THE COURT OF APPEAL

Birmingham J.
Mahon J.
Edwards J.

Appeal No. 246/13

The People (at the Suit of the Director of Public Prosecutions)

Respondent

V

Donal Connaughton

Appellant

JUDGMENT (ex tempore) of the Court delivered on the 12th day of May 2017 by

Mr. Justice Birmingham

1. On 20th December, 2012 the appellant was convicted of the following offences; two counts of a threat to kill, two counts of assault causing harm, two counts of false imprisonment and two counts of criminal damage involving a satellite navigation device and a telephone having stood trial alongside his wife, who was acquitted on all counts. Subsequently on 24th October, 2013 the appellant was sentenced to 12 months imprisonment. On 27th November, 2013 he was admitted to bail by the Court of Criminal Appeal.

2. In a situation where this appeal is not really concerned with events that occurred in the courtroom, or with the run of the trial in the normal way, a very brief summary of the factual background will suffice. The trial was concerned with events that occurred on 29th April, 2010 at the piggery of the appellant in Co. Longford. Mr. Connaughton had entered into a finance arrangement with a company called GE Money in relation to a generator and some power washers. He did not adhere to the repayment schedule and the stage was reached where approximately €2,500 was owed. On the day in question two individuals, Mr. Mulvey and Mr. Tighe, referred to as repossession men, arrived in a truck with a view to taking possession of the property or securing payment. One of the repossession men, Mr. Mulvey approached the appellant and an argument developed. While the details of what occurred were the subject of some dispute at trial, much of the incident was captured on an audio device. Indeed it was not really disputed that the two men were threatened in a very aggressive manner and that they were told their heads would be ripped off. There was reference to a boar. It was suggested that they would be put in a pen with him. They were told to get on their knees and pray, which they did, and they were ordered to strip naked. Mr. Mulvey suffered some injuries. He says he was punched and prodded with a screw driver by an employee of the appellant who is a co-accused. That co-accused pleaded guilty to certain offences and was dealt with by way of a suspended sentence.

3. In the course of the bail application, Mr. Connaughton averred that while matters were at trial that he was approached by an individual, R. McB. to whom his son owed money, some €3,500. He contends that he was told by Mr. O'B. that he had someone on the jury and if the debt was cleared that he could talk to the juror. According to Mr. Mulvey, contact was initiated by Mr. McB. on 17th December, 2012 by phone and then he called to the home of the appellant on 18th December, 2012, at which stage Mr. McB. informed Mr. Connaughton that he had five or six members of the jury on his side. It is alleged that Mr. McB. intimated that if the debt was cleared that he would talk to his man in the jury. Needless to say, Mr. Connaughton did not inform his lawyers of these approaches.

4. Following his conviction he discharged his legal team and for a period represented himself. Mr. Connaughton says that, when approached, he pointed out that the debt was that of his son James but that he would ask James to pay €1,000 at that stage with the balance to be paid in January, 2013. According to the appellant, he got €1,000 from his son which he gave to Mr. O'B., telling him that the balance would be paid in January, 2013, which it subsequently was. According to Mr. Connaughton, on 21st January, 2013 the appellant had a phone conversation with the juror in question and the juror is alleged to have subsequently called to the appellant's home on the evening of 23rd January, 2013. The juror, Mr. P.R., is alleged to have spent an hour in the house on the occasion and to have explained how he kept Mr. O'B. updated during the course of the trial. He discussed what was happening with others including with his son who warned him to be careful as he was exposing himself to a five year jail term. This meeting was video recorded. However, when a Garda investigation was launched it emerged that the recording had been altered; this was described as cutting and pasting.

Grounds

5. The appellant says the conviction was unsafe and unsound in that a reasonable and fair-minded observer would consider that there was a risk that at least one juror was not following the directions of the trial judge and so the verdict was tainted. Reference is made to the case of *DPP v. Tobin* [2001] 3 I.R 469.

6. The suggestion that there was anything untoward happening comes from Mr. Connaughton. It is a striking feature of the case that on Mr. Connaughton's own account he was a party to whatever impropriety was occurring. In those circumstances, the Court would be reluctant in the extreme to reward clear wrongdoing. If there were concerns that the verdict was unsafe that would be the price that might have to be paid. However, there are a number of factors present which provide reassurance that the verdict was in fact a safe and proper one. There is, first of all, the fact that the incident was audio recorded. The judge referred to the significance of this in the course of his sentencing remarks when he observed: -

> "Now, I can't punish Mr. Connaughton for fighting the case to its conclusion; he's entitled to have a trial if that's what he wants, although I do have to say that the case was conducted against – or under the spectre of the audio evidence, which couldn't be clearer in terms of what happened, so I'm not sure what Mr. Connaughton expected the jury to do with that evidence, in accordance with their oath, because it didn't rely on any view being taken as to the credit or otherwise or honesty of the witnesses; their account was corroborated by the ear of the telephone that was in operation, or the iPhone that was in operation on the occasion. But it was put up to the jury and the jury gave their answer, and in my view, as I've said repeatedly, it's an answer that's entirely consistent with the facts as seen and more importantly heard. So there is no mitigating factors in terms of a plea of guilty."

At an earlier stage on the day in which sentence was imposed, in the course of discussion with counsel, the judge had commented: -

> "I will repeat the observation I have made on every occasion in this case: All of the verdicts – and I underline "all of the verdicts", both the acquittals and the convictions -- by the self-same jury in my view are consistent with the evidence as presented. And the only other observation I can make is that so far as the evidence which didn't rely on any view that might be taken because it was supported by a crystal clear recording of what happened on that day, is entirely consistent with the evidence."

Again, on the sentencing hearing counsel on behalf of Mr. Connaughton, who of course was not the counsel that appeared at trial, read a statement prepared by her client. That statement had included the following passage: -

> "What else would anybody in my position do? This inflamed environment ensured that, regrettably, things went too far. I didn't always get it right. I made mistakes too. I never attempted to justify the extent of my behaviour towards these men, nor do I do now; I've merely tried to explain it. I never deliberately set out to cause pain for my fellow man and have always been sorry for each and every occasion that I may have inadvertently done so. I do not harbour grudges. In expressing regret, I speak only for myself. Others may also, or otherwise decline but I truly wish that the incident that the incident that was visited upon me and my family in my yard never took place. I truly wish too that I had not reacted to the extent that I did, and for this I am truly sorry."

7. When sentencing, the judge indicated that, having regard to his expression of remorse, he was going to impose a sentence of 12 months imprisonment rather than the 16 months that he had in mind.

8. The fundamental question that the Court has to ask itself is whether there are any concerns in relation to the safety of the verdict. In all the circumstances of the case, the Court is in no doubt that question can be answered with an unequivocal no. In the circumstances, the Court will dismiss the appeal.