



THE COURT OF APPEAL

**Birmingham J.
Mahon J.
Edwards J.**

218/14

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Aurimas Andruska

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 30th day of January 2017 by Mr. Justice Birmingham

1. On 6th November 2014, the appellant was convicted of two counts of murder in the Central Criminal Court, sitting in Tralee. The background to the trial was a double murder that occurred between the 15th and 17th June, 2013, in Killorglin, when a mother and her eight year old daughter were murdered. The appellant Mr. Andruska is now appealing against the convictions. A number of grounds of appeal have been advanced. It is fair to say that the principal issues raised on the appeal relate to the circumstance in which fingerprints were taken and DNA samples were taken on 19th June 2013, some three days after the bodies of the two deceased had been discovered at their home in Killorglin.

2. By way of background to the issues raised on the appeal, it should be said that the prosecution case was essentially based on circumstantial evidence and that there were a number of strands to that case:

(i) There was a bloody mark on a wall going up the stairs of the dwelling where the murders were committed. DNA was extracted from the blood at a section of the mark and it was found to match the DNA profile of the adult victim. In one section of the mark, ridge detail was evident and that was developed and there was evidence at trial that the ridge detail on the mark matched the fingerprints of the accused taken on 19th June 2013 at Killorglin garda station and matched a further set of prints that was taken from him at Killarney garda station on 27th June 2013, while detained following an arrest.

(ii) Lifts from a top worn by the child victim yielded DNA from a third party. The DNA matched that of the accused. A DNA sample had been taken from him on 19th June 2013 and a further sample was provided on the 27th June.

(iii) Footwear impressions had been found in blood throughout the house. These impressions were very distinctive and were made by one particular type of shoe. The actual shoes which caused the marks have not been located, but there were CCTV stills shown to the jury of the accused wearing a pair of distinctive shoes. A witness was called from the footwear company who identified the shoes worn by the accused in the CCTV stills as footwear created by his company, namely, "Memphis One" shoes. These shoes are not available for purchase in Ireland. However, the witness identified two samples that had been sourced overseas by the gardaí and there was evidence that the foot impressions in blood matched impressions created by size 43, 44 of Memphis One shoes. There was also evidence at trial from a witness about receiving a call from the appellant asking for a pair of shoes and in response delivering a pair of shoes to him at his home.

3. There was evidence that the accused provided a voluntary statement to gardaí which stated that he had gone to the home of the deceased on the Tuesday prior to the murders and that he was in the kitchen and hallways and had returned there on Thursday 13th June 2013 when he had given the deceased a bottle of alcohol and had then gone home thereafter. However, on the 27th June, the appellant was arrested and interviewed, he gave a different account, now saying that he had gone to the home of the deceased on 13th/14th June and had sex there with the adult victim.

4. The prosecution sought to rely on the lies told by the appellant.

Garda Investigation

5. It appears that initially, the gardaí did not have a suspect and in those circumstances, the gardaí asked those living in the area to complete a questionnaire dealing with their movements on 15th/16th June. Secondly, individuals were asked to provide saliva samples and fingerprints to gardaí for "elimination purposes". It seems that over 60 people provided prints and samples.

6. As part of that operation, two members of the gardaí, Sergeant Tim O'Keeffe and Detective Garda Michael Healy, met with four Lithuanian nationals, including the appellant, at their workplace at Currow, County Kerry. Following a conversation on the roadside, the four Lithuanians travelled together by car to Killorglin garda station.

7. At trial, an issue was raised as to whether the DNA sample and fingerprints were provided voluntarily. The argument was that the gardaí did not take sufficient steps to ensure that the appellant fully understood that he was not under any compulsion to provide samples and to make him understand that the samples could be of evidential significance. The garda evidence was that they had made this clear, both at the roadside and then later at the garda station. The judge found as a fact that the garda evidence was reliable. Today the appellant challenges the findings of fact by the trial judge. For completeness it should be pointed out that on the 27th June, when the appellant was arrested and detained at Killarney garda station that further samples of his saliva and further fingerprints were taken in the course of that detention. However the appellant says that that arrest flowed from the events of the 19th June, and that the events of the 19th June tainted everything that occurred subsequently.

8. The evidence of Detective Sergeant Shane Farrell provides that second ground of appeal. It is contended that the evidence of

Detective Sergeant Farrell, the garda fingerprints expert, went beyond what was permissible. Detective Sergeant Farrell was in a position to give evidence that a recovered mark on the bloodied wall matched the left little finger of the appellant. Detective Sergeant Farrell gave evidence as follows:-

"Well, my knowledge and experience of these things led me to believe that we were looking at quite a significant contamination of blood with associated fingerprint ridge details and I could clearly see that it was a left hand impression made as someone had placed their hand on the wall as they were going up the stairs from the downstairs towards the upstairs with quite an amount of pressure placed on the wall which is visible in the photographs".

9. The relevance of this is that the body of the adult deceased was located downstairs, while the child deceased was located on the upstairs landing. It is contended that this picture that was painted by the witness went beyond his area of expertise and was impermissible.

10. The challenge to the Killorglin prints and samples was the subject of a *voir dire* on day 6 of the trial. The judge heard from Sergeant O'Keeffe and Detective Garda Healy. He heard their direct examination and heard each of them in turn being cross examined by senior counsel on behalf of the appellant.

11. The appellant also gave evidence in the course of the *voir dire*. The judge considered matters overnight and then gave a detailed ruling the following morning. That ruling involved clear and specific findings of fact. By way of example, he commented:-

"Now the question then is whether or not it was made clear to the accused that in fact he had a choice, a free choice, as to whether or not he could or should give or would give or as to whether or not he would give the samples in question and that is the first question, whether or not he was aware of that fact full stop, so to speak. And I am completely satisfied on the evidence that he was fully aware of that fact from the roadside."

12. Having regard to the long established jurisprudence of this Court, this Court as an appellate court is not in a position to overturn those findings of fact. The trial judge was the one who had an opportunity to see and hear the witnesses, not an advantage that is available to this Court. It must be said that there was in fact abundant evidence to support the finding by the trial judge. Accordingly this ground of appeal is rejected.

13. So far as the complaint that Detective Sergeant Farrell went beyond his remit and exceeded the proper role of an expert is concerned, the court is not persuaded that this is a point of any substance. The court has been shown the photos of the blood mark and in truth what the Detective Sergeant said was all but self evident. The comments that he made could have been made by anyone studying the photo, so this ground of appeal is also rejected.

14. In summary then the court rejects each of the grounds of appeal that has been argued and will dismiss the appeal and uphold the conviction.