



**THE COURT OF APPEAL**

**Birmingham J.  
Edwards J.  
Hedigan J.**

**2/14**

**The People at the Suit of the Director of Public Prosecutions**

**Respondent**

**V**

**Ciaran Folan**

**Appellant**

**JUDGMENT of the Court delivered on the 23rd day of February 2018 by**

**Mr. Justice Birmingham**

1. On 23rd October, 2013, following a six day trial, the appellant was convicted at Wexford Circuit Criminal Court on four counts that had appeared on an indictment namely:

(i) using a false instrument, contrary to s. 26 of the Criminal Justice (Theft and Fraud Offences) Act 2001;

(ii) custody or control of a false instrument contrary to s. 29(ii) of the Criminal Justice (Theft and Fraud Offences) Act 2001;

(iii) knowingly as an agent using a document containing a false statement in which a principal is interested with intent to deceive and mislead contrary to s. 1(iii) of the Prevention of Corruption Act 1906 as amended by s. 2 of the Prevention of Corruption Act 2001.

(iv) knowingly as an agent using a document containing a false statement in which a principal is interested with intent to deceive and mislead contrary to s. 1(iii) of the Prevention of Corruption Act 1906 as amended by the substitution of s. 2 of the Prevention of Corruption Act 2001.

2. Following a subsequent sentence hearing fines totalling €3,000 were imposed by way of penalty. The appellant has now appealed against his conviction.

3. Counts 1 and 2 on the indictment related to the production by the appellant of a driving licence to Detective Inspector John Hunt at Fethard-on-Sea, Co. Wexford on the 13th February 2009 on foot of a request that he produce a driving licence. Count 3 related to the completion of a driver history form required to be completed and submitted in order to be admitted to a garda driver training course. This offence related to the period 17th November 2008 to 21st November 2008. Count 4 on the indictment related to documentation completed in the context of an application to transfer from Clifden Garda Station to Wexford Garda Division.

4. To provide some context for the charges that Mr. Folan faced it should be explained that at the time of his trial in Wexford Circuit Court, he was a serving member of An Garda Síochána. He joined the force in December, 1999 and was originally posted to a station in Dublin but was transferred to County Galway. He is a Galwegian, and he served in Clifden garda station. For various reasons, principally of a family or domestic nature, he was anxious to transfer to the Wexford Division and he submitted an application in that regard. That form is dated the 29th November, 2006. The application to transfer was successful and on the 15th April, 2008, he was assigned to New Ross garda station. Count 4 on the indictment relates to the period 17th to 21st November 2008, at which stage he was serving as a member of An Garda Síochána at New Ross garda station. The count relates to documentation completed in the context of an application he made in order to be admitted onto a garda van driving course. The applicant was in fact placed on the course but the instructor became concerned that Mr. Folan did not appear to have the appropriate driving skills and experience in order to take part in such a course. An investigation followed. It emerged that Mr. Folan had not completed the garda car driving course which was a pre requisite for admission to the van driving course. Moreover, in order to take part in a garda driving course one has to have a category B driving licence. The appellant indicated on the driver history sheet that he held the appropriate licence. As the application proceeded, contact was made with Galway County Council with a view to examining the original driving licence file, but that file was not located. Contact was then made with the Road Safety Authority and with other sections of Galway County Council and what was emerging indicated that the appellant had never applied for and had never taken a driving test and therefore could not have obtained a full driving licence. Records at Galway County Council indicated that the appellant had submitted a certificate of competency issued by An Garda Síochána in order to obtain a driving licence. No valid certificate of competency could ever have issued. It emerged that at the time of the processing of the application and the issuing of a licence that the appellant's brother, Mr. Brendan Folan, had been working for Galway County Council Driving Licence Section, and it was he who had processed the application. It was in the course of that investigation that Detective Inspector Hunt made the demand for production of a driving licence at Fethard-on-Sea. That provides the background to the charges faced by the appellant in Wexford Circuit Court.

5. However, in order to understand some of the issues raised during the trial in Wexford, and these issues are now central to this appeal, it is necessary to refer to a trial that took place in Galway Circuit Court.

6. As already mentioned Brendan Folan, brother of the appellant, was an employee of Galway County Council and his duties included issuing driving licences. The Galway County Council Identification Number of Brendan Folan appeared on key documentation that featured in the course of the Wexford Circuit Court trial, in particular on the licence produced on the 13th February, 2009 on foot of the request from Detective Inspector Hunt. Brendan Folan was charged with a number of offences including the offence of forging the driving licence in question contrary to s. 25 of the Criminal Justice (Theft and Fraud Offences) Act 2001. His trial came on in Galway Circuit Court on the 23rd November, 2001 before His Honour Judge Raymond Groake, as he then was. Judge Groake acceded to an application for a direction at the close of the prosecution case in respect of the forgery count. A second count on the Indictment, relating to an offence contrary to s. 8 of the Prevention of Corruption Act was allowed go to the jury which failed to agree. A re-trial resulted in an acquittal.

7. A number of grounds of appeal has been advanced. It is said that because of the ruling made by Groake J. on the application for a direction that the judge erred in permitting the prosecution to proceed with counts 1 and 2 on the Indictment. It is also argued that the judge was in error in allowing counts 3 and 4 to be added to the Indictment some three and a half years after the book of evidence was served. Alternatively it is argued that if the counts were permitted to be added, then the indictment should have been severed and the counts relating to the incident at Fethard-on-Sea should have been the subject of one trial with counts 3 and 4 being dealt with on a separate occasion. It is necessary to consider each of these arguments in turn.

#### **The significance of the direction in the Galway trial**

8. Implicit in the argument advanced in relation to this issue is a belief that the effect of the decision in Galway was to determine that the driving licence was authentic or at the very least to determine that the driving license was not a false instrument. The appellant goes so far as to contend that it was an abuse of process for the prosecution to maintain at his trial that the driving licence could be anything other than what it had already been determined to be at Galway Circuit Court i.e. a document that was not a false instrument. In the view of the Court, his argument is quite misconceived. The arguments advanced by counsel for the defence in the Galway trial were of course based on the evidence that had been adduced up to that point in the trial. Again the ruling of the judge in Galway was specific to the trial over which he had presided and was a ruling that the prosecution in that trial, at that point, had not adduced sufficient evidence to enable the case go to the jury.

9. In the Court's view it is absolutely clear that the acquittal of Brendan Folan in Galway did not prevent the trial of Ciaran Folan proceeding in Wexford.

#### **Issues relating to counts 3 and 4 on the indictment**

10. On 25th July, 2013 the prosecution applied to the Court to add counts 3 and 4 to the indictment. That application was resisted by the defence and the issue was debated on 25th July, 2013. The judge acceded to the application. The matter was reopened on 15th October, 2013, the first day of the trial. Opposing the application, the appellant has made the point that counts 3 and 4 are laid contrary to a different statute than the original counts, that count 4 is geographically distant having been committed in county Galway, and that the offences are distant in time from the events at Fethard-on-Sea.

11. The issue of the joinder of charges after an accused has been sent forward for trial is dealt with at s. 4(m) of the Criminal Procedure Act 1967 as substituted by s. 9 of the Criminal Justice Act 1999. That section provides as follows:

"Where the accused has been sent forward for trial in accordance with this Part, the indictment against the accused may include, either in substitution for or in addition to counts charging the offence for which he has been sent forward, any counts that—

(a) are founded on any of the documents served on the accused under section 4B or 4C, and

(b) may lawfully be joined in the same indictment."

Evidence in support of the proposed charges contrary to the Prevention of Corruption Act 2001 was contained in the book of evidence. In the Court's view there was nothing to prevent the joinder of these charges and the charges were linked in certain respects. All involved a driving licence and what were alleged to be false claims in relation to the appellant's driving history.

12. The appellant has argued in the alternative that if the counts are being added that the indictment should be severed and that there should be two trials and that the judge erred in deciding to proceed with a joint trial and declining to sever the indictment.

13. As already indicated, there was a link between the evidence that supported the four counts. It is significant that even though the book of evidence was prepared at a time when there were only two charges, the evidence therein included evidence relevant to the matters that would ground charges 3 and 4.

14. In summary, the Court is not prepared to uphold any of the grounds of appeal that have been argued. The Court has not been persuaded that the trial was unsatisfactory or that the verdict was unsafe. In the circumstances the Court will dismiss the appeal.