THE COURT OF APPEAL

Birmingham P.
Edwards J.
McCarthy J.

Record No: 88/2013

THE PEOPLE AT THE SUIT OF

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

GERARD MANNING

Appellant

JUDGMENT of the Court delivered on 20th December 2018 by Mr Justice Edwards.

Introduction
1. In this case the appellant was convicted of murder on the 21st of March 2013 before the Central Criminal Court (Carney J presiding) by the 11:1 majority verdict of a jury following an eight-day trial. He subsequently received a mandatory life sentence.

2. The appellant now appeals his said conviction.

Evidence adduced at the trial relevant to the grounds of appeal advanced.
3. The jury heard that the events in question are believed to have occurred between the 28th and 30th of September 2011, at Apartment No 2, 44 Wickham Street, Limerick. The deceased, Martin Purcell was the tenant of Apartment No 2. His body was found on 30th of September 2011 by a Mr Clive Kennelly and a Mr Pat O'Dwyer, after Mr Kennelly had been informed by Mr Michael Hedderman, the tenant of Apartment No 1 in the same building, that the deceased had not picked up his post. In 2011 No 44 Wickham Street was a four story building located beside a jeweller, and it was owned by Mr Kennelly. The ground floor was occupied by a tattoo artist who ran a tattoo parlour there, and the building overhead comprised three residential apartments all of which were rented at that time.

4. Ninety witnesses gave evidence at trial. Witnesses Clive Kennelly and Pat O'Dwyer gave evidence that on the day in question they entered the building, i.e., No 44 Wickham Street, at around 10:40am through the front entrance door, which was locked. They went up the stairs to Apartment No 2, knocked on the door and called out the deceased's name. Finding the door to be unlocked, the two men entered the apartment and found the deceased's body lying on the floor, with his trousers around his ankles and with multiple stab wounds.

5. The Gardaí were immediately called, and upon arrival they commenced an investigation into Mr Purcell's suspicious death, and designated Apartment No 2 a crime scene. Investigating gardaí found a fingerprint in the apartment which was later determined to be that of the appellant. This fingerprint was discovered on the arm of a chair which had blood on it, in close proximity to the body of the deceased. In addition, a further finger mark, believed to have been made by the appellant's left thumb was found on the hot tap in the kitchen area of the apartment, and yet other finger marks, believed to have been made by the appellant's left forefinger and middle finger, respectively, were found on a blank plastic CD cover which was under a table in the said apartment.

6. By the 2nd of October 2011, the appellant had been identified as being a person of interest in the context of the investigation. Accordingly, on that date, investigating gardaí obtained a judicial warrant from a District Court judge. to search the appellant's apartment dwelling at 17 Upper Gerald Griffin Street, Limerick.

7. On arrival at 17 Upper Gerald Griffin Street, gardaí met the appellant's partner, Ms Sabrina Flanagan, at the doorway of the apartment. The appellant was also present. They were shown the warrant and a search was commenced. The scene was designated a crime scene. In the course of that search a knife (ex LOL307) was found discarded on a flat roof, which had vegetation growing on it, at the rear of 17 Upper Gerald Griffin Street. This flat roof, which was in fact part of an adjacent property, was accessible through a bedroom window in the appellant's said apartment. It was not otherwise accessible. A second knife was found on a sloping section of the roof of 17 Upper Gerald Griffin Street itself. In addition, items from the deceased's apartment, including a Philips "ghetto-blaster", and a number of CDs, were found in various rooms in the appellant's apartment during the search. Further, a set of keys and a Tesco fob card were found behind some boarding on an overgrown area of waste land that was also adjacent to 17 Upper Gerald Griffin Street. It was later ascertained that these keys and the Tesco fob card had belonged to the deceased.

8. While the said search was taking place the appellant was invited to go voluntarily with three members of the investigating team, namely Detective Garda Downey, Detective Garda Hanrahan and Detective Garda Brick, to Roxboro Garda Station for the purpose of being interviewed. He agreed to do so, and was taken there in an unmarked patrol car. As he was not under arrest, he was not presented to the member in charge and was simply taken to an interview room where he was interviewed after being cautioned. A written note or memorandum of the interview was taken. However, this interview was not video or audio recorded.

9. In the course of this interview the appellant's answers to questions asked of him were literally exculpatory in as much as he made no express admissions and indeed denied ever being in the deceased's apartment. However, they were *de facto* inculpatory in so far as the prosecution were later able, on the basis of the fingerprint evidence obtained from the deceased's apartment, and the items found in the course of the search of the appellant's own apartment, to maintain that the appellant had told demonstrable lies in the

course of this interview (and indeed also in the course of subsequent interviews following his arrest where he maintained the same position).

10. Following this interview the appellant was arrested at 4.05pm on the same date outside Roxboro Road Garda Station under s.4 of the Criminal Law Act 1997 on suspicion of the murder of Martin Purcell. His reply after caution was *"I don't remember nothing about that man"*. He was conveyed to Henry Street Garda Station where he was introduced to the member in charge, Sergeant Andrew O'Riordan, and was detained under the provisions of section 4 of the Criminal Justice Act, 1984 (the Act of 1984) at 4:25pm for the proper investigation of the offence for which he had been arrested.

11. Authorisation was given to facilitate the taking of photographs of the accused, along with the taking of his fingerprints and buccal swabs. He was then duly photographed, his fingerprints were taken, and buccal swabs for DNA purposes were also taken from him.

12. At the time of being detained under s.4 of the Act of 1984 by the member in charge the appellant was given a notice of his rights (form C72S) and was also advised orally of those rights, including his right to consult with a solicitor. The appellant requested to speak with a solicitor, and a solicitor was called and arrived at the garda station at 5.13pm and was granted access to the appellant until 5.42 pm.

13. The appellant was brought to an interview room at 5.53 pm and was subsequently interviewed on ten separate occasions while in detention. As stated previously, throughout all of these interviews the appellant steadfastly denied ever being in the deceased's apartment.

14. The appellant was released from the provisions of s. 4 detention at 11:08pm on the 3rd October, 2011, following which he was charged with murder of Martin Purcell.

15. Included in the evidence given at the trial and relevant to issues that now arise on this appeal, was testimony from the then Assistant State Pathologist, Dr Jabbar. Dr Jabbar had previously been shown six knives recovered in the course of the investigation and believed to have come from the deceased's apartment, including the knife found on the flat roof at 17 Upper Gerald Griffin Street (Ex LOL307). In his evidence before the jury, Dr Jabbar stated:

> *"On Friday the 1st March, 2015 I was shown in my office, by two officers of the Garda Síochána, six knives. Each was placed in in a plastic container. Of these knives I have identified one knife that bore the following features; a pointed tip, the distal end is slightly bent, the bales shows one short edge and one opposite blunt edge. The blade measures approximately between 0/1 at the top to about 2.6 centimetres approximately." There will be separate evidence that this is LOL 307. "The cluster of wounds identified, especially on the anterior chest wall, showed external features that would have been inflicted by a knife bearing the above characteristics. Some of the wounds are associated with visible fractures of the underlying firm to hard structures like ribs, for example, and this feature has been interpreted by me as a reasonable explanation to the identifiable partially bent distal end in this knife. It is important to appreciate that infliction of sharp force trauma by utilizing a knife, for example can be subject to several factors. "And he lists in bullet form, "The potential twisting of the instrument by the hand of the perpetrator, the angle of contact between a knife and the surface of the… at the end of the day" …..and at the end he says "It is my assessment that the deceased had sustained the facial and next wounds before the cluster of the thoracic wounds and this could be confirmed by investigations conducted by the Garda Síochana but importantly is that I am of the firm opinion that all the wounds would have been inflicted from the same act"*

16. The defence had been on notice that Dr Jabbar proposed to give this evidence, and had unsuccessfully objected to this evidence, and indeed any evidence concerning the knife in question (Ex LOL307), being adduced, on the grounds that its prejudicial effect outweighed its probative value.

17. Other evidence relevant to an issue that arises on this appeal included scientific evidence from Dr Hoade of the Forensic Science Laboratory, who told the jury, *inter alia*, that blood found on two bannisters in the stairwell of No 44 Wickham Street, leading up to Apartment No 2, had been identified as being that of one Jason Maloney.

18. This detail, testified to by Dr Hoade, was contained in the third of four reports that had been prepared by Dr Hoade in connection with the prosecution of the appellant, but which third report had not, due to an oversight, been disclosed to the defence, nor served as a notice of additional evidence. The said Jason Maloney had, it later transpired, a number of convictions for crimes of violence. The defence, claiming they had been taken by surprise, unsuccessfully sought a discharge of the jury, and an adjournment of the trial to allow them to investigate thoroughly and properly the matters of which they claimed not to be on notice.

The Grounds of Appeal

19. The Notice of Appeal filed on behalf of the appellant contained eight grounds of appeal. However, only grounds 1 to 7, inclusive, were in fact proceeded with. Ground 8, which had alleged that the verdict was perverse, was formally abandoned at the oral hearing before us. Ground 1 is a standalone ground and concerns the failure to exclude evidence relating to the knife found on the flat roof. In addition, grounds 2 to 6 inclusive are considered to arise out of the same basic complaint, namely the alleged non-disclosure of the evidence relating to the blood stains on the bannisters and the identification of same as belonging to Jason Maloney. Accordingly these were dealt with together by both sides in their submissions. This Court intends to adopt the same approach. Finally, Ground 7 (mis-numbered in both sides' written submissions as Ground 8) is a standalone ground and relates to the admission into evidence of details of what was said by the appellant during his first interview.

20. Accordingly, there are in substance three complaints to be considered, which are now framed in the following terms by the appellant:

> a. Ground 1: The trial judge erred in law and / or in fact in refusing, on the application by the applicant, to exclude exhibit "LOL307" (being a knife) from the evidence and in particular the late statement of additional evidence by Dr Jabbar State Pathologist, in relation to such a knife on the grounds that the inclusion of such knife and such late additional evidence was considerably more prejudicial than probative (if indeed it was ever probative).
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> b. Grounds 2 – 6: The trial judge erred in law and /or in fact in failing to discharge the jury upon application being made to him by the appellant in relation to late disclosure during the course of the trial and / or in failing to give a reasonable and meaningful adjournment for the matter to be fully investigated by the defence.
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> c. Ground 7: The trial judge erred in failing to accede to the defence application that the first voluntary interview should

have been deemed inadmissible by reason of unfairness in the procedure adopted by the Gardaí.

Ground 1 – the failure to exclude evidence relating to the knife

21. The essential complaint here is that the knife found on the flat roof of 17 Upper Gerald Griffin Street (Ex LOL307), and the evidence of Dr Jabbar concerning it, should not have been admitted before the jury, and that the trial judge was wrong not to accede to the defence application to exclude it on the basis that its prejudicial effect outweighed its probative value.

22. Counsel for the appellant contends that in circumstances where there was nothing forensically to link the knife to the deceased, or to the deceased's apartment, the finding of a knife was of little or no probative value, and the evidence of Dr Jabbar with respect to it was speculative rather than inferential. It was said that at best it represented a piece of weak circumstantial evidence that added little to the prosecution case, but that its potential prejudicial effect was very significant, and that in the circumstances its admission could not be justified. It was further said that the legitimacy of the appellant's concern in that regard is reflected in the remark of prosecuting counsel in her closing address to the jury to the effect that the knife in question had *"got some attention, perhaps unduly so"*.

23. We consider that it is important to appreciate the full context in which this latter remark was made. In that regard, counsel for the prosecution stated:

> *"I will refer in due course to the knife, LOL307, which has got some attention in this trial, perhaps unduly so. The prosecution are not putting forward the case that this was the murder weapon. The prosecution merely put before you that this was found where it was, which I'll remind you of, and that it has not been excluded as the murder weapon. There is a difference between the pathologists on precisely whether it's likely to have been or not. I'll leave that entirely for you. In the prosecution's submissions it's not necessary in fact for you to rely on that knife because there is ample evidence to prove the guilt of Mr Manning beyond a reasonable doubt even putting that to one side but I will return to that."*

Returning to the topic later in her speech, she added:

> *"The knife, just to come back to the knife, LOL307. The prosecution are not trying to persuade you in some kind of unreasonable manner that this is the murder knife. The prosecution have a duty to put relevant evidence in front of you and you will have seen that there were two knives and a knife sharpener found at the apartment of the late Martin Purcell. They have been put in as exhibits so that you can see them but there was no blood on them. There was nothing of that kind and no fingerprints. This knife, LOL307, was found, to be precise about it, if one is standing in the back bedroom or in the hall looking out the back of Gerard Manning's apartment on Upper Gerard Griffin Street, out there is a slanted roof and then flat roof and there was a blade without a handle found there, LOL 306, and then this other knife which is LOL307 and again it didn't have blood or fingerprints or anything of that kind and to that extent it can't help us but all the knives were put, in my respectful submission, very properly. All those knives were put to the pathologist who had a good look at all the wounds and he was asked are any of these consistent or inconsistent with the murder and he said that this one seems to be the most consistent in my view because of the width, the length and in particular because of the bent nature of it; Now you have heard today from Dr Gilsenan that he doesn't necessarily agree about the bent nature of it. So, the two of them are disagreeing and if you have a reasonable doubt about Dr Jabbar's evidence on this point you must give the benefit of the doubt to the accused on this particular matter. But ultimately the question of the knife is a matter for you to decide how much weight you want to put on it, whether you consider it important or whether you consider it of no importance at all and to be put to one side, but at the end of the day Dr Gilsenan said to you he couldn't exclude it either. So at best it's a knife found in the location in which it's found. It is possible it was used. It is consistent, according to Dr Jabbar, with it being used in the murder but it's no more than that and the prosecution are not suggesting that it is definitively beyond a reasonable doubt, the knife that was used."*

24. Counsel for the respondent, contends in response, that the prosecution treated of the knife in a most responsible way. They did not contend that it was definitely the murder weapon. However, they contended that neither had it been excluded as the murder weapon. While it was true to say that there was no forensic trace evidence to link it to the deceased, or to the deceased's apartment, it was relevant in the context of the location in which it was found. While there was nothing to directly link the knife to the deceased or his apartment, the knife was linked to the appellant by virtue of where it was found, and the appellant in turn was linked to the deceased and his apartment by other evidence. The knife had been found, ostensibly having been discarded, on a flat roof accessible only through a bedroom window in the appellant's apartment. Moreover, there was prima facie evidence that the appellant had been in the deceased's apartment either at the time of or subsequent to the killing, having regard to the presence of the bloody fingermarks in the deceased's apartment that could be matched to the appellant. Further, certain personal items, which had belonged to the deceased, were found in and/or proximate to the appellant's apartment. When shown the knife, Dr Jabbar had been of the view that the knife in question was consistent with the wounds that had been inflicted on the deceased, in terms of its length, width and bent tip. Dr Gilsenan, who had given evidence for the defence, while disagreeing with Dr Jabbar on the issue of consistency, had been unable to exclude the possibility that the knife was the murder weapon. It was accepted that the evidence was circumstantial, but counsel for the respondent contends that it had the potential to be significantly probative depending on the jury's view of the evidence. It was said that the trial judge had been right to admit it.

25. The trial judge had ruled:

> *JUDGE: "Very well. So far as the knife is concerned it is admissible and how probative it is a matter for the jury."*

26. This ruling, although admittedly terse, was to the point. We have no hesitation in concluding that it was correct. Despite what the appellant has urged on this Court, and indeed upon the court below, it is clear that the knife, having regard to where it was found, and the other circumstances of the case, was potentially probative to a significant degree. A jury might dismiss it as being of little or no importance, but equally they might regard it as being of great importance as there was an evidential basis, admittedly circumstantial, on which they might do so.

27. We are satisfied that the trial judge was right to admit the evidence, both with respect to the finding of the knife, and with respect to Dr Jabbar's views concerning it. The prosecution's decision to seek to adduce the knife in evidence as part of their case, and the manner in which they in fact placed reliance on it, was entirely measured and responsible, and it was justified in the overall circumstances of the case. It was their duty to place all relevant evidence in their possession before the jury. The evidence given arising out of the finding of the knife was undoubtedly prejudicial. However, all probative evidence is by definition prejudicial. That

having been said, it was certainly not the case that in this instance it was more prejudicial than probative. It was potentially very significantly probative.

28. We therefore dismiss the appeal based on Ground 1.

Grounds 2 – 6: Failure to discharge the jury and adjourn any possible re-trial on account of non, alternatively late, disclosure.

29. The essential complaint here is that the appellant was prejudiced at his trial by the non-disclosure, or very late disclosure, in advance of the trial, that Dr Hoade had performed DNA analysis of trace evidence provided to him on swabs, which had been recovered by a scene of crime examiner from bloodstains found on two bannisters on the stairway leading up to Apartment No 2 at 44 Wickham Street, and had found that the DNA profile found in the blood on the swabs matched that of one Jason Moloney. It is said that the trial judge should have discharged the jury and adjourned any possible re-trial before a different jury for a sufficient period to enable the defence to investigate fully the matters in respect of which they were taken by surprise. The trial judge, having heard submissions from both sides, had refused to doing so, stating:

> *"I don't see any merit in this application. The trial proceeds."*

30. There is no doubt that the duty of disclosure on the prosecution is an important one, and a trial judge whose duty it is to ensure that the accused is able to receive a fair trial, must rigorously enquire both as to the reasons for, and extent of, alleged non-disclosure and as to the reality in terms of the potential prejudice claimed, and ultimately must take whatever action may be appropriate, up to and including the aborting of a trial that is underway, to ensure that the accused receives a fair trial. However, non-disclosure will not automatically result in a discharge of the jury. That will only be necessary if the alleged prejudice is real and egregious and irremediable by means of any lesser measure e.g., the granting of a short adjournment during the currency of the on-going trial.

31. In this case it should be noted that the application for a discharge of the jury and an adjournment for a sufficient period of any possible re-trial was vehemently opposed by counsel for the prosecution on substantial grounds. While not denying that the non-disclosure of Dr Hoade's third report was unsatisfactory and regrettable, she contended (and it was not disputed) that what had occurred was the result of oversight and involved nothing more sinister. Importantly, she went on to say:

> *"PROSECUTING COUNSEL: May it please the Court. I'm strongly opposing that application. First of all as regards the lateness of the report, I must put the prosecution's hands up. Apparently the report was furnished by Mr Hoade to the gardaí but there was a breakdown thereafter and while other reports were passed on to the chief prosecution solicitor, that particular one did not make it to the prosecution solicitor. So, until today neither counsel nor the solicitors were aware of it and that was human error and I must apologise to the Court and to my colleague for that. However, as to the significance of it, I strong low (sic) dispute the defence position and I would first of all say from a practical point of view that we're happy, if it's of assistance to postpone Mr Hoade's cross examination until next week, and we can also make Mr McNamara available for further cross examination if that's of assistance but I would like the Court to be aware of the fact that there is a context to this which has not been outlined to the Court and that is that in the disclosure, a long time ago the defence were furnished with a statement from Jamie Lee McNamara and if I may quote from the statement, he described that in or around February or March 2011, which is about six months before the murder, he was out drinking and he was with a fella from Moyross. He didn't know his name but he was known as Padders. He says: "I brought him back to the apartment and he was looking for a fag to smoke a joint. We went back and had one joint. I went into bed to go to sleep. I heard rooting going around. I looked and saw your man Padders trying to take my watch. I hit him a box and my phone fell out of his pocket. I gave him a bit of a beating after I saw this. Padders was bleeding heavily from his face and nose. I caught him then and dragged him down the stairs in the hallway of my apartment block and threw him out on to Wickham Street. This was about 2 or 3 o'clock in the morning. It was a Sunday night leading into a Monday morning. I don't recall what exact date this was but I recall seeing an article in the Limerick post about it. I went back to my apartment. Found Padders' bus pass. I contacted him about a week later and gave him back the bus pass." So, this is a clear description by Mr McNamara of an incident six months before in which he beat this person called Padders leading to blood, threw him down the stairs and kicked him out and it got some local attention. I have informed the defence that the gardaí made contact with Padders, who was in fact Jason Maloney. He confirmed that the incident had taken place but he declined to make a statement because he did not want to make a complaint against his friend and all of this I have indicated to the defence. It seems they also knew, not only that this incident involving blood and the stairways and Mr McNamara had taken place, they also knew that there were bloodstains on the banister because that was in the report of Louise O'Loughlin and therefore it seems to me that it is greatly to overstate the significance of the late disclosure of this report that they simply have learned the name of this individual. If they had been interested and thought that the blood on the banister were genuinely leading to some new area of defence they could have asked many questions arising out of the statement of Mr McNamara. They could have asked who this person was, were blood samples taken and so on and so forth but in circumstances where there was this description of an incident involving blood from this other man and notice that there were bloodstains in various areas it really seems to me that it is they have greatly overstated the significance of the report and that it opens up whole new areas of inquiry. In the circumstances it seems that there is likely to be an entirely innocent explanation for the fact that Mr Jason Maloney's blood was found on the banister and I understand, and I'm instructed, that the precise location, if one traces back the exhibit numbers, is actually between apartment 2 and apartment 3. So, that's the apartment leading up to Jamie McNamaras. So, in my respectful submission first of all the significance is greatly overstated by my friend with respect and secondly I say that there is nothing in it that cannot be cured by some postponement of certain witnesses or a recall of Mr McNamara, if they so wish, but it's certainly not a reason for adjourning the trial and ultimately this is a trial, as your lordship is well aware, in which the prosecution case relies heavily upon bloodstained fingerprints left at the scene of the crime by Mr Manning within the apartment of the deceased and there is nothing in any of what has emerged now that could undermine that evidence in any way and in my respectful submission the trial should proceed."*

32. We consider that it is also of importance that there has been no engagement by counsel for the appellant with the matters of which the defence were in fact on notice, and on which the respondent relies. There has been much protest about potential prejudice but no indication whatever that actual prejudice to the appellant's ability to defend the charge was in fact caused. It is now in excess of five years since the appellant's conviction, yet there is no suggestion that the much vaunted investigations that the appellant's counsel contended were necessary have yielded anything of substance. Neither were they likely to, we would suggest, in the light of what counsel for the prosecution was able to outline both to the trial judge, and again to this court. No application has been brought to admit new evidence. There is no suggestion that any new evidence of materiality was in fact uncovered if further investigations were in fact carried out.

33. In the circumstances we are satisfied that the trial judge's ruling was correct, and that the appellant's trial was not rendered unfair by the trial judge's decision not to discharge the jury.

34. We therefore also dismiss the appeal based on Grounds 2 to 6 inclusive.

Ground 7: Failure to rule evidence of the first interview inadmissible.
35. The final ground of appeal arises from the trial judge's failure to rule, in the course of a voir dire, that the first of the appellant's interviews was inadmissible. This was the interview conducted when the appellant voluntarily attended at Roxboro Garda Station and submitted to questioning in circumstances where he was not under arrest. Although the appellant was a person of interest at the time, and indeed a suspect, he was not advised as to his rights, and in particular his right to consult with a solicitor, nor was the interview video and audio recorded. It appears, however, that the Judges' Rules were adhered to, in as much as the appellant was cautioned in the proper form, and a record of the interview was maintained in writing. Moreover, at the second interview, which took place at Henry Street Garda Station after the appellant had been arrested, detained, advised of his rights, and had consulted with a solicitor, the record of the first interview was read back over to the appellant. This reading-over exercise was both video and audio recorded. The appellant agreed that the record of the first interview was correct and was prepared to sign it, and did in fact sign it. The contents of that interview had been exculpatory to the extent that no admissions of any sort were made. However, it was somewhat potentially damning of the appellant that he had maintained that he had never been in the deceased's apartment when that manifestly could not be true. During their scene of crime examination of the deceased's apartment the Gardaí had come into possession of irrefutable evidence that that could not be so, i.e., the presence within the apartment of the appellant's bloody fingermarks. While obviously much more equivocal with respect to the appellant's presence at some point in the deceased's apartment, there was also the fact that unexplained personal items belonging to the deceased were found in and/or proximate to, the appellant's apartment.

36. In the course of the *voir dire*, various issues were explored by the defence including whether the appellant was under the influence of either drink or drugs, whether he had been advised of his rights, and whether any of the Gardai advised the appellant that he could speak with a solicitor.

37. Some reliance was placed on the following exchange that occurred in cross-examination of one of the interviewing gardai:

> *"Q … The question was, 'Ger, you're not here by chance. You are here for a reason. I am pleading with you to tell the truth. Have a good think'. And then his answer was 'I went with ye today and I didn't have to but I knew I'd be arrested if I didn't.' Do you remember him saying that?*

A. It's recorded here, yes, my lord"

38. It was not suggested that anything of an untoward nature, such as the proffering of threats or inducements, or subjecting the appellant to oppression, had occurred in the course of the first interview. The objection to its admissibility was based on a suggestion that because the appellant was not afforded all of the rights and safeguards that would have been afforded to him if he had been in detention, the overall fairness of the interviewing process had fallen below acceptable standards and that, in application of the well-known dictum of Griffin J in *The People (Director of Public Prosecutions) v. Shaw* [1982] IR 1, it should not be admitted into evidence.

39. We emphatically reject that submission. There was nothing unfair about the circumstances in which the appellant was interviewed in Roxboro Road Garda Station. His rights were not disrespected. He voluntarily submitted to being interviewed, and the Judge's Rules were adhered to. While he was perceptive in his view that he would probably have been arrested if he had not been prepared to agree to go to Roxboro Road Garda Station, the fact is he did agree to go there and voluntarily submitted to being interviewed. Moreover, it is telling that there was nothing said in this first interview that was not re-iterated by the appellant in his later interviews which were conducted while he was in custody and about which there is no complaint. It is not suggested that he would not have said what he said in the later interviews if he had not said what he did in the first interview. That case has not been made. In our view the trial judge was entirely right to rule evidence concerning the first interview to be admissible. There were no good grounds for excluding it.

40. We therefore dismiss the appeal based on Ground 7.

Conclusion:
41. We are satisfied that the appellant's trial was satisfactory and that his conviction is safe. His appeal against his conviction is dismissed.