THE COURT OF APPEAL

Mahon J.
Edwards J.
Hedigan J.

Record No: 44/2014

THE PEOPLE AT THE SUIT OF

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

CELYN EADON

Appellant

JUDGMENT of the Court delivered on the 15th May 2018 by Mr. Justice Edwards

Introduction
1. On the 15th of February 2014, following a ten day trial, the appellant was convicted of the murder of his mother Nóirín Eadon on the 9th of March 2011 at their home in Derrycrieve, Castlebar, Co. Mayo.

2. The appellant's plea of guilty to manslaughter was rejected by the prosecution. At the appellant's trial on the murder charge, a defence of diminished responsibility as provided for by s.6 of the Criminal Law (Insanity) Act 2006 went advanced before the jury, but was rejected by them.

3. An alternative defence contending that the appellant lacked the specific intent necessary for the homicide to be characterised as murder rather than manslaughter was also rejected by the jury.

4. The appellant now appeals against his conviction for murder. He accepts the verdict of the jury with respect to their rejection of his defence based upon diminished responsibility, but contends that he ought to have been acquitted of murder on the basis that he lacked the necessary specific intent. In that regard, he complains that the trial judge misdirected the jury concerning the issue of his intoxication and its relevance in the assessment of his intent.

The facts of the case
5. The appellant, who was 19 years of age and unemployed at the time of the incident, had serious substance abuse issues. Since the age of 13 he had abused alcohol and cannabis and in the two years preceding the incident he had begun consuming other drugs including amphetamines, cocaine, crystal meth (otherwise methamphetamine), ecstasy and methadone. In the 18 months prior to the incident he had been spending approximately €400 per week on drugs. In addition, he drank large quantities of alcohol on a near daily basis. He had no known history of violence.

6. The appellant lived in the family home, a modest house in the countryside in Co Mayo, with his mother (the deceased), and his younger brother and younger sister. The deceased, although married to the appellant's father, Mark Eadon, had been separated from him for some years. In the five days immediately prior to the incident the appellant was consuming a large quantity of drugs, in particular amphetamines as well as methadone and diazepam, and because of the effect of the amphetamines was unable to sleep. During this period he suffered paranoid delusions and engaged in erratic behaviour: spraying deodorant to ward off demons; believing he was being pursued by aliens and making crop circles to communicate with them; asserting that fire ants and demons were emerging from the walls; imagining that the house was full of smoke; blocking the air vent in his bedroom with coins and stones because he believed the room was being filled with poison gas; and setting on fire an electrical socket and the family cat's bed.

7. On the 8th of March 2011 the deceased sought help for the appellant from her brother Patrick Kelly who is a long-time member of Alcoholics Anonymous. He visited the family home accompanied by a friend and recovered drug addict, Kevin Mitchell. The appellant's paranoia was evident to both and the deceased was very concerned. She was also visited on that date by her friend Diane Macko, who also observed the appellant's paranoid state. The deceased was so concerned that she hid a chain saw and petrol from the appellant.

8. The deceased also sought help from the appellant's father, Mark Eadon, with whom the appellant had fallen out about eight months previously. Mark Eadon arrived sometime after 9 p.m. on the 8th of March 2011 and found that the appellant had barricaded the deceased and her younger son, Ferdia, out of the house. Mark Eadon said the appellant appeared paranoid and delusional and was telling him that some of his drugs had gone missing, believing his uncle Patrick had taken them. The appellant's father succeeded in calming his son down to some extent and prompted him to admit that he had a drug problem. Having calmed the appellant down he left the deceased's house before 11.30 p.m. He told the Court that the deceased's numerous attempts to get professional help for her son from state services, both on the day in question and in the period preceding it, had been unsuccessful.

9. At approximately 1.30 a.m. on the morning of the 9th of March 2011 the appellant's younger brother, Ferdia Eadon, was awoken by muffled screams and found his mother on the floor of the living room mortally wounded. By this point the appellant had left the house The deceased was later found at post mortem to have 18 stab wounds including one to her eyeball as well as defensive type wounds to her hands.

10. At approximately 7.20 a.m. on the 9th of March 2011 the appellant arrived at the house of John Scott shivering and barefoot and wearing only a set of wet tracksuit bottoms. Mr Scott lived in the neighbouring townland of Rehins, which was not accessible by road from the appellant's house. The appellant's body was covered in scratches and cuts. He spoke of having been abducted by aliens who experimented on his mind, of radiation poisoning and said he may have killed his mother. The Gardaí were called by Mr Scott. They had already been alerted to the mortal wounding of the deceased and were in any case seeking the appellant. The appellant was arrested and brought to Castlebar Garda Station where he was detained and interviewed.

11. The appellant was interviewed on six occasions. In an early interview he told Gardaí that *"[the deceased] went for me. I didn't know whether it was my mother. It was a totally different person. I had a knife in my pocket. I clipped her with the knife. I fell asleep in the room. I woke up. I couldn't breathe. I went out to cut a tree".* In his first interview the appellant rambled incoherently, speaking loudly and at a fast pace. He told Gardaí *inter alia* that he had been pursued by aliens, that his room was filled with smoke, that his father was drinking toxic water, and seemed at certain times to be unaware that his mother was dead. He also appeared to imply that his mother had been replaced by an imposter or that she was *"mad".* He was however aware that his drugs had gone missing and that he had argued with his mother about this.

12. In a later interview the appellant admitted to killing his mother:

> *"Question: You're being detained here for the unlawful killing of your mother at Derrycrieve, Islandeady, this morning?*
>
> *"Answer: I find it hard to accept, yes, I did do it. I don't know what to say. My eyes were playing tricks on me. I didn't see what I was doing. I woke up not being moving around, being frozen. I don't know what happened. All I can tell you that I remember is stabbing and freaking and running out of the house.*
>
> *"Question: Stabbing who?*
>
> *"Answer: My mother. At the time I thought it wasn't my mother. I didn't really know what I done, that orange on me I think is blood. Why wasn't there blood on my trousers? I don't know whether I cleaned it or not. I didn't wash myself. How come there's no blood on me. Whatever shite, I don't know.*
>
> *"Question: What happened before?*
>
> *"Answer: I was getting funny old notions, someone was in my room and took my drugs, speed, money. They might have got my passport and money. It made me confused and wondered who the fuck done it.*
>
> *"Question: Were you angry?*
>
> *"Answer: I don't know. I didn't stab my mother over that. Someone pulled the wool over my eyes. It was my own fault. It was me who done it.*
>
> *"Question: Take it a step at a time?*
>
> *"Answer: I didn't see. I killed her because I was on a cocktail of drugs for days. I didn't know it was my mother. I ran out in shock and didn't realise until this morning.*
>
> *"Question: You did kill your mother?*
>
> *"Answer: As far as I know. I didn't finish her off. I stabbed her and left her at that. I didn't realise what I'd done at all. I'm very confused. I was timed. I guarantee you that it will hit me like a tonne of bricks in the morning. I didn't realise what I'd done at all.*

13. The appellant was later examined by psychiatric professionals. Dr Conor O'Neill, a consultant psychiatrist at the Central Mental Hospital, accepted that the appellant was likely to have been highly intoxicated at the time. In cross examination he was asked whether the appellant's intoxication could have impaired his ability to form a specific intent:

> *"Q. Yes. Now, going back to the question I was asking you about intoxication, leaving aside issues of mental disorder, do you accept, as you seem to accept, that if Mr Eadon was likely to have been highly intoxicated that would inevitably have been possible that it would interfere with his capacity to reason, his judgment, his ability to control himself and his intention, forming the intentions?*
>
> *A. Being intoxicated can have those effects, yes."*

14. Dr Paul O'Connell, a consultant psychiatrist at the Central Mental Hospital, told the jury that when he examined the appellant, the appellant informed him that he had taken a number of drugs in the period leading up to the incident including amphetamines, cannabis, cocaine, ecstasy and methadone. Dr O'Connell said that from collateral accounts it appeared that the appellant was grossly intoxicated in the days leading up to the incident. He was then examined by defence counsel in relation to the appellant's ability to form a specific intent:

> *Q. Is he, in your opinion, likely to have been either disorientated or delirious or?*
>
> *A. Well, in all probability, I think he was behaving in response to persecutory delusions and auditory, visual and tactile and other (inaudible) hallucinations, he believed he was being chased by unknown assailants, he believed he was being poisoned and gassed, he believed sinister events were going on, and was concerned about fleas and cats and aliens, he believed at one point that his mother had been replaced or changed in some manner. In my opinion, his psychosis was as a consequence of the toxic effects of the various illicit substances he had been abusing and in all probability he was disorientated and delirious. In other words, he would have been so extremely intoxicated that he had such a lack of awareness, he was not able to perceive reality, regulate his emotions or form a reasonable judgment at the material time.*
>
> *Q. And would you think, if that opinion is correct, Doctor, that would affect his capacity to, or could affect his capacity to form a specific intent?*
>
> *A. I would have thought that in such a state of mind, he would have been so grossly impaired it would have affected his ability to form that kind of intent.*

15. Expert evidence was also proffered in relation to whether the appellant was suffering a mental disorder such as to entitle him to a defence of diminished responsibility pursuant to s.6 of the Criminal Law Insanity Act 2006. However as stated, this defence was rejected by the jury.

The trial judge's charge and counsel's requisitions

16. The trial judge's charge followed on immediately after counsel's speeches in which both prosecuting counsel and defence counsel had correctly addressed the law in relation to indirectly related issues of diminished responsibility, intoxication and the specific intent required for murder. In particular, just moments before the trial judge commenced his charge defence counsel had concluded his speech for the defence with, *inter alia*, the following exhortation to the jury:

17. *"…if, as I suggest you should, you first consider the issue of diminished responsibility based on a mental disorder, if you rule that out, you go ahead and consider the effect in your view of the type of intoxication that you've heard about upon Celyn's ability to form the specific intent required for murder."*

18. The trial judge began his charge to the jury by referring to the closing speeches of counsel on both sides, stating:

> *"If there was any little bit of my charge that [prosecuting counsel] didn't hijack, [defence counsel] certainly captured it. You now have to hear from me and you have to hear from me in relation to matters you've heard of from counsel already perhaps several times over but the law is you must hear these matters from me …"*

19. The trial judge then commenced his substantive charge by saying:

> *"Now, this is a difficult form of case in which to charge and it's going to be very difficult for you because first of all the prosecution brings a case of murder. So far as that is concerned, the onus is on the prosecution to prove its case and to prove every single limb and ingredient of it and the onus to prove or disprove anything never shifts over to the accused man and the prosecution has to prove its case and every single limb and ingredient in it to the standard of beyond reasonable doubt."*

20. He went on to say that what rendered it difficult from the point of view of charging the jury was that the accused had raised *"an issue of diminished responsibility which is a partial defence to a charge of murder".* He said that he would charge them in the first instance on the basis that they were dealing with a murder case in which there was no mental issue involved. He would then charge them in relation to diminished responsibility.

21. The trial judge then proceeded to deal with the respective functions of judge, counsel and the jury; and having done so he then instructed the jury concerning the onus and burden of proof, as follows:

> *"Now, the prosecution brings this case, and it is therefore up to the prosecution to prove its case and to prove every single limb and ingredient in it, and the onus never shifts over to the accused man to prove or disprove anything. So there is no obligation on an accused to give evidence and in this case - and I'm talking about the murder issue now - the accused has not given evidence or called evidence on his own behalf. That is a matter to which you cannot attach any significance or speculate about in any way because the onus of proof resting on the prosecution and never shifting over to the accused, there is no reason why he should."*

22. The trial judge went on to deal with the standard of proof, the drawing of inferences and the presumption of innocence, before turning to the ingredients of the offence of murder. In regard to the ingredients of murder, he told the jury:

> *"Murder is defined in a negative way in section 4 of the Criminal Justice Act 1964, which tells you what murder is not, rather than what it is. This provides, "Where a person kills another unlawfully the killing shall not be murder unless the accused person intended to kill or cause serious injury to some person, either the person actually killed or not." And subsection 2 provides, "The accused person shall be presumed to have intended the natural and probable consequences of his conduct, but this presumption may be rebutted." Now, rebutted means set aside, not to operate in the circumstances of the particular case, by reason of the circumstances in the particular case. And I'm going to try to strip down this definition for you as if I was stripping down a motorcycle. It starts by providing, "Where a person kills another unlawfully", and that raises the inference that there may be lawful killings and indeed there may. In the old days when Mr Albert Pierrepoint came over on the packet steamer to carry out an execution in Mountjoy Prison on foot of a lawful court order, that was a lawful execution that was a lawful killing. Now, those days have gone. There are other lawful killings, but I take that one as an example, it being the clearest possible example, and I'm not going to go into any of the surviving ones. "Where a person kills another lawfully the killings shall not be murder unless the accused person intended to kill or cause serious injury to some person." Now, it may come as a surprise to you that under our law you can be guilty of murder without having the slightest intention in the wide, wide world of killing anybody. The minimum threshold is to have an intention to cause serious injury. So if you take the celebrated punishment beating with a baseball bat, the intention there is not to kill anybody, but to give somebody a jolly good hiding. And in that situation if the person happens to die, well the law says tough, that's murder. And the section goes on, "Kill or cause serious injury to some person, either the person actually killed or not." Well, what those words mean is …"*

23. At this point the trial judge deals with the legal concept of transferred malice, but no issue arises in this case with regard to that. Having done so, he went to state:

> *"Now, subsection 2 provides, "The accused person shall be presumed to have intended the natural and probable consequences of his conduct, but this presumption may be rebutted." Now, it's not as you might think for the defence to show that it has been rebutted, it's for the prosecution to show that it has not been rebutted, because as I told you the onus of proving or any or disproving anything never shifts over to the accused man in the context of the murder case. Now, to take an example away from the facts of this case, if I shoot at a vulnerable part of somebody else's body, what's the natural and probable consequence of that? Well, the natural and probable consequence of that is that I would cause that person at least serious injury, if not kill that person stone dead. Now, there's no mechanism for lifting back a flap of the skull and having a peek inside to see what intent is lurking there. So the law has to deal with matters of this kind with presumptions. And, therefore, it presumes that the natural and probable consequence of one's action is intended. But it provides for a situation where by reason of particular circumstances that presumption should not operate, and therefore the presumption may be rebutted. Now, I've been at this for 50 years, and I still find that a complicated and difficult concept. I've no difficulty about saying that. And I am going to, as I am entitled to do, adopt somebody else's words as my own. The late Mr Justice Walsh in the Supreme Court was credited with great clarity of thought. And he said, "It is important to note that the effect of the provision is that unlawful homicide shall not be murder unless the necessary intent is established. The onus of establishing this beyond reasonable doubt remains at all times upon the prosecution and so also does the onus of proving beyond reasonable doubt that the presumption that the accused person intended a natural and probable consequence of his conduct has not been rebutted."*

24. The trial judge then went on, as he had promised, to charge the jury in relation to diminished responsibility. In the course of doing so, he gave them the statutory ingredient of mental disorder, as a finding of mental disorder was a statutory pre-requisite to any possible finding of diminished responsibility. In that regard, he told the jury:

> *" 'Mental disorder includes mental illness, mental disability, dementia or any disease of the mind, but does not include intoxication.' It is the situation of our law that voluntary intoxication or the taking of drugs in the words of the former Chief Justice, 'Does not afford a defence to criminal responsibility or any mitigation in one's responsibility to society.' "*

25. The trial judge then proceeded to review the evidence. In the course of doing so he reviewed in considerable detail the evidence that had been given by the appellant's psychiatrist, Dr Paul O'Connell, and he reminded the jury (inter alia) of the evidence he had given relating to the issue of intoxication:

> *"Dr Paul O'Connell is a consultant forensic psychiatrist, Central Mental Hospital. "At the age of 10 he began inhaling solvents. He began smoking cigarettes when he was 12. He was drinking regularly from the age of 16 but had been arrested at 13 for drunk driving. He used to drink most days and would drink a shoulder of vodka and, at weekends, 12 cans of lager and a bottle of Buckfast a day. He began smoking cannabis when he was 13. He began using amphetamines in 2009 and he used them every day for a year. He first used cocaine when he was 13 and his use of cocaine had increased in the period of 18 months leading up to the alleged offence. His use of cannabis had diminished and instead he used an increasing amount of cocaine and amphetamines during the year before he was arrested. He ground up amphetamine pills and snorted them and snorted methadone. He used loads of this and would have associated nosebleeds. He used Ecstasy from 13 and, in the 18 months before the alleged offence, was spending €400 a week on drugs. In the three weeks before the death of his mother he was using a gram of methadone a day with some amphetamines and five tablets of diazepam. He had not been using drugs when I saw him in prison. Mr Eadon had an extraordinarily serious substance misuse problem beginning at an early age. The accounts of his behaviour prior to the killing of his mother described him behaving in an extraordinarily intoxicated way. There are collateral accounts to describe this intoxication leading to psychotic experiences, namely hallucinations and delusions. He is described not sleeping in the days leading up to the killing of his mother and this is also supported by collateral information. Mentally he was not just simply intoxicated but grossly intoxicated and in addition to being grossly intoxicated experiencing psychotic symptoms as a result of the intoxication."*
>
> *…*
>
> *"He presents shortly afterwards in the A&E department and there is a description there that suggests he was disorientated and he is described as mildly disorientated which suggests he may have been experiencing some delirium in association with the acute intoxication and the toxic effects of various drugs he had been taking."*
>
> *…*
>
> *"My opinion is that at the time of the killing of his mother he was intoxicated and, as a consequence of the intoxication, experienced a substance-induced psychosis. This largely resolves once he is not taking these substances and in all probability he was experiencing a substance-induced psychosis for a week or more before the killing. Psychosis represents a break from reality. A person's ability to perceive reality and exercise their judgment is disordered by a psychosis whether or not it is induced by an intoxicating substance. Someone who has hallucinated and deluded and acting in accordance with those abnormal experiences would not be exercising reasonable judgment or capable of exercising reasonable judgment or behaving appropriately. Their emotional ability to regulate their emotions would also be disordered as a result of that psychosis. This would be something that could affect the capacity to form any specific intent."*
>
> *…*
>
> *"In my opinion, his psychosis was as a consequence of the toxic effects of the various illicit substances he had been abusing when in all probability he was disorientated and delirious. He would have been so extremely intoxicated that he had such a lack of awareness he was not able to perceive reality, regulate his emotion or form a reasonable judgment at the material time. I would have thought that in such a state of mind he would have been so grossly impaired it would have affected his ability to form a specific intent. He has a form of brain injury which would have exacerbated the effect of the intoxicants he was using at the time. There is a very clear issue here of intoxication and this presents a problem when it comes to considering psychiatric defences, including diminished responsibility. It is the interplay between intoxication and the mental disorder here that has to do with brain injury and the affect his brain injury would have had on his behaviour when using substances at the time."*
>
> *…*
>
> *"The diagnosis which best fits him is that he had drug-induced brain injury, triggering an extreme drug-induced psychosis because of these intoxicating substances. This is not the same as someone who was merely drunk or intoxicated; it's an order above that."*
>
> *…*
>
> *"I think a degree of intoxication is central to his behaviour at the time; it is whether this degree of intoxication is as severe that his mental state becomes one of confusion. There was some evidence of mild delirium. Mental states can change quickly over periods of hours in concert with changes in the level of intoxicating substances. As intoxicating levels decrease, any confusions should also decrease. In relation to the history he gave about the events of the night in question, he told me he had taken loads of drugs. He said that his mother had taken the drugs from him earlier. He said he did not know his limit when it came to drugs; that he was getting very stupid, wired, and then he details that he could not find his drugs, that he lost it with her. Then he said he could not sleep, 'so I got up. I was going around the house looking under pillows, under the couch looking for my drugs. She came out then, saying what the fuck did I set the house on fire for and I went for her.' He said he had seen aliens and matters of that nature and these were in the form of hallucination. Well, one could experience that as a result of taking intoxicants such as speed, amphetamines and methamphetamines. Sometimes the symptoms associated with those drugs were almost indistinguishable from acute schizophrenia hallucinations and delusions and so on."*

26. The trial judge also reviewed the evidence of the prosecution's psychiatrist, Dr Conor O'Neill, but not in anything like the same degree of detail, and he did not specifically remind the jury of the evidence given under cross-examination and quoted earlier at paragraph 13 of this judgment. However, the appellant makes no complaint in regard to that.

27. The trial judge concluded his charge by instructing the jury as to the possible verdicts open to them and how they should deal with the issue paper. He told them (inter alia):

> *"The first thing that is capable of going into that box is the word 'guilty', and that would mean that the accused was being found guilty of the full grown crime of murder, namely that he killed Noreen Kelly and in doing so had the statutory intent requisite for murder; that he intended to kill her or cause her serious injury. Now, the second thing that's capable of going into that box is the formula 'Not guilty of murder but guilty of manslaughter', and the accused sought to plead guilty on those terms at the start of the trial but the prosecution declined to accept that and proceeded with the murder count. Now, that would arise in the circumstance where you found that Celyn Eadon did kill his mother, and of course that's not in dispute, but the necessary intent had not been proved. And the third thing that is capable of going into the box is 'not guilty of murder but guilty of manslaughter on the grounds of diminished responsibility', and that would arise where you found that he did the act alleged and at the time was suffering from a mental disorder, and the mental disorder was not such as to justify finding him not guilty by reason of insanity but was such as to diminish substantially his responsibility for the act, and you'll recall that Dr O'Connell said, well, he couldn't help you on that, that is a matter for you, and indeed it is."*

28. Following the conclusion of the trial judge's charge defence counsel raised a two part requisition complaining (i) that the trial judge had dealt together with the issues of diminished responsibility and voluntary intoxication, and (ii) that the trial judge had not given the jury any other direction in relation to the issue of intoxication and in particular had not instructed the jury that intoxication can be of such proportion as to be capable of interfering with capacity to form intent and the formation of intent. Counsel asked that the trial judge *"cure"* the matter by *"following the Reilly case* (ie *The People (Director of Public Prosecutions) v Reilly* [2005] 3 I.R. 111) *where the Court of Criminal Appeal in 2004 decided that Majewski* (*Director of Public Prosecutions v Majewski* [1977] A.C. 443*) should be followed*".

29. In response to this requisition the trial judge re-charged the jury in the following terms:

> *JUDGE: Madame Foreman, members of the jury, in relation to what I said to you about intoxication, it's suggested that I ought to have given that direction in a freestanding manner, and not included it when I was dealing with the question of diminished responsibility. So the first thing goes to the architecture of my Charge; treat what I said about intoxication as a freestanding matter, freestanding direction to you, and what I said to you about intoxication is that a former Chief Justice had said that the voluntary taking of drink and drugs does not under our law form a defence or any mitigation in one's responsibility to society, and that is so and that is the law. But it is of course the situation that intoxication is part of the mix in relation to whether a person is capable of forming the necessary intent."*

30. Following this recharge, the trial judge enquired *"Now, is everybody happy?"*, which gave rise to the following exchanges:

> *[PROSECUTING COUNSEL]: I've no difficulty, my lord.*
>
> *[DEFENCE COUNSEL]: Yes, I've no difficulty.*
>
> *JUDGE: Very good.*

31. No further requisition was raised.

Grounds of appeal

32. The appellant appeals against his conviction on four grounds as set out in the Notice of Appeal:

> i. The trial judge erred in failing to direct the jury adequately or at all in relation to the defence of intoxication and, in particular, failed to direct the jury that intoxication can be a defence to a crime of specific intent such as murder.
>
> ii. The trial judge erred in law in directing the jury that intoxication was not a defence to a criminal charge.
>
> iii. The trial judge erred in law in failing to direct the jury adequately or at all on the manner in which intoxication can affect mens rea so as to reduce the crime of murder to one of manslaughter.
>
> iv. The verdict was in all the circumstances perverse and was against the evidence and the weight of the evidence.

The appellant's submissions

33. The crux of the appellant's submission is that while voluntary intoxication is not in itself a defence to a criminal charge, where an offence (such as murder) requires a specific intent to be proven, evidence of intoxication can establish the absence of *mens rea*, or at least raise a doubt as to the existence of the required *mens rea*. The appellant submits that the trial judge erred in failing to direct the jury that if they had a reasonable doubt as to whether, due to his intoxication, the appellant had had the necessary intent, they must acquit him of the murder charge.

34. It was submitted that the jury should have been directed that, on account of his intoxication, the appellant may not have formed the specific intent to kill or seriously injure the deceased. The appellant relies on the case of *Director of Public Prosecutions v. Majewski* [1977] A.C. 443 approved in this jurisdiction by the Court of Criminal Appeal in *The People (Director of Public Prosecutions) v. Reilly* [2005] 3 IR 111.

35. In their written submissions, the appellant's legal team note that there are divergent strands of case law as to the relevance to the jury of the question of the appellant's capacity to form an intent. While the English courts in *R v Sheehan & Moore* [1975] 2 All E.R. 960, *Broadhurst v. R.* [1964] 1 All E.R. 11, *R v. Brown and Stratton* [1998] Crim. L.R. 485 and *R v. Garlick* [1981] 72 Cr. App. R. 291 have held that the relevant question for the jury is whether the accused in fact formed a specific intent, and not whether the accused had capacity form such intent, the Irish authorities are unclear on the matter. The cases of *The People (Attorney General) v. Manning* [1955] 89 I.L.T.R. 155, *The People (Director of Public Prosecutions) v. McBride* [1996] 1 IR 312 and *The People (Director*

of Public Prosecutions) v. Cotter (Unreported, Court of Criminal Appeal, 28th of June 1999) appear to endorse the view that the accused's capacity to form a specific intent is the relevant question where intoxication is in issue. However the appellant's submissions very fairly and properly also point out that a number of scholarly sources suggest that the capacity standard is erroneous, not least because it may result in a significantly lighter burden of proof for the prosecution and put "the intoxicated offender at an unfair disadvantage, because while he might have had the capacity to form the intent, he may not in fact have formed it" - [see McAuley & McCutcheon (2000) *Criminal Liability, A Grammar* (Dublin: Round Hall Sweet & Maxwell), 598 – 599, citing O'Malley, T., *"Intoxication and Criminal Responsibility"* (1991) I.C.L.J. 86 at 95-6] .

36. The appellant submits that the trial judge should have directed the jury that the prosecution bore the burden of proving that there was no reasonable possibility that, by reason of his intoxication, the appellant may not have formed the requisite *mens rea* for murder.

37. The appellant concedes that no further requisition was raised on this issue at trial after the jury was re-charged. However the appellant relies on the judgment of this Court in *The People (Director of Public Prosecutions) v. Cahoon* [2015] IECA 45 in submitting that notwithstanding this failure the Court should engage with the issue raised on the basis that, in circumstances where the effect of the appellant's intoxication was the critical question in the case, there must inevitably be an apprehension that a real injustice may have occurred due to the trial judge's failure to correctly charge the jury.

The respondent's submissions
38. Counsel for the respondent lays emphasis on the closing speeches of both the prosecution and defence counsel, in which they comprehensively summed up the law in relation to intoxication and specific intent for the jury. The respondent submits that, though brief, the trial judge in re charging the jury adequately and correctly summarised the law. The respondent further submits that the appellant's lawyers ought properly to have raised any residual concerns about the adequacy of the judge's charge with the trial judge immediately following his re-charge, and in circumstances where they expressed themselves as having "no difficulty" with what was said, they are not entitled to complain about the adequacy of the charge in this appeal.

The Court's Analysis and Decision
39. It was a correct statement of the law for the trial judge to tell the jury that voluntary intoxication does not provide a defence to criminal responsibility.

40. Save for the issue as to whether the appellant could avail of the partial defence to murder afforded by s. 6 of the Criminal Law (Insanity) Act, 2006 on the basis of diminished responsibility, which issue the jury ultimately rejected, this was a murder case in respect of which the ordinary rules as to the burden and standard of proof applied.

41. The trial judge properly instructed the jury that the burden of proof rested at all times on the prosecution and never shifted. In explaining the ingredients of murder they were told specifically and correctly that it required proof of a specific intent to kill or cause serious injury to some person, whether the person actually killed or not.

42. With reference to section 4(2) of the Criminal Justice Act 1964 they were correctly told that "*The accused person shall be presumed to have intended the natural and probable consequences of his conduct, but this presumption may be rebutted*" and they were given a detailed explanation of how that works, with suitable and easily understood illustrations rendering the explanation a model of clarity. Included in the explanation was a reminder that proof of specific intent was necessary before a verdict of guilty of murder could be brought in, and that *"the onus of establishing this beyond reasonable doubt remains at all times upon the prosecution and so also does the onus of proving beyond reasonable doubt that the presumption that the accused person intended a natural and probable consequence of his conduct has not been rebutted".*

43. It is true that in the trial judge's initial charge to the jury he had dealt tersely and only very briefly with the potential significance, or otherwise, of the evidence that the jury had heard with respect to the appellant's intoxication. He had told them, quite correctly, that voluntary intoxication did not provide a defence to criminal responsibility, but that is all that he told them.

44. If the extent of his instructions had rested there this Court would have been concerned as to the adequacy of the charge, notwithstanding the trial judge's clear and succinct general exposition of the law relating to the ingredients of the crime of murder and the burden and standard of proof. We consider that it required to be specifically drawn to the jury's attention that evidence of voluntary intoxication was potentially relevant to the issue as to whether the accused had formed the requisite specific intent at the time of the killing. He had not done that initially. However, the trial judge later told the jury, in re-charging them in response to the requisition raised, that *"it is of course the situation that intoxication is part of the mix in relation to whether a person is capable of forming the necessary intent."*

45. While it might have been better if the trial judge had elaborated in some what greater detail on this late specific instruction, and perhaps added to it the words *"and whether he actually formed that intent"*, we consider the instruction given to have been adequate having regard to the overall run of the trial.

46. It is the law that a trial judge cannot abdicate responsibility for correctly charging the jury on the basis that the jury have already heard a detailed and correct exposition of the law from counsel in the course of counsel's speeches. Nevertheless, the fact that the jury may have been provided by counsel with such an exposition is not wholly irrelevant, particularly in circumstances such as in the present case where the trial judge refers in the course of his charge, and with ostensible approval, to the fact that counsel have already dealt in some detail with the issues of law that he is required to deal with. The fact that counsel have dealt with such issues correctly and in detail does not of course absolve the trial judge from again doing so, but it may explain and indeed justify a somewhat briefer and less detailed treatment by trial judge of issues that the jury have already been addressed on, than the trial judge might otherwise have given.

47. Accordingly, in this case, when the jury were told in the re-charge that *"it is of course the situation that intoxication is part of the mix in relation to whether a person is capable of forming the necessary intent"*, this was not a concept that the jury were being introduced to for the first time. As stated earlier in this judgment, they had been told the same thing, and in greater detail, by both counsel. In particular they had been expressly told by defence counsel that if they were ruling out the partial defence of diminished responsibility *"you go ahead and consider the effect in your view of the type of intoxication that you've heard about upon Celyn's ability to form the specific intent required for murder."* In this Court's assessment, although the trial judge's supplementary instruction was economical and to the point, and was certainly capable of being elaborated upon to a greater extent, the jury would have immediately understood and appreciated its import in the light of counsel's speeches. In our assessment the instruction was adequate in the circumstances of the case.

48. We feel that we should comment that while the Court of Criminal Appeal in the case of *The People (Director of Public Prosecutions) v. Reilly* [2005] 3 IR 111 did approve of statements of principle by the House of Lords in the English case of *Director of Public Prosecutions v. Majewski* [1977] A.C. 443, the *Reilly* case was not in any way concerned with how a jury should be charged with respect to the issue of intoxication in a murder trial. The issue in fact under consideration in *Reilly* was whether intoxication was relevant to the capacity to form, and the actual formation of, general non-specific *mens rea*; and in that instance the general non-specific mens rea required for manslaughter.

49. The appellant has suggested in submissions that the trial judge ought to have instructed the jury that the prosecution bore the burden of proving that there was no reasonable possibility that, by reason of his intoxication, the appellant may not have formed the requisite *mens rea* for murder. We do not consider that recourse to a formula of words involving a double negative would necessarily have been helpful. While the formula suggested is a legally accurate formulation, the double negative would, in our view, have been more likely to confuse than to assist the jury. The instruction of a jury is an exercise involving the communication of sometimes difficult legal concepts that the jury must apply. Where simple language can be used it is preferable to complex language.

50. It was also fair comment for the respondent to point out that counsel for the appellant expressed himself satisfied in response to the trial judge's question as to whether he was happy, following the re-charge. The respondent contends that it is clearly significant that counsel, who had raised the issue, did not feel it necessary to raise a supplementary requisition when afforded the opportunity to so. However, an affidavit of former defence counsel was put before us which proffers some explanation as to why no supplementary requisition was raised, and we accept his explanation in so far as it goes Accordingly we do not feel it appropriate in the circumstances of the case to refuse to entertain the complaints now being made. While the trial judge did tell the jury in the course of his re-charge that intoxication is part of the mix in relation to whether a person is capable of forming the necessary intent, and that was correct, he did not at any stage suggest, or seem to suggest, that the jury's inquiries should be confined to the issue of capacity, or that they did not have to be satisfied beyond reasonable doubt as to the existence of an actual specific intention to kill or cause serious injury in order to convict. Whether an accused had the capacity at the material time to form the required specific intention will often be a relevant enquiry, but it is not the critical question. For the avoidance of doubt, the critical question will always be whether the accused in fact had the requisite specific intention.

51. If an accused was incapable at the material time of forming the required specific intention then, of course, it follows that he/she could not, in those circumstances, have actually formed the requisite intention. Accordingly, if a jury, having weighed the evidence, is left with a reasonable doubt on the issue of capacity, then their duty must be to acquit. However, the converse does not obtain. Just because an accused may have been capable of forming the necessary specific intention, it does not automatically follow that he/she did in fact form that intention.

52. Accordingly, in a murder case in which intoxication is an issue, the critical question must always be whether the prosecution have proven beyond reasonable doubt that the accused had the necessary specific intention.

53. In the present case, the trial judge correctly told the jury in the course of his charge that proof of specific intent was necessary before a verdict of guilty of murder could be brought in; further, that the onus of establishing this beyond reasonable doubt remains at all times upon the prosecution; further, that so also does the onus of proving beyond reasonable doubt that the presumption that the accused person intended a natural and probable consequence of his conduct has not been rebutted.

Moreover, in the course of his re-charge the trial judge had added that intoxication is part of the mix in relation to whether a person is capable of forming the necessary intent. We see nothing wrong in any of that, particularly having regard to the run of this particular trial.

54. Finally, there was clearly evidence before the jury that allowed them to bring in the verdict that they did. It was a verdict that was open on the evidence, even if there was other evidence that the jury might also have relied upon, had they been minded to accept it, which would have allowed them to bring in a different verdict. We reject without hesitation the contention that the verdict was perverse.

Conclusion

55. We are not disposed to uphold the appellant's grounds of appeal. We consider that the trial was satisfactory and that the verdict is safe. We therefore dismiss the appeal.