



**THE COURT OF APPEAL**

**17 2018**

**Birmingham J.  
Edwards J.  
Kennedy J.**

**BETWEEN/**

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

**RESPONDENT**

**AND**

**GRAHAM MCEVOY**

**APPELLANT**

**JUDGMENT of the Court delivered on the 20th day of December 2018 by Ms. Justice Kennedy**

1. This is the appellant's appeal against conviction on the 18th December 2017, at the Central Criminal Court, having been found guilty by a jury of one count of murder, contrary to common law and as provided for by s.4 of the Criminal Justice Act 1964. He received the mandatory life sentence on the 19th December 2017.

**Background facts**

2. On the 16th July 2016, the appellant made his way to the stairwell of Seagull House, also known as Rutland Avenue Flats and shortly thereafter was joined there by the deceased, Paul Curran. Shortly after Mr. Curran's arrival, the appellant emerged in a hurry from the stairwell and fled the scene. He was ultimately apprehended by the Gardaí. The evidence disclosed that during the course of the meeting between Mr. Curran and the appellant, Mr. Curran was stabbed a number of times. Mr Curran went into a flat, medical help was summoned and he was taken to hospital but died shortly after admission from his injuries. The pathologist, in evidence said that on post mortem she found that Mr Curran had six stab wounds and one incised wound. The six stab wounds consisted of two stab wounds on the trunk, three stab wounds to the back of the right thigh and one stab wound to the back of the left thigh. The pathologist also concluded that Mr. Curran had a defence type injury over his left forearm which was the incised wound previously mentioned.

3. The appellant was charged in relation to the killing of Mr Curran and when arraigned, pleaded not guilty to murder but guilty to manslaughter. His trial commenced on the 6th December 2017 and he was convicted of the offence of murder on the 18th December 2017.

4. Prior to the murder, the deceased and the appellant were known to each other.

5. The appellant was arrested on the evening of the 16th July 2016 for the offence of assault causing serious harm to Paul Curran at Seagull House Flats. Dublin 12. He was cautioned and made a number of admissions which were recorded in the garda's official notebook. Following his arrest, he was detained in Sundrive Road garda station for the proper investigation of the offence and in the course of his detention he was interviewed on two occasions during which he stated he had gone to meet the deceased in respect of a drugs transaction, that the deceased had pulled a knife and attacked him, and a struggle ensued with the deceased being stabbed under his armpit. The appellant asserted that he fled, got into his vehicle and crashed the vehicle. In summary he asserted that he had acted in self-defence.

6. In the course of the trial a witness, C.R. gave evidence by way of video link. She said that on the 16th July 2016 she received a number of telephone calls from the appellant asking her where the deceased was and that the appellant told her he wanted to see the deceased because "someone had said something to him" and that he said that he "nearly got a stripe down his face..." C.R. stated in her evidence that the appellant went on to say "he got a stripe down- he nearly got a stripe down his face over Paulie." She said she did not know what was meant by the term "stripe".

7. Dr Jennifer Ryan gave evidence of attending the scene on the 16th July 2016 for the purpose of conducting an examination. She observed blood on the stairwell leading from the area of the incident to the flat to which Mr. Curran had made his way until the arrival of the emergency team. CCTV showed the deceased and the appellant arriving at the flat complex within a short time of each other with the appellant arriving in a silver Hyundai. CCTV did not disclose the incident itself. The footage showed the appellant running from the scene, getting into the silver Hyundai and driving away. The appellant's clothing was not recovered.

8. On day four of the trial, the respondent served a notice of additional evidence upon the appellant; namely an additional statement of Garda English explaining his understanding of "got a stripe" having regard to the context in which it was used. Issue was taken with the admissibility of this evidence at the trial; and correctness or otherwise of the trial judge's decision to rule it admissible notwithstanding the objection raised, now forms the gravamen of this appeal.

**Grounds of appeal**

9. Prior to the commencement of the hearing of this appeal, two grounds of appeal were detailed. However, at the outset of the appeal, Mr Bowman S.C., counsel for the appellant, indicated that only one ground was being advanced, namely: -

(1).The learned trial judge erred in law and fact by ruling that the prosecution could adduce evidence to explain the

meaning of the term "get a stripe", as the relevance of this phrase had not been established as a matter of evidence and this led to speculation on the issue of motive.

10. As stated, a notice of additional evidence was served on day four of the trial, to which the defence objected on the basis that it was unclear from the evidence what, if anything, may have been said regarding a stripe and further, that there was no evidence regarding Ms. C.R.'s understanding of the term. Counsel for the defence argued at trial that the prejudicial effect of the evidence outweighed its probative value and, in circumstances where there was no clarity as regards the issue of a stripe, the jury would be left with the impression that it was some form a revenge attack by the appellant on the deceased.

11. C.R gave evidence that the appellant had telephoned her on the day of the killing and had spoken to her regarding the deceased, in particular enquiring as to the whereabouts of Mr. Curran. The salient portions of her testimony is as follows:-

"Q. Okay. And it's that reason you're here. I just want to know about the 16th of July, which we know to have we know that was a Saturday, do you remember that?

A. Yes.

Q. And that was the day that Paulie died; do you recall that?

A. Yes.

Q. And was he somebody you knew?

A. Yes.

Q. And how did you know him?

A. He was my cousin's boyfriend.

Q. Okay. And did you spend time with him or hang out with him at all?

A. Yes.

[...]

Q. All right. So, you were in your own place and with your cousin Louise, is that Louise Sutcliffe?

A. Yes.

Q. Okay. And while you were there, do you remember whether you - did you talk to anybody or did anybody get in touch with you?

A. Yes.

Q. Who?

A. Graham McEvoy.

Q. Okay. And did he do so by phone or how?

A. By phone.

Q. All right. So, do you remember that conversation with him?

A. Yes, he was just asking me where my cousin was.

Q. I'm sorry, it wasn't clear what you said there, maybe it's the sound?

A. He was just asking me where I was.

[...]

A. And he asked me where Paulie was.

Q. And did you know who he meant when he said Paulie?

A. Yes, Paul Curran.

Q. All right. And did he say anything further about Paulie?

A. No, I can't remember.

Q. Okay. Well, how many phone calls were there? Was it only one or was there more than one?

A. More than one I think.

[...]

Q. Okay. And he may have rung a second time?

A. Yes.

Q. Okay. Do you remember what that conversation had in it?

A. He said had happened him, to Graham, but I can't really remember what it was and then he rang me back.

Q. Yes?

[...]

Q. Well, leave aside what he may have done other than when you were talking to him, he rang you back. Do you remember anything of that call?

A. I think he said where's Paulie.

Q. Yes?

A. And I said I think he's in his house, I'm not sure and then I think he rang Paulie himself and then I think they arranged to meet each other in the flats.

[...]

Q. Now, he asked you where was Paulie. There may have been a second call. Did he ever say why he wanted to see him?

A. Yes, because he said someone said something to him or something.

Q. Do you remember what he said?

A. No, I can't really remember.

Q. But somebody said something to him?

A. Yes.

Q. About what, was it did he explain any of it?

A. Yes, he did, but I can't remember. He said he nearly got a stripe down his face, that's what it was.

Q. Okay. And what did you understand by nearly getting a stripe down his face? What did you understand that to mean?

A. What?

Q. What does that mean?

A. I can't I don't know.

[...]

Q. Okay. And when he said he was after nearly getting a stripe down his face, did he say why or how he nearly got a stripe down his face?

A. No.

[...]

Q. Well, what was the reason for the second call, that you understood?

A. I don't know, he just asked me where Paulie was.

[...]

Q. All right, but something about getting a stripe down his face?

A. Yes.

Q. And did he say how?

A. No.

Q. Did he blame anybody for this?

A. No.

Q. Okay?

A. He said he got a stripe down he nearly got a stripe down his face over Paulie.

Q. Over Paulie, all right?

A. Yes."

12. In cross examination of the issue the following is noted:

"Q. And you then said that there was a phone call made to you and Mr McEvoy was saying that he was going to go down and he was going to meet up with Paulie; isn't that correct?

A. Yes.

Q. And there was nothing unusual about that for you?

A. No.

[...]

Q. And I'm just going to go back slightly, you told Mr Devally in relation to the second call that Mr McEvoy made, you told Mr Devally that he mentioned something about a stripe; is that right?

A. Yes.

Q. And you didn't seem too sure about that when Mr Devally asked you about it, but you said that you thought Mr McEvoy had said something about Paulie getting a stripe or something like that?

A. Yes."

13. It is submitted on behalf of the appellant that the evidence did not provide a sufficient foundation enabling Garda English to give evidence of the meaning of the term "got a stripe". The appellant submits that this evidence was then used by the prosecution to supply a motive for the killing, which motive was not otherwise present on the evidence. It is further submitted that emphasis was placed on this evidence in the course of prosecuting counsel's closing speech such that the issue of motive became central to the prosecution's case. It is argued that this was simply unfair and that the respondent ought to have made clear its intention to rely in this manner on the evidence in controversy. Ultimately, it is submitted that the trial was unfair and the conviction unsafe as a consequence of the admission of the evidence of Garda English.

14. By way of written submissions, the respondent contends that the basis for the objection to the additional evidence was that the facts surrounding the evidence relating to the "stripe" were unclear. The respondent submits that the evidence of C.R. was perfectly clear and she simply did not know the meaning of the phrase. This evidence was unchallenged by the appellant.

15. It is important to note the actual evidence given by Garda English which was as follows:-

"Q. Now we have heard evidence from a Ms C.R. where she references the term getting a stripe. What do you understand the phrase getting a stripe to mean?

A. To me it means a cut or a slice across the face that leaves a scar.

Q. Ok

A. Similar to a stripe."

16. The respondent, in submissions says that the words spoken by the appellant in the course of the conversation with C.R. could amount to an expression of motive and this was indeed argued by counsel in the closing arguments. Finally, the respondent contends that clarification of the meaning of a phrase relevant to motive could not form the proper basis for an objection in fact or in law.

### **Findings of the court**

17. This Court is satisfied that the evidence of C.R regarding the conversation with the appellant was relevant admissible evidence. The purpose of Garda English's evidence was simply to explain the term "got a stripe" which was given in evidence by C.R., in circumstances where Garda English was familiar with the use of that term in colloquial parlance. Arguably, this evidence was unnecessary as a jury might be assumed to have understood the term in the context in which it was used without any need for explanation. Having said that, that the prosecution would, out of an abundance of caution, seek to introduce such an explanation was unobjectionable in our view. The evidence went no further than simply explaining the term having regard to the context in which it was used. We are satisfied that this clarification of the phrase was entirely admissible and that it falls into the category of admissible non-expert opinion evidence. See *McGrath on Evidence, 2nd Ed. Para. 6-100 to 6-105 inclusive*.

18. It is clearly open to the prosecution, in any given case, to draw together the strands of evidence in the course of a closing speech. It can hardly be said to have come as a surprise to the appellant, that counsel for the prosecution, relied upon and emphasised the evidence of C.R. and he could have done so with or without the explanatory evidence from Garda English. The fact that the clarification of the term was adduced in evidence did not render the trial unfair in any respect. The appellant contended that, in killing the deceased, he used excessive force. The jury was fully entitled to consider the evidence of the aforementioned telephone conversation and to hear the evidence of clarification as to the meaning of the impugned term in order to assess the significance, if any, of the evidence. This was a matter four-square within the province of the jury.

### **Conclusion**

19. We are satisfied that the ruling by the trial judge was both reasonable and correct. No error of principle has been identified in relation thereto, and there is nothing to suggest that the appellant's trial was unsatisfactory or that his conviction is unsafe.

20. We therefore dismiss the appeal.