THE COURT OF APPEAL

Record No. 139/2015

Birmingham J.
Mahon J.
Edwards J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND–

TADGH BUTLER

APPELLANT

JUDGMENT of the Court delivered on the 3rd day of July 2017 by Mr. Justice Mahon

1. The appellant was convicted of murder, contrary to Common Law, (as provided for by s. 4 of the Criminal Justice Act 1964), on the 15th May 2015 by a jury in the Central Criminal Court. He was sentenced to life imprisonment on the 15th May 2015, to date from the 9th January 2014. The murder victim was Michael O'Dwyer. The appellant has appealed against his conviction.

2. On the evening / early morning of the 9th and 10th January 2014 four men, including the appellant and Mr. O'Dwyer, the appellant's cousin, were drinking in a house in County Waterford. A row broke out between the two men and it was alleged that the appellant fatally stabbed Mr. O'Dwyer in his side. Another of the men present, Mr. Anthony O'Grady, made a statement on the 10th of January 2014 in which he claimed that he had witnessed the appellant stabbing Mr. O'Dwyer. Subsequently, in the course of the trial, Mr. O'Grady professed a lack of memory and his statement was admitted by direction of the learned trial judge pursuant to s. 16 of the Criminal Justice Act 2006. There was also evidence from the appellant's ex partner, Mary Rose Burke, to the effect that when visiting the appellant in jail he told her that he had stabbed the deceased.

3. The trial commenced on the 5th May 2015 and concluded on the 14th May 2015. In the previous week an earlier trial of the appellant ended on its second day when the jury was discharged because a witness had given evidence in respect of which neither the defence or the prosecution had previous notice.

4. The grounds upon which this appeal are based are, briefly stated, as follows:-

> (i) The learned trial judge erred in law by forcing the appellant to conduct his own defence following the appellant's discharge of, and the withdrawal by, his legal team. The appellant then sought to re-engage his legal team but they did not feel they could act in the circumstances. The appellant unsuccessfully applied to the learned trial judge for an adjournment to enable a new legal team be engaged.
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> (ii) The learned trial judge erred in law by permitting evidence to be given by the appellant's former partner, Mary Rose Burke, to the effect that when she visited the appellant in prison on the 13th January 2014 he admitted to having stabbed the deceased.
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> (iii) The learned trial judge erred in permitting the statement of Anthony O'Grady to be admitted in evidence pursuant to s. 16 of the Criminal Justice Act 2006 in circumstances where the statement was unreliable and where the proofs required under the Statute were not established in order to justify its admission.

Accused forced to conduct his own defence

5. The appellant parted company with his legal team on the 12th May 2015, being the sixth day of the trial. The appellant then sought an adjournment of the case to facilitate his appointment of a new legal team. The learned trial judge offered the appellant the choice of either re-engaging his legal team or proceeding with the case and representing himself. He was afforded the opportunity to speak again to his recently discharged legal team. His senior counsel, Mr. Grehan S.C., having consulted with the appellant sought leave that he, his junior counsel and his solicitor be permitted to discharge themselves from the case. This was acceded to. Mr. Grehan advised the court that his new instructions from the appellant were 'radically different' to his pre-trial instructions on which he had conducted the trial up to that point. He indicated that the appellant now wished to seek to recall the prosecution witness, Mr. O'Grady, and put a 'totally different' version of events to him compared to that put in his earlier cross examination of that witness.

6. The appellant's application for time to engage a new legal team was made in the following terms:-

> *"..I feel that I am not getting a fair trial because of the evidence that I have heard in this case and I should have said this, you know, from the start, but I didn't actually know the way this case was going to play out and there is .. my life is at stake here in this case and I feel that I need more time for, to put a proper defence, to be able to have a fair trial in this case.."*

7. In pressing for an adjournment of the trial, the appellant said he was unable to represent himself and did not wish to do so. The prosecution counsel, Mr. Vaughan Buckley S.C., requested the court to direct that the trial should continue. After a further exchange between the learned trial judge and the appellant, the learned trial judge ruled as follows:-

> *"I take the view that the case should now proceed. At this juncture you must take responsibility for the course which you have adopted and it is your responsibility, alright. .."*

8. Prior to the appellant's dismissal of his legal term on the sixth day of the trial, twenty nine prosecution witnesses had given evidence, including Mr. O'Grady. Also Mr. O'Grady's statements had been admitted into evidence pursuant to s. 16 of the Act. Subsequent to the resumption of the trial, and with the appellant representing himself, four prosecution witnesses gave evidence, including Mr. O'Grady, whose recall was permitted by the learned trial judge following an application by the appellant to which no objection was raised by the prosecution. No witnesses were called on behalf on the appellant, and the appellant himself elected not to give evidence. Closing speeches were made to the jury by prosecution counsel and by the appellant.

9. The further cross examination of Mr. O'Grady by the appellant saw a radically different version of events put to him by the appellant compared to what had been put to him earlier in the trial by counsel on behalf of the appellant. The latter version was that the appellant had accidently stabbed the deceased when struggling to take a knife off Mr. O'Grady. This suggestion was vehemently denied by Mr. O'Grady.

10. In submissions to this court, the appellant maintains that being compelled to conduct his own defence resulted in the trial falling short and of being fair in a number of respects, including:-

> (i) Evidence was admitted that would otherwise have been excluded, and indeed in one instance evidence that had been excluded in a voir dire was later referenced to the jury.
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> (ii) The appellant was clearly unfamiliar with basic legal concepts including the principle that evidence is not made up of submissions or comment from the body of the court but is given under oath in the witness box and that the jury could not rely upon comment or submissions in arriving at its verdict. This misapprehension led to a situation where the accused did not call any evidence to support the defence raise belatedly in the proceedings, as he believed that this was not necessary.
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> (iii) The prosecution delivered a closing speech which in the context of the proceedings was unfair to the accused and contrary to statutory provisions.

11. The evidence which the appellant maintains was admitted and ought to have been excluded related to that of D/Gda. Ryan and Gda. Raleigh and, more specifically, memos prepared by them in relation to interviews conducted with the appellant. In the course of same reference was made, and repeated to the jury, that the appellant had declined to answer certain questions put to him by the gardaí. More particularly again, one of the memos recorded a response given by the appellant (and which was repeated to the jury) of "*I told you under a solicitor's advice no comment"*.

12. In the course of his closing address to the jury, the appellant sought to explain his refusal to answer the question put to him by the gardaí in the following terms:-

> *"Now, I know I didn't give an explanation to the police and I wasn't prepared because I was not prepared to see my sister, Breda, go through a lot of suffering again if I had to explain what had happened to the police."*

13. The appellant submits that had he had the benefit of legal representation his legal right to silence as exercised by him in the course of being interviewed by the gardaí would not have been disclosed to the jury and, further, he would not have felt the need to explain to the jury why he had remained silent.

14. A further complaint made by the appellant is that a remark made by him to the gardaí, namely, *"prove it, I am a citizen of Ireland"* ought not to have been disclosed to the jury, and that it would not have been so disclosed had he had legal representation.

15. However, as has been pointed out on behalf of the respondent, evidence of a garda interview of the appellant in which he indicated that he was not prepared to give the gardaí his *"version of events"* on "**legal advice"** was in fact disclosed to the jury in the course of evidence in the trial at a time when the appellant was legally represented. It was emphasised that the reading of the memo in question was done at the insistence of the appellant's legal team. A similar request was made in relation to the second extract referred to. It was also pointed out that prior to the commencement of the trial senior counsel for the appellant had specifically asked that the extract of the first memo (referred to above) be given to the jury. It was suggested on behalf of the respondent that this position was taken by the appellant from the very commencement of the trial in the interest of his defence.

16. In the course of his comprehensive and well structured charge to the jury the learned trial judge advised that the appellant had a right to silence and that no inference could be drawn from any exercise of that right by him.

17. In relation to the criticism that evidence was admitted which ought to have been excluded, the court is satisfied that such did not occur. No issue was taken on behalf of the appellant when he was legally represented in relation to this matter. Furthermore, it was the case in any event that a decision had been made prior to the commencement of the trial and on behalf of the appellant that evidence indicating that the appellant had exercised his right to silence ought not be excluded from the jury. Furthermore again, the jury was advised by the learned trial judge in the course of his charge that the appellant had a right to remain silent when being questioned by the gardaí, and that no inference ought to be drawn from his exercise of that right. The court is therefore satisfied that the admission of such evidence was appropriate and was not prejudicial to the appellant, and that the jury was informed that a right to silence was an entitlement available to any person being questioned and that the exercise of that right did not indicate guilt.

18. The second issue which arises specifically in relation to the decision to compel the appellant to proceed with the trial without legal representation relates to the fact that comments made and questions put by the appellant to Mr. O'Grady, after Mr. O'Grady was recalled to give evidence, and references made thereto by the appellant in his closing address to the jury, did not constitute evidence for consideration by the jury.

19. Immediately prior to Mr. O'Grady being recalled to give evidence, the learned trial judge canvassed with the appellant, in very general terms, (in the absence of the jury), what would be the subject matter of his cross examination of Mr. O'Grady. The appellant confirmed that he intended to raise with Mr. O'Grady a *new topic*. Mr. O'Grady was then recalled and proceeded to give evidence in response to questions and, what were in reality statements, put to him by the appellant. It is clear that the line of questioning and the manner in which the appellant addressed Mr. O'Grady was intended to establish that he had accidently stabbed the deceased in the course of an altercation with Mr. O'Grady. This essentially new version of events was firmly rejected by Mr. O'Grady. At the conclusion of Mr. O'Grady's evidence the following exchange took place as between the learned trial judge and the appellant:-

"Judge, Thank you. Now, Mr. Butler, do you want - or Mr. O'Grady do you want - what's your position now?

Appellant, Well -

Judge, do you have any other witness or do you want to give evidence yourself?

Appellant, Well, I think, you know that the major point in the case that the jury needed to

Judge, No No do you want to give evidence?

Appellant, No, I don't think there is a need to.

Judge, Have you any other witnesses to call?

Appellant, There is no more witnesses that I need to call."

20. Mr. Vaughan Buckley S.C., counsel for the prosecution proceeded to make his closing speech to the jury. In the course of that he stated, inter alia,:-

> *"Now, it's a different case being made by the accused representing himself here now, suggesting there was a struggle between himself and Anthony O'Grady …and accidently he killed him."*

21. The appellant then proceeded to give his closing speech to the jury. In the course thereof, he proceeded to recount again the new version of events as put by him to Mr. O'Grady when Mr. O'Grady was recalled to give evidence. The appellant was interrupted while this aspect of his closing speech was discussed in the absence of the jury. Mr. Vaughan Buckley S.C. voiced his objection to any suggestion being made to the jury that, in effect, questions put by the appellant to Mr. O'Grady, or unsworn statements made by him in the course of that cross-examination or addressed to the jury in a closing speech, could be considered by the jury as evidence.

22. The learned trial judge then addressed the appellant in the following terms:-

> *"No, the position is you have said many things which are not evidence and I have to - it's my duty to make clear to the jury that anything which wasn't spoken by somebody in the witness box, subject to the exception of the statement of Mr. Anthony O'Grady and what you said to the gardaí, is not evidence in the case. So, the overwhelming bulk of what you have said he is not evidence and I will be telling the jury as a matter of law they are forbidden to rely upon it, and it would be - that they are not allowed to rely upon it. I didn't interrupt you because you are not a lawyer. I am not going to interrupt you now. You will continue as you see fit, but of course I will discharge my duty in my charge to the jury. Ok?"*

23. In his charge to the jury, this issue was mentioned directly, in the following terms:-

> *"..Now then the only evidence with the limited exceptions to which I have referred is the evidence from the witness box. The accused chose not to give evidence. I have told you that no adverse inference, good, bad or - good - no adverse inference of any kind can be drawn from - against him in terms of the prosecution's duty to prove the case. This is not the point I am making. I am about to make the point, which is this, anything which he said to you is not evidence in itself. Now, I, if I were a barrister as Mr. Buckley is, would refer to parts of the evidence and the law is that a barrister is entitled to refer to the evidence and make submissions to you on the evidence and express opinions on the evidence. You can see that that's a totally different thing from saying things or asserting propositions as facts which have not been given in evidence in the witness box.*
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> *Occasionally barristers do that. I have to tell you bluntly I have to come down on them like a ton of bricks because it is just wrong. Now this gentleman, Mr. Butler, is not a lawyer and accordingly I give him a leeway which would be unthinkable otherwise, did not interrupt him. Mr. Butler protested. I felt Mr. Butler should have every opportunity to defend himself but you will know that there were assertions made in the course of his evidence which - in respect of which there was no evidence and we know, in particular, that there is no evidence whatsoever, good, bad or indifferent, that the version of events which he put to Mr. O'Grady is - there is no evidence good, bad, or indifferent of that version of events. He put a proposition. It was not accepted and if and insofar as he has purported to say things to you as facts which are not part of the evidence in the case, then of course the ordinary rule applies, as you appreciate."*

24. In the course of its deliberations, the jury returned with this question:

> *"Are we allowed to use Mr. Butler's admission that he accidently stabbed Michael O'Dwyer or the same assertion made in the prosecution's closing statement as evidence."*

25. The learned trial judge's immediate response was:-

> *"Yes, well, you cannot use the assertion made in the prosecution's submission obviously. That's just a submission and I will ask Mr. Buckley and indeed of course Mr. Butler, Mr. O'Grady, to address me on that particular topic, ok? So you might just care to excuse us for a short time…"*

26. Following a discussion between the learned trial judge, prosecution counsel and Mr. Butler the jury was recalled and their question was then formally responded to as follows:-

> *"Ladies and gentlemen, you asked me a question and I hope I am going to say something to you which will answer the question. I have already told you that what counsel or Mr. Butler - he does'nt mind, I think, me speaking of him as such, say on a free standing basis is not evidence in the case. No more to be said. No, if something was said on a free standing basis which wasn't in the evidence, that's not evidence of that fact, ok. You've touched upon the topic was what was said about the - we will call it the alternative version of events which have been put. I inferred that possibly what you are asking me was whether what was said in the speech - his speech by Mr. Butler was evidence in the case on this topic and, in particular that is what the lawyers would call an admission or acknowledgement of such a thing. I inferred perhaps - I think I see you nodding - Mr. Foreman - that this is precisely what you want to ask…So, the evidence in relation to the topic is not, how shall I put it, something I may say in my speech although I might in my speech refer to the evidence, for example a concession supposedly in the speech by a person that he involved himself, say in this alternative version of events. The evidence is what was said in the witness box… Now, a person can in his submission to the jury refer to evidence or he can go further than the evidence but if he goes further then the evidence*

need I say it's obvious that's not evidence. So that is the evidence - sorry you have heard evidence on that topic. I have gone through it all, …"

27. The learned trial judge was, of course, correct in his instruction to the jury that unsworn statements made by the appellant in the course of the trial, either when cross examining Mr. O'Grady or in the course of his closing speech to the jury, were not evidence, and could not be considered as such by the jury. In effect the learned trial judge told the jury, again correctly, it could not consider what was said by the appellant in relation to his suggestion that his stabbing of the deceased was accidental as evidence because the appellant had not given that evidence under oath.

28. It is contended that the legally unrepresented appellant ought to have been advised by the learned trial judge, in the particular circumstances prevailing at the time, that he, the appellant, should consider giving evidence under oath in order to ensure that the jury could then consider the version as put by the appellant to Mr. O'Grady and as referred to in the appellant's closing speech to the jury as evidence.

29. It is almost certainly the case that the appellant was unaware and did not understand that in order for the jury to consider the appellant's version of events it was necessary that they should hear it as sworn evidence.

30. In *DPP v. Byrne and Ors* [1998] 2 I.R. at 417, the accused were tried for certain drugs and firearms offences. At the close of the prosecution case, their counsel sought a direction in relation to the various counts. A direction was granted in respect of some counts but not in relation to others. At this point, the court was informed that one of the accused had discharged his legal team. When counsel for the other appellants indicated that they did not propose to offer evidence, the accused, who was no longer legally represented, was advised by the trial judge that if he wished to give evidence, he would have to do so on oath and could only address the jury by reference to the evidence which had been adduced. The Central Criminal Court held, *inter alia*, that it was a matter for the trial judge's discretion to refuse the applicant's request to reconsider the discharge of his legal team, ample opportunity having been given to that applicant to consider the matter before effecting that discharge.

31. In the instant case, the learned trial judge was entitled to use his discretion, as he did, to insist that the trial should continue in circumstances where the appellant would no longer be legally represented. At the time when the appellant discharged his legal team, the prosecution's case had almost concluded. It was a lengthy trial, and while not complex, neither was it particularly straight forward. The learned trial judge was correct to exercise his discretion with due regard for the interests of justice and the entitlement of the appellant to have a fair trial. The decision to force the appellant's hand in this way did not result in his trial becoming, or being, unfair.

32. However, in circumstances where the appellant's legal team was discharged at an advanced stage in the trial there was an onus on the learned trial judge, over and above that which is present when an accused is legally represented, to ensure, as far as reasonably practicably possible that the appellant, as the accused person, would not take any step which might weaken any line of defence which he had clearly adopted. This in no way suggests that a trial judge should step into the shoes of an accused's discharged counsel or become the legal advisor to a legally unrepresented accused. In this case, it became clear to the learned trial judge that the appellant was, in effect, running a defence that he had accidently stabbed the deceased, and that this version of events was firmly rejected by Mr. O'Grady while giving evidence under oath. It was also apparent that the appellant was under a misapprehension that the introduction of this revised version of events in this manner was sufficient to enable the jury consider it in the course of its deliberations. While such would have been within the basic knowledge of a lawyer, but unlikely to have been known by a lay person.

33. In these particular circumstances, the learned trial judge, having correctly and appropriately reminded the appellant of his entitlement to give evidence under oath ought to have gone that step further and advised him that if he did not do so, or call other evidence on his behalf, what was now a new version of what had occurred on the date of the killing could not be considered by the jury as it had not heard sworn evidence in relation to it.

34. On this basis, the court is satisfied that the conviction ought to be quashed. While it is unnecessary for the court to consider the other grounds of appeal it has however done so and will briefly refer to them and its conclusions in relation thereto.

The evidence of Mary Rose Burke

35. It is contended by the appellant that the learned trial judge erroneously permitted Ms. Burke to give evidence to the jury. Ms. Burke, who was a former girlfriend of the appellant and the mother of his children, visited the appellant in prison on the 30th January 2014. In the course of that visit Ms. Burke said that the appellant admitted to having stabbed the deceased.

36. Ms. Burke's relationship with the appellant had ended some three and a half years prior to her visit to him in prison. She said that she saw his name in the newspaper and decided to bring the children to visit him for humanitarian reasons. On the day before her visit to the prison, Ms. Burke had been visited by Gda. Ryan who asked her to make a statement in relation to the appellant. Ms. Burke said that at that point in time she had not definitely decided to visit the appellant in prison. She said that she was not asked by Gda. Ryan to visit him or ask any question of him, and Gda. Ryan stated that nothing was requested of Ms. Burke by her in this respect. After her visit, Ms. Burke made a statement to the gardaí, which included the reference to the appellant telling her that he had stabbed the deceased.

37. The issue of the admissibility of Ms. Burke's evidence was raised and comprehensively argued in the course of a *voir dire* in the first trial of the appellant which concluded with the discharge of the jury, and before the same trial judge as in the second trial. The matter was not raised in the course of the second trial, on the basis, as is contended on behalf of the appellant, that there was little point in doing so given that the same judge had made a determination on the issue in the course of the first trial.

38. In the court's view, the evidence of Ms. Burke was properly admitted before the jury. The suggestion that she had been in some way tutored to obtain information from the appellant as to the circumstances of the deceased's stabbing was not established, and, indeed, was firmly rejected by the two persons concerned, Ms. Burke and Gda. Ryan.

The admission into evidence of the s. 16 statement of Mr. O'Grady

39. Mr. O'Grady gave a statement to the gardaí in his mother's house shortly after the stabbing incident. The statement was the subject of a proper caution, and it was signed by Mr. O'Grady. The statement was read back to Mr. O'Grady on video recording, and he confirmed its content.

40. In the course of giving evidence at the trial, Mr. O'Grady stated that he was unable to remember what had occurred on the night of the stabbing. He accepted that the signature on the statement was his, but he denied any memory of its content. More

specifically, he denied any memory of the events that led to the death of the deceased.

41. The learned trial judge was shown the video recording at Kilkenny garda station when Mr. O'Grady's statement was read over to him and he agreed with its content. He also heard evidence from D/Sgt. Furlong who took the statement from Mr. O'Grady. D/Sgt. Furlong said he had no concerns about Mr. O'Grady's ability to understand what he was saying in relation to making the statement. He was unaware, as contended by the appellant, that at the time he made the statement, and at the time it was read over to him in the garda station, that the appellant was under the influence of medication or cannabis.

42. The learned trial judge ruled in favour of the prosecution application to admit the statement made by Mr. O'Grady pursuant to s. 16. He meticulously dealt with the various matters properly requiring consideration pursuant to s. 16, including the statement's reliability and consistency, having had the benefit of hearing the relevant witnesses first hand and of viewing the video recording of the statement being read over to the appellant and his expression of agreement with it. He also referred extensively to the decision of McKechnie J. in *DPP v. Jason Murphy* [2013] IECCA 1.

The prosecution's speech to the jury
43. Although not advanced as a separate ground of appeal it is nevertheless contended on behalf of the appellant that the delivery by the prosecution of a closing speech "was unfair to the accused and contrary to statutory provisions". The latter is a reference to s. 24(1) of the Criminal Justice Act 1984, which provides as follows:-

> *"24(1) Notwithstanding any rule of law or practice, and notwithstanding anything contained in section 2 of the Criminal Procedure Act, 1865 , the procedure at a trial on indictment as to the closing speeches for the prosecution and for the defence shall be as follows:*
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> > *(a) the prosecution shall have the right to a closing speech in all cases except where the accused is not represented by counsel or a solicitor and does not call any witness (other than a witness to character only), and the defence shall have the right to a closing speech in all cases, and*
> >
> > *(b) the closing speech for the defence shall be made after that for the prosecution."*

44. The decision of the Court of Criminal Appeal in *Byrn*e is cited by the appellant in support of his contention. In that case, one of the grounds of appeal against conviction related to the fact that counsel for the prosecution was permitted to make a closing speech to the jury in circumstances where the appellant discharged his legal team after the close of the prosecution case and after an application for a dismissal of the case had been made and rejected by the trial judge. In the course of delivering the judgment of the court in Byrne, Keane J. (as he then was) said:-

> *"In this case, the first applicant was represented by senior and junior counsel from the beginning of the trial: they were discharged only after the trial judge ruled on the application for a direction. Accordingly, literally construed, the exception in subs. 1(a) does not apply to this case, since the applicant was represented by counsel, save at the closing stage of the trial. However, even if one were to adopt a purposive rather than a literal construction of the section, it is clear that it cannot have been the intention of the Oireachtas to deprive the prosecution of their right to a closing speech in circumstances such as arose in this case. The object of the section is to give the prosecution a right to a closing speech in circumstances where the accused has been represented by counsel or a solicitor who, as professional advocates, may have exposed what appear to be weaknesses or lacunae in the prosecution's case and which the prosecution may wish to deal with before the jury consider their verdict. It was clearly the view of the legislature that it would tilt the balance unfairly in favour of the prosecution if they were to have a similar facility where the accused was not so legally represented and did not call any evidence. It would tilt the balance unfairly in the other direction if an accused person, by discharging his counsel or solicitor after they had tested the strength or otherwise of the prosecution case in full, could deprive the prosecution of the opportunity to make a closing speech."*

45. It is submitted on behalf of the appellant in this case that Byrne is distinguishable from it in that in the former the prosecution case had closed, whereas in the instant case it had not closed at the point when the legal team was discharged. It is contended that *Byrne* is an authority supporting the contention that the prosecution should only be permitted to make a closing address to a jury in circumstances where an accused was legally represented up to the close of the prosecution case.

46. It is undoubtedly so that in the instant case the prosecution case had not closed at the point in time when the appellant ceased to be legally represented. Subsequently, three further prosecution witnesses were called and in addition, the prosecution witness, Mr. O'Grady, was recalled albeit it on the appellant's application. It is, however, relevant to note that twenty nine prosecution witnesses had already completed their evidence. With the exception of Mr. O'Grady who was recalled by the appellant, the three other prosecution witnesses who gave evidence while the appellant was not legally represented did so in relation to what might be described as formal matters which were absent of any controversy in the context of the trial. Their evidence was relatively brief and was of a nature which was unlikely to have been the subject of cross examination even if the appellant had been legally represented. It represented less than one day's evidence out of a total of six days evidence.

47. In the court's view, the decision in *Byrne* tends strongly to confirm that the prosecution were entitled to make a closing speech to the jury in circumstances where at the point when the appellant discharged his legal team the prosecution case had almost concluded. There is no fault to be attributed to the learned trial judge for permitting this to occur. This court is satisfied that in the circumstances of this case the prosecution was entitled to address the jury.

Conclusion
48. The court will allow the appeal against conviction on the sole basis that the learned trial judge erred in not advising the then legally unrepresented appellant that in the absence of sworn evidence of his revised or altered version of events directly relating to the stabbing of the deceased that version could not be considered by the jury in the course of their deliberation as to his guilt or innocence.

49. The Court will in due course consider whether or not a re-trial should be ordered.