THE COURT OF APPEAL

[124/17]

The President

Edwards J.

McCarthy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

ANDREJS KRAUZE

APPELLANT

JUDGMENT of the Court delivered on the 21st day of March 2019 by Birmingham P.

1. On 29th March 2017, following a trial which had lasted 13 days, the appellant was convicted by a unanimous jury in the Central Criminal Court of the offence of murder. He had faced trial on a count which alleged that on a date between the 7th to 23rd July 2011, he had murdered one Mr. Juris Buls in Glenamaddy, County Galway.

2. Four grounds of appeal have been advanced:

> (i) That the trial Judge erred in law and in fact in ruling admissible an interview given by the appellant to the Latvian authorities;
>
> (ii) That the Judge erred in law in ruling admissible the evidence of previous bad character of the applicant;
>
> (iii) That the Judge erred in law in permitting the DPP to furnish additional evidence throughout the trial and in response to specific aspects of the cross-examination and conduct of the defence case;
>
> (iv) That the Judge erred in law in allowing evidence to be given by the interpreter of the appellant's interview in Latvia;

3. Before dealing with the grounds of appeal, it is necessary to explain that both the appellant, Mr. Krauze, and the deceased, Mr. Buls, were members of the Latvian community. Mr. Buls and Serges Krauze, brother of the appellant, were both living and working in the Glenamaddy area of Galway. At trial, there was evidence from a number of witnesses about an altercation involving the appellant and the deceased that had occurred on 12th February 2011. The evidence was that following a disagreement about a car, the appellant had entered the deceased's home and assaulted him. Arising from this, the deceased lodged a complaint with Gardaí on 17th February 2011. The fact that the Court heard about this altercation on 12th February 2011 explains ground of appeal (ii), that the Judge erred in ruling admissible evidence of previous bad character of the appellant.

4. At trial, the prosecution case was that on 7th July 2011, Serges Krauze drove his brother, Andrejs, from Portadown in County Armagh to Glenamaddy. The prosecution contended that at this stage, the appellant was angry about the fact that the deceased had made a complaint about him to Gardaí. The prosecution case was that Andrejs Krauze went to the home of the deceased and murdered him there and that the body was then moved to a wooded area known as Funshion Woods, close to Glenamaddy.

5. On 7th July 2011, the deceased, who had been scheduled to work a night shift at Titan Plastics in Glenamaddy, his place of work, failed to appear. He was subsequently reported missing, and on 23rd July 2011, Serges Krauze, the brother of the appellant, directed members of An Garda Síochána to the Funshion Woods area. There, the body of the deceased was found in a drain within the woods.

6. Following a request by the Director of Public Prosecutions, pursuant to s. 62(2) of the Criminal Justice (Mutual Assistance) Act 2008, the appellant was interviewed on 9th March 2012 in Skirotava Prison in Riga, Latvia, where he was serving a sentence for a theft offence. The interview was conducted by Sergeant Michael Kelly and Detective Sergeant Michael O'Driscoll of An Garda Síochána. Also present was Jurijs Jabrens, an Inspector/Investigator with the Ministry of Internal Affairs in Latvia, and Ginta Lauvra Triede, a Russian interpreter. The interview was conducted in the Question and Answer format after the appellant had been cautioned. The prosecution case is that significant admissions were made during the interview, including by way of a demonstration of how the appellant strangled the deceased. It is this interview which resulted in admissions in Riga which provides the basis for ground (i) of the grounds of appeal. The question of the admissibility of evidence arising from the Riga interview and the admissibility of evidence in relation to the incident on 12th February 2011 were the subject of voir dires at trial, with the trial Judge, in both cases, ruling the evidence admissible in the course of a lengthy ruling on Day 8 of the trial.

Ground 1

7. So far as the first ground of appeal is concerned, that relating to the interview in Riga, when, by way of shorthand at the Call Over of the List stage, a member of the Court referred to the ground as being a complaint that the interview was not conducted in

accordance with the Custody Regulations, counsel on behalf of the appellant was quick to deprecate any suggestion that non-compliance with the Custody Regulations formed any part of the defence case. However, a perusal of the appellant's submissions suggests that the categorisation by the Court was not altogether inaccurate. The sub-grounds of appeal are instructive:

> (i) "The Custody Regulations were not cited or complied with and no information (C72 Form in this jurisdiction) was provided to the appellant prior to or during the interview."

This section of the submissions involves quotations from Regulation 4 of the Custody Regulations which deals with the position and role of the Member in Charge. Sub-grounds:

> (ii) The interview was not recorded and therefore no independent verification of the procedure or the content of the interview existed and is provenance remained untested;
>
> (iii) The appellant was unaware of his rights under Irish law – no access to an Irish solicitor was provided – and therefore the legal ramifications of a charge of/conviction for murder in this jurisdiction were never explained to the appellant;
>
> (iv) There was evidence heard from the Latvian lawyer to explain that under Latvian law, sanctions can be placed upon a prisoner who fails to comply or cooperate with a request to be interviewed and that such sanctions can take the form of unspecified detention;
>
> (v) The interview process can last for up to eight hours in Latvia, whereas in Ireland, the process breaks after four hours to provide for rest and the maintenance of optimum interview conditions.

8. Overall, one is left with the clear sense that the complaint is that the procedures followed in Latvia did not mirror those that would have been followed in Ireland. However, as the Director points out, the appellant was cautioned and was given a document in Russian explaining his rights.

9. The comment about the fact that the appellant was subject to sanction when interviewed in Riga seems to this Court to be misconceived. It is the case that in Latvia, one can be invited, indeed required, to attend for interview, and if, as a suspect, one fails to do that, there may be consequences, in the sense that the proceedings will proceed to a different phase, but there is no question of any requirement to actually self-incriminate. Again, the appellant has complained about the fact that the interview in Riga lasted five and a half hours, whereas, had the interview been conducted in Ireland, it would not have lasted more than four hours. However, we do not see that as a point of any real significance. States enjoy a margin of appreciation in setting their own procedures.

10. It seems to the Court that the real question facing the trial Judge was as to whether there was any reason to believe the admissions made were not voluntary and were the result of coercion or oppression or the offering of an inducement. No hint whatsoever of that has emerged. Neither is there any suggestion that the note taking was inadequate, in the sense that something is recorded as having been said which was not in fact said, or something of significance that was said was not recorded.

11. The Court has not been persuaded that there is any substance in this ground of appeal.

Ground 2

12. The second ground of appeal and the other substantial issue raised relates to the decision to allow the jury hear evidence relating to the events of 12th February 2011. The defence have categorised this as a Judge permitting the jury to hear evidence of previous bad character and reliance is placed, accordingly, on cases such as DPP v. Ferris, a decision of the Court of Criminal Appeal, delivered on 10th June 2002. The Court is firmly of the view that the characterisation of what occurred as permitting evidence of bad character is a mischaracterisation. The prosecution case was that the ill-will between deceased and accused some time before the fatal incident had its origin in the events of 12th February 2011, and perhaps more particularly, in the decision of the deceased to make a complaint to Gardaí in the aftermath of the incident. Insofar as it was the prosecution case that it was the events of February which provided the motive for the murder and the trigger for what occurred in July 2011, this Court is in no doubt but that the jury was entitled to hear that evidence. Broadly similar issues were considered by the Court in the case of *DPP v. James Connors* [2016] IECA 420, and *DPP v. Power* [2018] IECA 164.

13. In DPP v. Connors, this Court upheld a conviction in circumstances where the jury had been permitted to hear evidence that about three years prior to the evidence the subject of the trial, the accused, when a prisoner, had, in the course of telephone calls, made threats against the deceased, and the jury was also permitted to hear evidence in relation to an altercation that had occurred between the deceased and the accused. In that case, this Court was of the view that the question of whether the appellant was initiating a physical confrontation some weeks before the fatal incident was of considerable significance, and the fact that he was prepared to use a knife and inflict wounds was also of significance. In the present case, where it is suggested that the altercation provided the motive, and where the altercation was discussed during the course of the Riga interview, its relevance was clear, its probative value was considerable, and in the view of this Court, the trial Judge acted properly in admitting the evidence.

Ground 3

14. This relates to the complaint about the fact that the Judge permitted the DPP to furnish additional evidence during the course of the trial. It is true that there were a number of statements of additional evidence and additional disclosure. The prosecution responded by saying that the trial was particularly unique and complex, given its extra-jurisdictional nature. The approach of the trial Judge was to indicate at an early stage that, if at any point, the defence needed time in order to deal adequately with a particular issue, that time would be provided. The Court sees parallels with the case of *DPP v. Tuite* (1983) Frewen 175. That too, was a case with a Cross-Border dimension. In the present case, there is no indication whatever that the defence were embarrassed in any way in dealing with the prosecution case as it unfolded. The main focus of complaint relates to the fact that the prosecution, late in the day, indicated that they had finally secured a Latvian lawyer to deal with the procedures that are followed in the course of a criminal investigation in Latvia and the extent to which they were followed in the present case. From the outset, it was clear to the defence that the prosecution would be seeking to admit at trial the contents of the Riga interview. It was equally clear that the defence case was going to involve challenging the admissibility of that interview. The question of whether the interview was properly conducted in accordance with Latvian law was potentially of some relevance to the assessment of voluntariness, so that the prosecution would be

addressing that cannot have come as a surprise to the defence. In the Court's view, the trial Judge dealt with this issue with patience and with conspicuous fairness.

15. This ground of appeal is dismissed.

Ground 6

16. The final ground relates to the fact that the interpreter at the interview in Riga, from English to Russian and from Russian to English, was an employee of the Latvian Police Service. The point is made that because of her links with the Latvian Police Service, that she could not be regarded as an independent, and therefore reliable interpreter. The Court sees no real substance in this complaint. In the course of the appeal, members of the Court pointed out that they had experience of cases where members of An Garda Síochána had acted as interpreters at interview. In the present case, there is no suggestion that Mr. Krauze had been recorded as saying something different to what he actually said, or that anything he said was misinterpreted.

17. This ground of appeal, too, is rejected.

18. In summary, none of the grounds that have been canvassed in the course of the appeal have caused this Court to doubt the fairness of the trial or the safety of the verdict.

19. Accordingly, the appeal is dismissed.