A.B. spent more time, perhaps substantially more, at A.B.'s family home than in his own house, although his girlfriend did visit his house on occasion, especially on Saturdays. The complainants were in their grandparents' home from time to time – he assumed this was at weekends since they were at school. So far as the complainants' home was concerned, he said “*we may have gone down there to babysit, but again I couldn't put specific dates on it or anything like that no*”. He had no memory of watching a video called “Cocoon”. As to visits to public house, he said “*we'd*” (by which we understand him to mean himself and his girlfriend) visited it to work at weekends, and this extended to going there on Friday evenings if he had Saturday off. This was an opportunity to see A.B. He returned from the public house late on Sunday nights. He explained that one might break one's shift in the bar by taking a break upstairs (where the living quarters of the family were) for twenty minutes or half an hour. The complainants' grandmother did most of the cooking and was not generally “*standing behind the bar*”. The complainants did not in the main visit every weekend but rather “*a couple of weekends in the month, you know, it mightn't even be that sometimes, like, you know*” – they visited with their father or were collected by their grandfather. It appears that they also visited for a period of time when on holiday. He was there on some weekends when the complainants were present and others when not (with A.B.). He never showed a so called “Page Three” to the older complainant.

**23.** Considerable controversy arose at the trial about sleeping arrangements. He described the upstairs area of the premises referring to a large room occupied by the complainants' grandparents and containing a double bed; he slept in what he described as one of the “small rooms”; he denied the event which allegedly occurred at the time when the complainant's paternal grandfather entered a bedroom which he allegedly shared with S.B. He claimed that he always stayed in his own bed (his bed was single). There was a second bed in this room and, if there were a lot of people staying, the complainants would either share a bed with their

Aunt A.B. (there was a second bed also in that room) or, if her room was full, they would sleep in the second bed in his room (also a single bed); on finishing work – he took the example of finishing at 2 o'clock in the morning – he would “*just crash into bed*” and he stated that he never shared a double bed with them. He was never in the grandparents’ room (where it was accepted there was such a bed); to his recollection that was the only room which contained a double bed.

**24.** On his visits to the complainants’ home, the children’s parents were also present. The appellant claimed that he did not purchase boxer shorts for the complainants. He was also tasked by the complainants’ grandfather to play music to entertain children at the public house on Sunday afternoons and had interactions with the complainants from time to time. He gave evidence of the visit to the English city with A.B. to his sister P.H.; the time when that visit had taken place was relevant to one of the counts, and ultimately by reason of the state of the evidence pertaining to that count with special reference to when the offences allegedly occurred (the time of the visit being itself relevant to that) such offence was the subject of one of the directed acquittals.

**25.** He never played Subbuteo other than in his own home (because of the difficulty of carrying it or moving it to any other premises); and he claimed that he never babysat the children on his own. He confirmed his interest in music and asserted that the fact of his epilepsy inhibited him from looking after children or of being in their company alone. He had made a statement to the Gardai denying the allegations.

**P.H.**

**26.** The appellant’s sister P.H. as she became on her marriage, who resided in the English city, confirmed that one of her children was born in January 1989 – this in circumstances

where evidence had been given as aforesaid that the visit in question to her occurred when she was pregnant – the fact that it occurred before the birth was not really in dispute.

### **The Appellants Wife.**

She gave evidence of good character.

### **Grounds 1 and 2**

(1) *The honourable trial judge erred in permitting amendment to the Indictment so as to allow alternative counts relating to the same alleged offence but over 3 successive years with the effect that:*

*(c) These counts were without evidential foundation and/or:*

*(d) The span of 3 years was wrongly permitted for each such alleged offence.*

(2) *The honourable trial judge erred in permitting substantial and repeated amendments over the course of the trial in order to refine the Indictment thereby depriving the Accused of procedural fairness including his right to a fair trial under Article 38 of the Constitution and Article 6 of the European Convention on Human Rights.*

27. In a case such as the present where multiple sexual offences over a lengthy period of time are alleged it will frequently be impossible as a matter of practicality to afford particulars of the offences with any high degree of specificity or exactitude, such as a reference to a given date or event. The practice which has been approved for many years is to, say, charge one offence for each quarter (or the like) or perhaps a multiplicity of charges, often over a longer period, distinguishing between them by the use of an appropriate formula of words (e.g. an allegation that an offence occurred “*other than on the occasion referred to*

*in count...*”). Even where a large number of offences have occurred it might well be that a given event could be identified with some specificity or exactitude, notwithstanding that it was one of a multitude. The evidence adduced, especially the evidence of the victims (one assumes largely in accordance with the book of evidence), would have justified such a course here – indeed it would have been preferable – but the prosecutor here did not adopt it.

**28.** Counsel must carefully consider in advance of drawing the indictment the way in which the case is to be presented on the proposed evidence in the witness statements and having regard to the charges upon which the return has been made. It will frequently be the case that the form of the counts in the indictment in respect of a charge upon which a return has been made will differ, often by affording greater particularity. It may well be that the number of counts in the indictment will be larger than the those upon which a return has taken place. Even if the prosecutor does not propose to proceed on all of the charges upon which a return has been made, they cannot be allowed to let lie but should be disposed of. If care is taken it will minimise the extent to which amendments will be necessary.

**29.** In cases of multiple sexual offences, especially cases involving offending against child victims (and notwithstanding that they may be prosecuted many years later when the victims are adults), a high degree of latitude must be given to the prosecution when seeking to amend the indictment. It is not uncommon in such cases for the evidence to differ in respect of many incidental particulars from what might have been anticipated by reference to the witness statements, but no injustice will in general be caused when amendments are made to bring the indictment into conformity with the evidence actually given. This is because the law is concerned with the core allegations of which all concerned will know; indeed, on occasion it may be possible to give better particulars of the offence as the case proceeds. Nor is it uncommon for complainants to fail to come up to proof, for additional relevant evidence to emerge or for evidence to be vague or contradictory. These will be matters of degree and are

the common currency of cases of the present type. At the end of the day, this is what occurred here.

**30.** Such amendments as were made here were extensive. The basis for the amendments can, we think, be fairly summarised as amendments made in response to the way in which the evidence developed and the necessity (identified by the trial judge) for a greater degree of specificity than that initially afforded; the acquittals by direction also resulted in amendment-reducing the number. They are subject to the well-founded criticism (not made at trial in the sense to which we have referred) of the introduction of the so-called alternative counts.

**31.** We might say in passing at this stage that objection was taken to the amendments on the basis that they extended to amendments made to take account of what was described as “the defence case” – by this was meant propositions which emerged in cross-examination of the complainants. In our view such objection was misconceived since amendments can be made on the evidence howsoever it may emerge. We should add also that amendments may be made at the conclusion of all of the evidence, and not just at the end of the prosecution’s evidence.

**32.** At the end of the prosecution case the judge indicated that he would grant a direction, and did indeed do so thereafter, on counts 1, 2, 12, 13, 16, 17, 26, and 27, and, at a later stage, count 30 on that first indictment of 30 counts. These directions were on the traditional or usual basis that there was insufficient evidence for those counts to go to the jury.

**33.** However, in the course of the application which ultimately gave rise to the judge’s decision to direct acquittals on such counts he referred to the fact that “*I mean, there is no count on the indictment based on specific facts, even though specific facts are sworn to. That’s a worry to me*”. This indicated the difficulty of attributing any particular alleged incident to a given count and in response prosecuting counsel said, “*I can amend the*

*indictment for it to be more specific so it's easier for the court and for the jury...*". The judge went on to say to the prosecutor "*well, what do you say to that Ms Hyland, that... any remaining part of the indictment should be amended to disclose, where possible specific incidents. I certainly think that it is necessary and should be done*" and, thereafter; "*...the remaining counts of the indictment should, where possible, be reformed to include specific acts or actions as testified by the lads (sic)*" and "*in other words, that the jury can be pointed to did this happen on this occasion... because otherwise it's I think way too general.*" The identification of these difficulties by the trial judge is to be approbated. To these suggestions the prosecutor was amenable and prosecuting counsel furnished what has been described as the second indictment. That "new" indictment did not include the counts which, at that point, were the subject of such directed acquittals as had been decided upon. These observations of the judge seem to be the first step which ultimately led to the emergence of alternatives.

**34.** The judge then indicated that no count should cover a period of more than a year and the prosecutor said she would prepare a third indictment on this basis and furnished it shortly thereafter. When the judge actually directed the jury to acquit on counts 1, 2, 12, 13, 16, 17, 26, 27 and 30 (as enumerated on the first indictment), he said that there were "*eleven or twelve*" counts left, subject, in effect, to confirmation. Further debate then took place as to the form of the third indictment before counsel's speeches, the accused and others having been called by defence counsel to give evidence for the defence giving rise to the fourth: this need not concern us in the present context.

**35.** These are not offences which could give rise to alternative verdicts in the event that the jury acquitted on any count. Alternative verdicts are well known to the law. The best example is probably that an alternative of manslaughter is sometimes available on a charge of murder. Provision is also made by statute for alternatives. In general, it may be said that what these have in common is that alternative verdicts arise where the offence charged is not made out,

but another offence is. This simply does not apply here – we know of no precedent for the course adopted and it is contrary to principle. The premise upon which the alternative counts were left to the jury was that if the jury could not be sure of the guilt of the accused in respect of one offence on a particular count they might be so satisfied, and convict, of that same offence on another count; in other words, the same offence was charged more than once on the same indictment because of the uncertainty in the evidence.

**36.** If and insofar as any count and in particular any conviction is tainted by this type of error, it is bad and cannot stand. The remaining verdicts, since they are freestanding, are not in any sense undermined by those which are bad. As a matter of legal principle each count must be considered separately, and solid freestanding evidence exists in respect of each of those remaining offences.

**37.** The various amendments (save those giving rise to alternative counts) to the indictment were properly permitted; the manner in which the amendments were successively made gave rise to what have been called the second third and fourth indictments but these documents were all created in an attempt to provide the jury with greater clarity. The procedural errors which we have identified do not in our view undermine the overall fairness of the trial. That having been said, the verdicts on the so-called alternative counts are undoubtedly bad, and we quash the verdicts on counts 3, 6 and 15. The good counts, notably, have not been changed in any way since they were charged in the original indictment with one exception, viz, count 1 (which retained the same number throughout) to the amendment of which (as to dates) there was rightly no objection. We accordingly reject this ground of appeal so far as the convictions on the freestanding counts are concerned.

### Grounds 3 to 7

*(3) The honourable trial judge erred in refusing to accede to an application pursuant to D.P.P. v. PO'C [2006] 3 I.R. 238 having regard to (a) the effects of the delay between the date of the alleged offences and the trial and/or (b) the lack of particularity in the Indictment as originally served and on foot of which the trial substantially (sic).*

*(4) The honourable trial judge erred in refusing to hear a renewed application on the above ground after the final amendment of the Indictment.*

*(5) Alternatively, the honourable trial judge erred in failing to direct an acquittal on all remaining counts on the Indictment.*

*(6) Alternatively the honourable trial judge erred in failing to direct an acquittal on the counts concerning the game of Subbuteo, having regard in particular to (a) the lack of particularity of those counts as to time or location and/or (b) the confusion which had arisen in the course of the trial on the relevance of football allegiances and the Jury's manifest misunderstanding of this issue.*

*(7) The honourable trial judge erred in making a comment, in addition to the Jury warning about the risks of delay, to the effect that it would be impossible not to have sympathy for the complainants, thereby undermining the efficacy of that delay warning and/or unduly influencing the Jury's view of their testimony.*

38. We think it appropriate to deal with these grounds together since they pertain to the issues of directed acquittals whether on the traditional bases: (i) that there was insufficient evidence to make out the elements of some one or more of the charges (i.e., the first limb of Lord Lane's celebrated test in *R. v Galbraith* [1981] 2 All ER 1060); (ii) the jurisdiction, notwithstanding the existence in theory of sufficient evidence on a charge, to direct an acquittal because of inconsistencies or infirmities in the evidence of such seriousness that no

jury properly charged could reasonably convict (the second limb of Lord Lane's celebrated test, as dealt with in the now leading authority in this jurisdiction, namely, the judgment of this court in *DPP v M* [2015] IECA 65 per Edwards J.); and (iii) also, on a more established basis, under the jurisdiction elaborated in *D.P.P. v. PO'C* [2006] 3 I.R. 238.

**39.** We refer first to the issue raised at ground four, namely, the fact that the judge did not hear counsel when counsel sought to again make application to stop the trial by direction on all counts; there was in reality in such an application no new or additional basis for considering the application generally whatever might have been the position in respect of individual counts (which, in the event, were dealt with correctly); we do not think that in the circumstances the judge is to be criticised for his reiteration of his earlier refusal of the application, when the approach taken by him is seen in context.

**40.** There was an extent to which the application to amend the indictment (giving rise to the so-called second indictment) made at the conclusion of the prosecution evidence was conflated with the application for directed acquittals. During the course of argument about such amendments, it was either conceded by prosecuting counsel, or the judge in the course thereof indicated that he would direct acquittals on a number of the counts as they then stood and as set out above; to that extent the application for directed acquittals was successful. We have sought to set out above the history of the amendments and referred to the counts in respect of which directed acquittals arose. Rightly or wrongly, the directed acquittal given in respect of the offence which was alleged to have occurred in S.B.'s own home when the appellant and his aunt returned from a visit to England, in particular to the appellant's sister in an English city was primarily on the basis of that sister's evidence and that of the aunt; the former's evidence as to dates was evidence incompatible with that of S.B. We have touched upon that above but refer to it under the present heading as it is contended that such direction

is a reason why directions based on these wider grounds should be granted; we cannot see how that course of action, in ease of the appellant, can be relied upon by him.

41. Counsel's general submission under these headings was effectively made after the resolution of issues pertaining to the indictment (including decisions by the judge to direct acquittals effectively on the basis that there was no case to answer under the traditional role). In her submission in that regard, counsel addressed a number of factors on the evidence; we do not set out here the submissions *in extenso* but rather will refer, although not exhaustively, to a number of what we think are the salient points made. She referred to the fact that the allegation that the appellant had "*peeled back*" M.B.'s foreskin was first made at trial, in circumstances where nothing of that kind was said by his brother S.B. A further submission was made in relation to the evidence concerning events in the public house, which were alleged to have occurred in a room containing a double bed, including an event when the appellant was sharing a double bed with S.B. It was further submitted that the evidence in that regard was, to put the matter at its lowest, not supported by any witness and that there was what was described as a "contradiction" between S.B.'s evidence and that of his brother as to knowing that anything untoward had occurred. With regard to this submission, it is in the nature of so-called "secret crimes" of the present kind that there may not be independent witness evidence directly referable to any one or more offence. It is, of course, the position that the evidence of one brother was capable of corroborating that of the other but we do not have any regard to that since it is not a matter for this Court to decide whether or not there was such corroboration as a matter of fact – in circumstances where the jury were not told anything about this. The fact that neither brother could give direct evidence as to what had happened to the other would not have deprived one brother's evidence of the potential to corroborate the evidence of the other. It is the opposite of the truth to say that the want of evidence in this regard in any way undermines the prosecution case. It was said that this was

“*extremely worrying and extremely undermining*” of S.B.’s evidence. We cannot see how this could be so.

42. It was also said that S.B. had no memory of going to the appellant’s home when M.B.’s evidence was that he had gone there regularly – the judge pointing out that that evidence was not supported by A.B. (in the judge’s words “*there may have been [a] very occasional visit*”). Counsel submitted that this undermined the evidence of M.B. and creates “*a huge worry*” about him. Again, we cannot see how this could be so.

43. Counsel also referred to what she submitted was a further weakness in the evidence, in relation to the incident involving the alleged indecent assault in 1988 at the complainants’ home, of which M.B. was the victim. She contended that there was no recollection by S.B.’s parents of being told – if they were told (the appellant said such in his interview with the Gardaí) – of an incident supposedly involving a cardboard box and the biting of the appellant by S.B. We regard this as being of no significance since it depends on the veracity of the appellant – to be assessed by the triers of fact. All of these issues go to the merits and constitute no more than comments upon the evidence which in the ordinary course of events must be matters for the jury. We have set out the evidence here in some detail and it is unambiguously clear that there was sufficient evidence to convict the appellant of the four offences which still stand, having regard to our decision above.

44. Reference is made also to supposed specific prejudice to the appellant in respect of one event; namely, the event alleged to have occurred in the room (with the double bed) shared by the appellant and S.B. on an occasion when the complainant’s grandfather entered the room and is said to have enquired as to what was going on. S.B. gave evidence to the effect that at that stage the appellant had managed to return to his own bed. The alleged specific prejudice arises in circumstances where the grandfather is not available to give evidence. This was merely one incident of which evidence was given in circumstances where the witness

alleged multiple offences. One can only speculate as to whether or not his grandfather would have had any recollection of any such event and accordingly, the fact that he is not available is irrelevant since a court may never speculate. It must be borne in mind in this connection that the appellant denied that any such event occurred at all so his complaint must be either that the grandfather would explicitly say that no such thing occurred or, at best from the appellant's point of view, he had no recollection of it (whatever weight the latter might have). If one were permitted to speculate one could of course speculate that the complainants' grandfather would have given evidence in accordance with what that complainant said. It should be borne in mind that no trial is perfect and that the absence of an allegedly important witness is a risk which arises even in a trial for an offence which has occurred a short time before; it would be rare indeed for a judge to stop a trial in the latter circumstances, if, in point of law, it is possible at all. In any event we see no reality in this contention of specific prejudice.

**45.** Insofar as want of recollection or other infirmities due to lapse of time are concerned, because of the antiquity of a case where they arise, they can be, and were in this case, addressed by an appropriate warning as to the consequences or effects of delay.

**46.** The most striking feature of this case is the relative coherence of the basic elements of the evidence of both boys; as we have said, we do not of course take into account, in reaching this view, the fact that one brother's evidence was capable of corroborating the evidence of the other and vice versa since; surprisingly, this case was not made at the trial. In our view there was no basis for withdrawing the case from the jury on either of the bases advanced. It will be rare that such an application under these heads will succeed in cases of this kind and this is certainly not one of them. We should add that since we are of the view that the amendments of the indictment, subject to the wrongful reliance on alternatives, were

perfectly proper amendments this cannot be a factor which would conduce to accession to the applications, as submitted.

47. Reference is also made to supposed infirmities in relation to the so-called “Subbuteo” counts or confusion in relation to football allegiance. We have dealt with alternative verdicts issue, and so far as there may be any further complaints relating to the quality of the evidence in so far as what might be characterised as the “Subbuteo” counts are concerned, or indeed in relation to the question of football allegiance, we think such complaints are without merit.

48. Effectively, it is submitted that certain observations of the judge in the course of his charge might have undermined the warning he gave the jury about delay or engendered sympathy for the complainants to the point of undermining the capacity of the jury to reach an impartial verdict. No requisition was made on this and that should be the end of the matter as far as we are concerned but surprisingly no point has been taken here either on behalf of the prosecution to the effect that that is the case by virtue of the rule in the *People (DPP) v. Cronin* [2006] IESC 9. The aspects of the charge to which reference is here made (it must be placed in context) seem to us to be as follows: -

*“Now, in all cases like these, emotion is very strong. You saw it in the witness box when people were giving evidence and in fact you've seen it in the courtroom afterwards. There's plenty of emotion. So, what do you do? Do you give in to that emotion? Well, if you do, you have no business being on a jury. Because you swore an oath to determine the case according to the evidence, not in accordance with the emotion. You cannot be distracted. Now, you'd be a fool, you'd be a stone not to realise that there is emotion there. The hurt that witnesses felt, deeply felt, is there but that is not your function, to acknowledge that. Your function is to evaluate whether a crime has been committed or not and you cannot do that, you couldn't even begin to do that if you get involved in the emotion.*

*Remember when you took – when you were called in, a list of names was read out to you. "Do you know these people? Do you know anything about the case?" And the reason for that of course was it's accepted by everybody that to be involved in the case is very emotional and for the people making the decision, the jury, you must be distant from the people and unemotional. You've got to be objective. And I'm sure you will be. You've stayed with the case for the number of days it's been on and you also, when you're examining the evidence, you have to use your experience of life."*

49. Thus what is sought to be done here is to turn on its head the warning given by the judge to the jury to act unemotionally and rationally even though, and he was in a position to know, there was, as he put it "*plenty of emotion*" in the case; there is no reason to suppose that he was referring to emotion shown by the complainants not by the appellant – though this is irrelevant. In any event he referred to "*witnesses*". Furthermore, there is no reason to think that the jury, in breach of their obligations to decide the case rationally and without emotion, and to do so independently when they were told that the decision is theirs alone, would have been influenced by the judge to do the thing against which they were being warned; were one to speculate that that could be so it would mean in effect that one had no trust in the jury to act in accordance with their oaths. The suggestion seems to be that the judge was expressing sympathy for the complainants in what he said which would influence them to accept their evidence and reject that of the appellant. We cannot see any basis for that suggestion. A jury would have to be regarded as a very weak instrument indeed for deciding on allegations of criminality of the utmost seriousness if something of that kind, i.e., the expression of such sympathy, could impact upon their deliberation. However, juries are not a weak instrument. It has been reiterated time and again that juries are robust and can be trusted to be faithful to their oaths and to follow directions given by the trial judge to decide the case dispassionately

and solely on the evidence. Furthermore, we cannot see any connection between this supposed infirmity and the delay issue. We accordingly reject these grounds also.

**Ground 8**

***(8) The verdict of the jury was perverse or alternatively so logically inconsistent it should not be permitted and stand.***

50. This ground of appeal is becoming increasingly common, in cases where, in reality, the complaint is that directed acquittals should have been granted, as here. The judge rightly permitted certain counts on the ultimate indictment to be left to the jury, and there is no inconsistency between the verdicts which we have upheld on the state of the evidence. The fact that a number of the counts were purported alternatives does not give rise to any question of perversity amongst those which we have upheld; we have upheld those verdicts on the basis that they are not tainted in any way by those which we have condemned.

**Conclusion.**

51. We accordingly reject the appeal on all grounds with the exception of Ground 1, which we uphold in part in respect of the tainted counts pleaded on an alternative basis. For the avoidance of doubt, the convictions which we must accordingly quash are those recorded on Counts 3, 6 and 15 on the fourth indictment, and they are as follows: -

- (3) On a date unknown between the 1st of January 1987 and the 31st of December 1987 both dates inclusive at the TV room at [M.B.'s home] indecently assaulted M.B., a male, by touching his penis with his hand in the course of having watched a movie (*sic*). **[Guilty]**

(6) On a date unknown between the 1st of January 1984 and the 31st of December 1988 at [M.B.'s grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs". [**Guilty**]

(15) On a date unknown between the 1st of January 1988 and the 31st of December 1988 at [S.B.'s grandparents' home] indecently assault S.B., a male, by touching his penis with his hand while playing Subbuteo in the room known as "A.B.'s room downstairs" [**Guilty**]

Again, for the avoidance of doubt the counts in respect of which we dismiss the appeal (again numbered in accordance with the fourth indictment) are Counts 1, 4, 8 and 12, which are as follows: -

(1) On a date unknown between the 1st of May 1986 and the 31st of October 1987 both dates inclusive at [a certain public house] indecently assault M.B., a male, by putting his hand on M.B.'s penis when they shared a double bed. [**Guilty**]

(4) On a date unknown between the 1st of January 1988 and the 31st of December 1988 both dates inclusive in M.B.'s bedroom at [M.B.'s home] indecently assaulted M.B., a male, by rubbing his penis with his hand and forcing him to lean on the bed with his bare bottom in the air. [**Guilty**]

(8) On a date unknown between the 22nd of August 1984 and the 22nd of August 1985 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching his penis and putting his finger in his anus. [**Guilty**]

(12) On a date unknown between the 1st of May 1986 and the 31st of October 1987 both dates inclusive in a bedroom at [a certain public house] indecently assault S.B., a male, by kneeling over him while C.K. was naked and pinning his arms to the bed in the bedroom. [**Guilty**]

**APPENDIX**

**-INDICTMENT 1-**

**COUNT 1**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1985 and 31<sup>st</sup> of October 1985 both dates inclusive at [the public house] indecently assault M.B., a male.

**COUNT 2**

**STATEMENT OF OFFENCE**

Attempted Indecent assault contrary to common law.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1985 and 31<sup>st</sup> of October 1985 both dates inclusive at [the public house] attempt to indecently assault M.B., a male.

**COUNT 3**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and 31<sup>st</sup> of October 1986 both dates inclusive at [the public house] indecently assault M.B., a male.

**COUNT 4**

**STATEMENT OF OFFENCE**

Attempted Indecent assault contrary to common law.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and 31<sup>st</sup> of October 1986 both dates inclusive at [the public house] attempt to indecently assault M.B., a male.

**COUNT 5**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1987 and 31<sup>st</sup> of October 1987 both dates inclusive at [the public house] indecently assault M.B., a male.

**COUNT 6**

**STATEMENT OF OFFENCE**

Attempted Indecent assault contrary to common law.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1987 and 31<sup>st</sup> of October 1987 both dates inclusive at [the public house] attempt to indecently assault M.B., a male.

**COUNT 7**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1985 and 31<sup>st</sup> of December 1985 both dates inclusive at [M.B.'s home] indecently assault M.B., a male.

**COUNT 8**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and 31<sup>st</sup> of December 1988 both dates inclusive at [M.B.'s home] indecently assault M.B., a male.

**COUNT 9**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 31<sup>st</sup> of December 1988 and 31<sup>st</sup> of December 1989 both dates inclusive at [M.B.'s home] indecently assault M.B., a male.

**COUNT 10**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1984 and 31<sup>st</sup> of December 1984 both dates inclusive at [M.B.'s grandparents' home] indecently assault M.B., a male.

**COUNT 11**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1985 and 31<sup>st</sup> of December 1985 both dates inclusive at [M.B.'s grandparents' home] indecently assault M.B., a male.

**COUNT 12**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1986 and 31<sup>st</sup> of December 1986 both dates inclusive at [M.B.'s grandparents' home] indecently assault M.B., a male.

**COUNT 13**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1987 and 31<sup>st</sup> of December 1987 both dates inclusive at [M.B.'s grandparents' home] indecently assault M.B., a male.

**COUNT 14**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and 31<sup>st</sup> of December 1988 both dates inclusive at [M.B.'s grandparents' home] indecently assault M.B., a male.

**COUNT 15**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1989 and 31<sup>st</sup> of December 1989 both dates inclusive at [M.B.'s grandparents' home] indecently assault M.B., a male.

**COUNT 17**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and 31<sup>st</sup> of December 1988 and other than the date of the count set out at count 16 above both dates inclusive at [C.K.'s home] indecently assault M.B., a male.

**COUNT 18**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

[C.K.] did on a date unknown between the 22<sup>nd</sup> of August 1984 and 22<sup>nd</sup> of August 1984 both dates inclusive at [S.B.'s home] indecently assault [S.B.], a male.

**COUNT 19**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 22<sup>nd</sup> of August 1984 and 21<sup>st</sup> of August 1987 and other than the date of the count set out at count 18 above both dates inclusive at [S.B.'s home] indecently assault S.B., a male.

**COUNT 20**

**STATEMENT OF OFFENCE**

Attempted indecent assault contrary to common law

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1987 and 31<sup>st</sup> of December 1988 both dates inclusive at [S.B.'s home] attempt to indecently assault S.B., a male.

**COUNT 21**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1985 and 31<sup>st</sup> of October 1985 and other than the date of the count set out at count 18 above both dates inclusive at [the public house] indecently assault S.B., a male.

**COUNT 22**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and provided for by section 62 of the Offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and 31<sup>st</sup> of October 1986 and other than the date of the count set out at count 18 above both dates inclusive at [the public house] indecently assault S.B., a male.

**-INDICTMENT 2-**

**COUNT 1**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> May 1986 and the 31<sup>st</sup> October 1986 both dates inclusive at [the public house] indecently assault M.B., a male, by putting C.K.'s hand on M.B.'s penis when they shared a double bed.

**COUNT 2**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> January 1986 and the 31<sup>st</sup> December 1986 both dates inclusive at the TV room at [M.B.'s home] indecently assault M.B., a male, by touching his penis with his hand in the course of or having watched a movie.

**COUNT 3**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> January 1988 and the 31<sup>st</sup> December 1988 both dates inclusive in M.B.'s bedroom at [M.B.'s home] indecently assault M.B., a male, by rubbing his penis with his hand and forcing him to lean on the bed with his bare bottom in the air.

**COUNT 4**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> December 1988 and the 31<sup>st</sup> January 1989 both dates inclusive at [M.B.'s home] indecently assault M.B., a male, by touching his penis with his hand while M.B. was wearing Santa Claus boxer shorts.

**COUNT 5**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1984 and the 31<sup>st</sup> of December 1989 with the exception of the years 1986 and 1987 at [the grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs".

**COUNT 6**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 22<sup>nd</sup> of August 1984 and the 22<sup>nd</sup> of August 1985 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching his penis and putting his finger in his anus.

**COUNT 7**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 22<sup>nd</sup> of August 1986 and the 21<sup>st</sup> of August June 1988 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B.,

a male, by touching his penis and stroking his penis and putting his hand over his mouth.

**COUNT 8**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1987 and the 31<sup>st</sup> of December 1988 both dates inclusive at [S.B.'s home] indecently assault S.B., a male, by putting his hand on his penis while S.B. was sitting in a box.

**COUNT 9**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and the 31<sup>st</sup> of October 1987 both dates inclusive at [the public house] indecently assault S.B., a male, by kneeling over him while C.K. was naked and pinning his arms to the bed in the bedroom.

**COUNT 10**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and the 31<sup>st</sup> of October 1987 both dates inclusive at [the public house] indecently assault S.B., a male, by putting his hand down his pants and touching his penis.

**COUNT 11**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1984 and the 31<sup>st</sup> of December 1988 both dates inclusive with the exception of the years 1986 and 1987 at [the grandparent's home] indecently assault S.B., a male, by touching his penis with his hand while playing Subbuteo in the room known as "A.B.'s room downstairs".

**COUNT 12**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 31<sup>st</sup> of May, 1986 and the 31<sup>st</sup> of October 1987 both dates inclusive and other than the dates set out in the other counts in the Indictment above at the bridge at [the public house] indecently assault S.B., a male, by putting his hand down his pants and touching his penis.

**-INDICTMENT 3-**

**COUNT 1**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> May 1986 and the 31<sup>st</sup> October 1987 both dates inclusive at [the public house] indecently assault M.B., a male, by putting C.K.'s hand on M.B.'s penis when they shared a double bed.

**COUNT 2**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1986 and the 31<sup>st</sup> of December 1986 both dates inclusive at the TV room at [M.B.'s home] indecently assault M.B., a male by touching his penis with his hand in the course of or having watched a movie.

**COUNT 3**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1987 and the 31<sup>st</sup> of December 1987 both dates inclusive at the TV room at [M.B.'s home] indecently assault M.B., a male by touching his penis with his hand in the course of or having watched a movie.

**COUNT 4**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 both dates inclusive, in M.B.'s bedroom at [M.B.'s home] indecently assault M.B., a male, by rubbing his penis with his hand and forcing him to lean on the bed with his bare bottom in the air.

**COUNT 5**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PATRICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 both dates inclusive, at [M.B.'s home] indecently assault M.B., a male, by touching his penis with his hand and while M.B. was wearing Santa Claus boxer shorts.

**COUNT 6**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1989 and the 31<sup>st</sup> of December 1989 both dates inclusive, at [M.B.'s home] indecently assault M.B., a male, by touching his penis with his hand and while M.B. was wearing Santa Claus boxer shorts.

**COUNT 7**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1984 and the 31<sup>st</sup> of December 1984 at [the grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs".

**COUNT 8**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 at [the grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs".

**COUNT 9**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 22<sup>nd</sup> of August 1984 and the 22<sup>nd</sup> of August 1985 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching his penis and putting his finger in his anus.

**COUNT 10**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the and the 21<sup>st</sup> of August 1986 and the 21<sup>st</sup> of August June 1987 (*sic*) both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching and stroking his penis and putting his hand over his mouth.

**COUNT 11**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1987 and the 31<sup>st</sup> of December 1987 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by putting his hand on his penis and while S.B. was sitting in a box.

**COUNT 12**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by putting his hand on his penis and while S.B. was sitting in a box.

**COUNT 13**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act, 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and the 31<sup>st</sup> of October 1987 both dates inclusive in a bedroom at [the public house] indecently assault S.B., a male, by kneeling over him while C.K. was naked and pinning his arms to the bed in the bedroom.

**COUNT 14**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCES**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1984 and the 31<sup>st</sup> of December 1984 at [the grandparents' home] indecently assault S.B., a male, by touching his penis with his hand while playing Subbuteo in the room known as "A.B.'s room downstairs".

**COUNT 15**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1985 and the 31<sup>st</sup> of December 1985 at [the grandparents' home] indecently assault S.B., a male, by touching his penis with his hand while playing Subbuteo in the room known as "A.B.'s room downstairs".

**COUNT 16**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 at [the grandparents' home] indecently assault S.B., a male, by touching his penis with his hand while playing Subbuteo in the room known as "A.B.'s room downstairs".

**-INDICTMENT 4-**

**COUNT 1**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and the 31<sup>st</sup> of October 1987 both dates inclusive at [a certain public house] indecently assault M.B., a male, by putting his hand on M.B.'s penis when they shared a double bed.

**COUNT 2**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1986 and the 31<sup>st</sup> of December 1986 both dates inclusive at the TV room at [M.B.'s home], indecently assault M.B., a male, by touching his penis with his hand in the course of or having watched a movie.

**COUNT 3**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1987 and the 31<sup>st</sup> of December 1987 both dates inclusive at the TV room at [M.B.'s home] indecently assaulted M.B., a male, by touching his penis with his hand in the course of having watched a movie (*sic*).

**COUNT 4**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 both dates inclusive in M.B.'s bedroom at [M.B.'s home] indecently assaulted M.B., a male, by rubbing his penis with his hand and forcing him to lean on the bed with his bare bottom in the air.

**COUNT 5**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1st of January 1988 and the 31st of December 1989 both dates inclusive at [M.B.'s home] indecently assaulted M.B., a male, by touching his penis with his hand while M.B. was wearing Santa Claus boxer shorts.

**COUNT 6**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act, 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1984 and the 31<sup>st</sup> of December 1988 at [M.B.'s grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs".

**COUNT 7**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 at [M.B.'s grandparents' home] indecently assault M.B., a male, by putting a Subbuteo ball down his pants and touching his penis with his hand in the room known as "A.B.'s room downstairs".

**COUNT 8**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act, 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 22<sup>nd</sup> of August 1984 and the 22<sup>nd</sup> of August 1985 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching his penis and putting his finger in his anus.

**COUNT 9**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act, 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 22<sup>nd</sup> of August 1986 and the 21<sup>st</sup> of June 1987 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by touching and stroking his penis and putting his hand over his mouth.

**COUNT 10**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between 1<sup>st</sup> of January 1987 and the 31<sup>st</sup> of December 1987 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by putting his hand on his penis and while S.B. was sitting in a box.

**COUNT 11**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. on a date unknown between 1<sup>st</sup> of January 1988 and the 31<sup>st</sup> of December 1988 both dates inclusive in a bedroom at [S.B.'s home] indecently assault S.B., a male, by putting his hand on his penis while S.B. was sitting in a box.

**COUNT 12**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of May 1986 and the 31<sup>st</sup> of October 1987 both dates inclusive in a bedroom at [a certain public house] indecently assault S.B., a male, by kneeling over him while C.K. was naked and pinning his arms to the bed in the bedroom.

**COUNT 13**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act 1861.

**PARTICULARS OF OFFENCE.**

C.K. did on a date unknown between the 1<sup>st</sup> of January 1984 and the 31<sup>st</sup> of December 1984 at [S.B.'s grandparents' home] indecently assault S.B., a male, by touching his penis with his hand whilst playing Subbuteo in the room known as "A.B.'s room downstairs".

**COUNT 14**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act, 1861.

**PARTICULARS OF OFFENCE.**

C.K. on a date unknown between the 1<sup>st</sup> of January 1985 and the 31<sup>st</sup> of December 1985 at [S.B.'s grandparents' home] indecently assault S.B., a male, by touching his penis with his hand by playing Subbuteo in the room known as "A.B.'s room downstairs".

**COUNT 15**

**STATEMENT OF OFFENCE**

Indecent assault contrary to common law and as provided for by Section 62 of the offences against the Person Act, 1861.

**PARTICULARS OF OFFENCE.**

C.K. on a date unknown between the 1st of January 1988 and the 31st of December 1988 at [S.B.'s grandparents' home] indecently assault S.B., a male, by touching his penis with his hand while playing Subbuteo in the room known as "A.B.'s room downstairs".