THE COURT OF APPEAL

Appeal Ref: CAOT0127/20(20

Bill No: WXDP0042/2018

WXDP0050/2016

Neutral Citation No: [2022] IECA 299

UNAPPROVED **NO REDACTION NEEDED**

Edwards J.

Kennedy J.

Ní Raifeartaigh J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

JOHN REILLY

APPELLANT

Judgment of the Court delivered by Ní Raifeartaigh J. on the 20th day of December 2022

1. The appellant was tried and convicted in respect of an offence of demanding money with menaces as set out by Section 17 Criminal Justice (Public Order) Act 1994 as amended by Section 22 of the Intoxicating Liquor Act 2008. His appeal concerns the following issues:

(1) the admission of two witness statements pursuant to s.16 of the Criminal Justice Act 2006:

(2) whether the evidence adduced proved the ingredients of the offence of demanding money with menaces pursuant to s.17;

(3) whether or not certain evidence ruled admissible by the trial judge amounted to inadmissible hearsay.

General Background

2. On the night of Christmas Eve, 24 December 2017, one Linda Ring was at home with her two young children and her partner Declan Kavanagh. At approximately 8pm, three men arrived at the door, one of whom was wearing a balaclava. Ms. Ring answered the door and certain things were said to her in connection with money owed by her older son Stephen. She went back inside to get Mr. Kavanagh, who went to the door and interacted with the three men. The men then left. The prosecution case was that the appellant was one of the three men, and that the interaction constituted an unwarranted demand for money with menaces. Details of what was alleged to have been said at the door will be dealt with below.

3. The Gardaí were called and arrived at the house, where statements were taken from each of Ms. Ring and Mr. Kavanagh within hours of the incident. Each of their Garda statements was ultimately admitted at the trial pursuant to s.16 of the 2006 Act and the first ground of appeal, to be discussed shortly, concerns those rulings of the trial judge.

4. However, before examining each of the s.16 applications in further detail, it may be helpful to observe that the appellant, when interviewed by the Gardaí, had indicated that he was present at Ms. Ring's door on the night in question. The appellant's account, which was presented to the jury during the trial, was recorded in a memorandum of interview as follows:-

"I don't know that much. I know this much; I was out for a few pints on Christmas Eve. I was in Toss Kavanagh's with a work colleague. It must have been about 8 o'clock. I'm not too sure. A chap who I know well came in, spoke to my colleague about a vehicle he was buying and once they'd discussed what they were talking about, he asked me if I'd like a lift down to Rosslare. I said, "Yea, I'll take a lift". Me and the work colleague Mark Shiggins got into the vehicle. The driver is Pat Heago. He dropped Shiggins off at Vinegar Hill. He proceeds down towards Rosslare. I ask him if he'll pass through [name of area] where I proceeded to look for Stephen Ring's house. We went past it. There was a blue van parked outside it as I walked up with two fellows sitting in it. *I opened the gate of Stephen Ring's house. One of the fellows opened the door and followed me in and said, "Stephen". I said I wasn't Stephen. I rang the doorbell. He stood further up the path. When they opened the door, the fellow came walking down the path aggressive. I said to Linda, "This has nothing to do with me". I said, "I was just here". He was shouting and roaring. He was a big fellow. He said, "It's nothing to do with him you know why I'm here". I said to Linda that I was just there to tell Stephen that the problem he had asked me about I had addressed.* I turned around and headed quickly towards the gates where another fellow had been standing, walked through the gates, ran down to where Pat was waiting, got in his car. I asked him did he see what was going on there. He said no, he was on his phone. I said, "Just go go cause there's trouble here". I told him little bits and pieces of what was going on but he was on his phone and took no notice of it. He drove me home… (Emphasis added)"

5. In other words, the appellant indicated that he was at the door at the same time as other people but contended that this was a coincidence and that his own behaviour was innocuous. The appellant went on to say that the next he heard of the incident was that Stephen rang him

and told him that he was thrown out of the house. He gave a description of the man who was standing at the gate when he left the house. He was asked if he knew who Coco was and said he did, saying "*That's who robbed me of my wages, of my two weeks' wages*". He was asked if he called to the house to collect money for a drug debt he said "*That's what they're saying*". He was asked if he could turn back the clock what would he do differently on Christmas Eve and his answer was: "*If I wasn't robbed by Coco, I wouldn't have left the house because I was waiting for him to give me the money back. He told me he would give me back my money. Stephen Ring said I was bullied by Coco*".

6. For completeness, we also observe that during cross examination of Sergeant Cleary, he indicated that there were other incidents at the Ring household on 27 April and 10 May 2018 and that three other people were before the courts in relation to those incidents, unrelated to the accused. We turn now to the trial judge's rulings on the admissibility of the witness statements pursuant to s.16.

Ground of Appeal 1: The ruling on the admission of two statements pursuant to section 16 of the Criminal Evidence Act 2006

Events during the trial concerning Linda Ring

7. On the first day of trial, and before the case commenced, prosecution counsel informed the court that she had two main witnesses, Ms. Ring and Mr. Kavanagh, but that neither of them was present. Her instructions were that the Gardaí had been informed that Ms. Ring had to go to the doctor that morning. Sergeant John Cleary then gave evidence to the Court and indicated that he had spoken to Ms. Ring the previous evening. He said she was very upset and anxious about the trial and when he rang again in the morning he was not able to talk to

her. Mr. Kavanagh rang him back to inform him that Ms. Ring had not slept all night, that she was sick, had cold sores, was very upset, and that he had to bring her to the doctor. The Sergeant informed Mr. Kavanagh that they would need a certificate from the doctor. The Gardaí had subsequently tried to ring Ms. Ring at 10:30am and there was no answer.

8. The trial judge declined to issue a warrant at that point, deciding to wait a little longer. After a short adjournment, Mr. Kavanagh arrived in court and the prosecution sought a warrant in relation to Ms. Ring. Mr. Kavanagh told the court that Ms. Ring was ill and was then called into the witness box. Upon the judge asking him a question, he responded that he was "*withdrawing all statements*". When questioned by prosecution counsel, he indicated that Ms. Ring was at home and was not well. He also referred to their having children who had to be minded.

9. After another short adjournment the court was told that Ms. Ring was in a consultation room beside the courtroom and was upset and saying that she would not come into court. A jury was then sworn in and sent away to elect a foreperson. In the absence of the jury, Ms. Ring was called to the witness box and questioned by the judge. She said that she would "*like to drop the case*", "*I can't do this anymore*", that "*I just feel like my life has just- I'm just fed up of it, like*".

10. The trial judge indicated that the trial should commence. The jury were brought in, the appellant was given in charge, and prosecution counsel opened the case. The jury were then sent away while the appellant's counsel made an application to have certain evidence ruled as inadmissible hearsay. We will return later to that issue as it is a separate ground of appeal. The

trial judge ruled on the hearsay application and the jury were brought back. Ms. Ring was called and gave evidence in front of the jury.

11. We propose to set out here the contents of Ms. Ring's witness statement to the Gardaí before dealing with her evidence at the trial. While this was not, of course, the sequence adopted at the trial (as it never could be), it may be in ease of the reader as it will set the context for the application and ruling pursuant to s.16 of the 2006 Act.

12. In her statement, Ms. Ring had said as follows:

> "Stephen is 20 and I am aware that Stephen has been smoking cannabis. He had gathered a drug debt from an English lad called John Reilly who is in his forties, small in height, average weight. I have paid two or three sums of money for Stephen for drugs, in total €1,000. I am aware that Stephen still owes €1,300 to John Reilly for drugs. I have received calls and texts from John Reilly on [phone number given] looking for Stephen and for the €1,300. Tonight I was home at [address given] with Stephen, [names of her children] and [child's name]'s father Declan Kavanagh. A knock came to door at 8:00pm tonight I opened the door and there was two lads standing at the door. I knew one of them is John Reilly. I didn't know the other lad. [Description given] when I opened the door John Reilly asked was Stephen there and the other lad was talking. I don't know what he was saying. I know Stephen was meant to meet him with money but hadn't. I recalled John Reilly saying Coco was picked up tonight and dealt with and was in A&E. I don't remember much more as I was shocked. The lad with John Reilly said the money was owed him now. I came in and got Declan. Declan went out to them then and at this stage another fellow got out of the van. He went down the side of the house and had a balaclava on. He didn't say anything. He was a little fat lad. I recall the Dublin fellow

saying I don't care when he gets it, I will be back for my money a couple of days after Christmas. He said €1,300. I am down here tonight. I'm after leaving my family in Dublin for this. I was in fear that they were going to harm me and going to come in to my house only for Declan was here. I have been shaking since this has happened. The sum of money I paid for drugs for Stephen's drug debt was to John Reilly. I gave it to John Reilly personally each time he called to the house for money."

Ms. Ring's evidence in front of the jury (before the s.16 application was made)

13. Ms. Ring's evidence in front of the jury was as follows. She described where she lived and said that she had two children, one who was nine and one who was four years of age. She said she had an older son Stephen who lived with his grandparents. She said that on the night in question, Christmas Eve, she was in the house with her two small children and her partner Mr. Kavanagh. She said Stephen was not present. The children were getting ready to go to bed when, around 8 pm, there was a knock on the door. She answered the door and there were three men standing there. One had a balaclava on. She did not know any of them, got a fright, and went into her partner who then went out to the men. She said that when she opened the door, one man with a Dublin accent said he was looking for Stephen, to get Stephen there or to get Stephen on the phone, but that when she looked across and saw a man wearing a balaclava, she got a fright so went in for her partner. The man had said he was looking for Stephen for money involving a drug debt. She did not know how much it was but thought it was in the region of €1,000 or €2,000.

14. She knew that Stephen had a debt and this had gone on for a couple of months. She had told Stephen that she would pay whoever he owed money to because she was scared for him. She said that she had paid approximately €1,200 in one payment to John Reilly.

15. When asked was John Reilly at the door on that occasion (Christmas Eve), she said "*To be honest I'm not sure if it's John – if it was John Reilly at the door to be honest because, like, I have looked over there and that's not the man who was at my door*". She said the man with the balaclava was a big stout man and she could not see his face, and she did not know any of the other two men. She said she had no other dealings with anybody at the door and repeated that she got a fright and had immediately walked in to her partner.

16. She was asked again about whether John Reilly was there and answered "*I don't know. I don't know if it was him or not. I don't know*". She was asked if she knew him, and she said "*I don't know John Reilly. All I know from John Reilly was what my son had told me. That's all I know. I didn't know John Reilly. I don't know him*".

17. She was asked if she had previously paid money to John Reilly and she agreed that she had and then added "*Well, not to John Reilly but to Stephen for John Reilly*". She said that she had not met him.

Application pursuant to s.16 in respect of Ms. Ring

18. There was then an application by prosecution counsel pursuant to s.16 of the 2006 Act in the absence of the jury. Sergeant Cleary gave evidence of the taking of the statement from Ms. Ring. He said that the Garda station had received a phone call on the night in question as a result of which he went out to the house. Ms. Ring was upset and shaking when they arrived and although he was not sure of the exact time, he thought that he started taking a statement at about 12:30 or 1:00 am. He said that it "*flowed quite easily*" and that he was on his own with her inside the kitchen taking the statement, while his colleague Detective Garda O'Shea was in

the sitting room with Mr. Kavanagh taking a statement from him. He said that Ms. Ring was able to speak freely and that she had made usual declaration at the beginning of the statement. She did not wish to change anything at the conclusion of the statement. He said that it may have taken up to an hour to take the statement because she was quite upset, and also her two young children were coming in and out of the kitchen looking for their mother. He said that she was fully aware that she had to tell the truth and he himself witnessed the signature.

19. In cross-examination he agreed that he was aware that there were other incidents where men had called for similar purposes on 27 April 2018 and 10 May 2018, although he himself was not involved in the investigation of those other incidents.

20. Ms. Ring was then called back to the witness box and identified the statement that she had made, accepted that she made it, and listened while it was read out to her. In relation to the part of her statement where she had said that she knew one of the men at the door as John Reilly, she said "*To be honest I had never met John Reilly but I presume, like, they were there looking for Stephen. I had known from Stephen, I don't know, to be honest"*.

21. When asked about other occasions when she paid money to John Reilly, she answered "*I gave it to Stephen but I was there in the house, like, I gave the money to Stephen to pay but, like, yes, that's it*". She also said "*I wouldn't give it to Stephen – like, I wouldn't give it to Stephen to go with and pay somebody, like, do you know. I was with Stephen*." But when asked was John Reilly there as well, she said yes. She accepted that she had made the statement on Christmas Eve to Sergeant Cleary and that she had no difficulty in making that statement. She agreed that she felt calm and secure in her own house and when asked if it was the truth she said that it was.

22. In cross-examination, when asked about how she gave a different account, she said that it had been a while since it had happened and she was quite nervous and "*quite sick over the whole thing*". She said that she first came to hear the name John Reilly from her son and that her son owed him money. She said that she did not know whether it was John Reilly she had met. She said when she saw a man at the door and described him as John Reilly this was from what her son had been saying; that she "*presumed*" it was John Reilly. She said that when she answered the door she was a bit afraid and someone asked for Stephen and "*I had presumed it was John Reilly because there was a fellow in my house before that I had given money with Stephen and that's not him that's there*". In cross-examination she also accepted that reference had been made to Coco and that she was afraid her son would meet a similar fate.

23. On the application pursuant to s.16, the appellant's counsel submitted that the only difference between her statement and her evidence was that she was now saying that the John Reilly referred to in her statement was a different person from the John Reilly present in court, and that it was not a material difference sufficient that s.16 should be utilized.

24. In a relatively short ruling, the trial judge referenced the key differences as between Ms. Ring's statement and her evidence as being; that in evidence she said she did not know John Reilly, that he was not at her door on the night in question (now having seen him in court), and that she had failed to mention that she had previously given John Reilly money (as per her statement); and that she had failed to say that her son Stephen was present there on the night in question. He was satisfied, in accordance with the section, that the witness had given evidence which was materially inconsistent with her statement.

25. He was satisfied from the evidence of the Sergeant that she had made the statement and indeed the witness had also confirmed that she had made it. He was satisfied that the direct oral evidence of the facts concerned would be admissible in proceedings, that the statement was made voluntarily and that it was reliable. He said that he was also taking into account the explanation by the witness for giving evidence which was inconsistent. He was taking into account that there was a statutory declaration. He was satisfied that having regard to the circumstances in which it was made there was sufficient evidence to support its reliability. He considered subsection (4) and was not satisfied that it would be in the interest of justice to exclude the statement. In relation to whether it was unnecessary to admit it, he was satisfied that that was not the situation. He had therefore concluded that the statement should be admitted. In his ruling, the trial judge mentioned each of the requirements of s.16 *seriatim* and declared himself satisfied that each of them had been met.

Evidence in front of the jury after the s.16 ruling in respect of Ms. Ring's statement

26. Ms. Ring then gave further evidence in front of the jury. She agreed that she made a statement on the night in question to Sergeant Cleary. She accepted that she had and agreed it was her statement with her signature when it was shown to her. She accepted that she made the declaration and that it had been read over to her before she signed it. It was read out to her and she was asked: "is that right?", and she agreed. The prosecution was then granted leave to make the statement an exhibit in the case.

27. In cross-examination by counsel on behalf of the appellant, Ms. Ring said that in terms of previous payments, it was Stephen who gave it to John Reilly but that she was present. In relation to the three men at the door, she said that "*He wasn't at my door. That's not the John Reilly that was at my door"*. She added "*I am 100% positive unless he had plastic surgery but*

there's absolutely no way. The man that was at my door was smaller and he had grey hair". It was put to her that the accused accepted in his Garda interview that he was in the vicinity of the door, but she interrupted to say "*Well, he did not – when I opened the door he was not one of the men standing at my door*". She described how shocked she was because her young children were "*wired to the moon*", it being Christmas Eve, and were getting their pyjamas on and couldn't wait to go to bed and were jumping around the place. She said she was beyond shocked when the men came to the door.

28. She also was cross-examined about the reference to Coco and said that she wondered why they would say that somebody had been put in hospital and then mention her son: "*it just frightened me*". She was asked whether she understood the threat to be directed towards her son and she said that she did. (This was a point upon which the appellant's counsel subsequently relied in his application for a direction, and was drawn to the Court's attention on appeal).

29. In re-examination it was put to her that the accused was arrested and interviewed by the Gardaí and said that he had called to her house and spoken to her. She said that she could not remember speaking to him and that there were three men at her door and he was definitely not one of them. She repeated that he definitely was not there. It was put to her that what the appellant had told the Gardaí was that he had spoken to her at her door on the evening in question, and her reply was "*Well, I don't remember that to be quite honest*".

Submissions of the parties on appeal

30. The appellant submits that the threshold of material difference for the purpose of a s.16 application had not been reached as the only substantial difference between the statement and

the oral evidence of Ms. Ring was that the appellant (the man in court) was not the man at the door on the night in question, and there was nothing to prevent her giving that oral evidence being given without the necessity for the statement itself to be admitted. It is also submitted that the trial judge failed to take into account, as required by s.16, any explanation given by Ms. Ring, when ruling on admissibility. It is also submitted that the admission of the statement was not "necessary" within the meaning of s.16 in circumstances where the appellant had told the Gardaí that he *was* at the scene. Reference is also made to the fact that, as there was no application to have the witness treated as hostile, there had been no attempt by the prosecution to impugn her evidence before the jury as incredible or unreliable.

31. The respondent submits that the trial judge correctly addressed the inconsistencies between the statement and the evidence of Linda Ring, correctly referred to the law and criteria pursuant to Section 16 when making his ruling and did not err in admitting the statement pursuant to Section 16.

The Court's decision on the admission of the statement of Ms. Ring

32. In our view, the trial judge did not err in admitting the statement of Ms. Ring into evidence pursuant to s.16 of the 2006 Act.

33. S. 16 provides that a statement relevant to the proceedings made by a witness may, with the leave of the court, be admitted as evidence of any fact in it if the witness, although available for cross-examination, (a) refuses to give evidence; (b) denies making the statement; or (c) gives evidence materially inconsistent with it. The section goes on to set out a number of matters which must be considered by the court before a statement may be so admitted, but the first condition is as set out at (a)-(c) above. In the present case, Ms. Ring failed to appear on

the first morning of the trial despite being aware of it; then arrived into a consultation room beside the court but said she was upset and would not come into court; and then told the judge that she wished to "*drop the case*" and that she was "*just fed up of it*". Therefore, before she even gave evidence in front of the jury, she had indicated, in effect, a refusal to give evidence, a fact which provides some context to what happened thereafter. When examined by prosecution counsel in front of the jury, however, she did not refuse to give evidence; instead she gave evidence broadly in accordance with her statement but with two important differences. In her evidence she said (1) she was not sure if it was John Reilly at the door because the man in court was not the man at the door; and (2) that she had not previously met John Reilly. In contrast, in her statement, she had said (1) one of the men at the door was John Reilly; and (2) she had previously received calls and texts from John Reilly on a particular phone number looking for Stephen, and that she had personally paid him sums of money each time he called to the house for money. Thus, she was, in her evidence, broadly painting the same picture of the events on the night while seeking to erase the appellant from the incident entirely as well as denying knowledge of who he was. The Court has no hesitation in agreeing with the trial judge that this amounted to a "material inconsistency" within the meaning of s.16 and that this threshold criterion for using s.16 was satisfied.

34. Another basis for objection by the appellant to the trial judge's ruling in this context was the contention that the trial judge did not take into account any explanation given by the witness for giving evidence inconsistent with her statement, a matter which is specifically referenced in s.16 itself as something which the trial judge should take into account when deciding whether a statement should be admitted. However, the transcript shows that during the *voir dire*, when asked about the contents of her statement, she accepted she had no difficulty making the statement at the time and when asked if the statement was the truth, answered "*Yes, that's*

right". Accordingly, she did not in fact offer an explanation as to the difference between her statement and her evidence (s.16 refers to "any explanation by the witness…") and the criticism of the trial judge for failing to take account of something which was simply not contained in the evidence is misplaced. In some cases, of course, an explanation may be offered by a witness, but that was not the situation here.

35. A further requirement within s.16 is that a statement shall not be admitted if its admission is "unnecessary, having regard to other evidence given in the proceedings". The trial judge considered this condition and said he was not satisfied the evidence was unnecessary. The criterion of necessity was described in the following terms by McKechnie J. in *People (DPP) v. Murphy*:-

> "There is one further aspect of the prohibitory provisions which should be mentioned. As with the risk of an unfair trial and the justice requirement of subs. (4)(a), a court is also precluded from admitting a statement if "having regard to other evidence given in the proceedings" such is unnecessary (subs. 4(b)). The key therefore is "necessity"; evidence which is merely supportive, useful, helpful or even desirable is not sufficient. It must be essential in a material and substantive respect. This obviously means that every statement, certainly from different witnesses, must, at this time of assessment, be critically judged against the existing evidence. Anything less will not be in compliance with the "necessity" test."

36. In the present case, Ms. Ring and Mr. Kavanagh went to the door and interacted with the men at the door separately. In those circumstances, the Court is of the view that there was no possibility of the remaining evidence in the case supplying the same evidence; nor of the

evidence of one furnishing the same information as the other. It was submitted, in particular, on behalf of the appellant that his admission to the Gardaí of having been at Ms. Ring's door on the night in question rendered the admission of the evidence of Ms. Ring and Mr. Kavanagh unnecessary. However, their statements did not merely place the appellant at the door physically: their evidence described what was said by him and by others in his company, whereas the appellant had presented his presence at the door as entirely innocuous and unrelated to any demands made the other men. For that reason the Court is not persuaded by the appellant's argument that the statements of each of Ms. Ring and Mr. Kavanagh were "unnecessary" within the meaning of s.16(4)(b) of the 2006 Act.

37. As to the complaint that the witness was not treated as hostile, the Court sees little substance in this argument. Applications pursuant to s.16 and "hostile witness" applications are separate and distinct, as is made clear within the wording of s.16 itself, which specifically provides in subsection (6) that the section is without prejudice to sections 3 to 6 of the Criminal Procedure Act 1865. A failure to make a witness hostile can in no way be seen as fatal to a successful s.16 application. In *People (DPP) v Gruchacz* [2019] IESC 45, O'Malley J discussed the differences between the hostile witness procedure and the s.16 procedure in circumstances where the appellant was arguing the opposite proposition, namely that both procedures *cannot* be used together. She made it clear that they can, but there is nothing in her discussion which suggest that they *must* be used together. She said as follows:-

> "101. On the second issue, the principal argument made by the appellant is that s.3 of the 1865 Act and s.16 of the 2006 Act cannot be used together.
>
> 102. It is true that the "hostile witness" procedure is frequently used for the purpose of undermining the credibility of the evidence given on oath in the trial. A clear example would be where the witness initially makes a statement directly implicating the accused

("I saw him commit the crime") but gives evidence to the contrary effect ("I saw the person who committed the crime and it was not him"). If the evidence was allowed to stand without challenge, its acceptance by the jury would mean that the accused would be acquitted. The s.3 procedure is aimed at ensuring that the jury understands that the evidence may be entirely unreliable in the circumstances. However, before that point is reached the process may achieve the objective of persuading the witness to confirm the truth of the statement. Whether or not that happens, there will still be an issue of credibility because of the conflict between the accounts.

103. The s.16 procedure, on the other hand, is concerned with giving evidential status to the statement whether or not the witness has attempted to give a contrary account in court. Nonetheless, it is a process that will inevitably undermine the credibility of anything emanating from the individual in question.

104. Both procedures, therefore, have the consequence that the credibility of the witness is damaged. However, in my view these are matters which the judge is entitled to leave for assessment by the jury, provided the weaknesses in the evidence are adequately explained. There is nothing in the Act of 2006 to support the suggestion that the s.16 procedure cannot be utilised if the "hostile witness" process has been gone through — the fact that the credibility of the in-court evidence of the individual has been damaged does not mean that a statement admitted by the trial judge in accordance with the statutory criteria might not be true."

Accordingly, the Court considers that the trial judge did not err in admitting the statement of Ms. Ring pursuant to s.16 of the 2006 Act.

Events during the trial relating to Declan Kavanagh

38. As already described above, Mr. Kavanagh failed to appear at the beginning of the trial on the first day but attended later in the morning and spoke to the trial judge, at which point he told the judge he was "*withdrawing all statements*". On the second day of trial, Mr. Kavanagh again failed to appear in court. A warrant was issued, and on the third day of trial evidence was given of the execution of the warrant. Mr. Kavanagh was called to give evidence in the absence of the jury and told the judge that he did not know that he was supposed to attend court after the first day of trial. He said he received nothing in the post nor any telephone call in relation to giving evidence. He added that he did not want to give any more evidence in the court. Again, these events provide some context for what happened thereafter.

39. The jury were brought in and the trial proceeded. Mr. Kavanagh was called to give evidence and the prosecution sought to examine him in chief. Again, before looking at what he said on that occasion, we will first set out his prior Garda statement, in order to provide context for the application and ruling at trial. His witness statement said as follows:

> "Tonight I came out here around 7:00pm. I was in kitchen watching the TV and heard a knock at the door. Linda went out and answered it. She was out there for around a minute, a minute and a half. She came into me and asked me to go to the front door. I went out and two fellows, one I know as John O'Reilly, was standing in the hall. I told them to get out, that I had two young chaps here. They went out and Linda came out from the kitchen and I told her to go back in I'd talk to them out on the porch. I went out and John said they were here for Stephen and the other lad interrupted, saying, 'We already looked after Coco'. I told them I didn't know who he was talking about. John said it was Conor Kirwan. I said, 'I don't know who they are talking about'. I said to John, 'I thought this was finished', because Linda paid John O'Reilly 400 and 800 to sort

out the money Stephen owed. A lad then hopped out of the van wearing a balaclava and went to run down the side of the house. I said, 'Where the fuck are you going?' and he just stopped and stared for a while. Then he went back to the van. He was stocky and clothes were dark. The other lad at the door with John was tall, six foot, Dublin accent, very strong. He had a hood up. I can't remember what his clothes were like. John was trying to tell me Stephen still owed €1,300 and the other lad was saying, 'he doesn't owe John anymore. Now he owes me'. There was a smell of drink off John. I was up close to them. Linda came back out and then this Dublin lad started saying that, 'I know ye don't owe the money but Stephen has to get the money'. He doesn't care if he has to beg, borrow or steal. They said they would be back a couple of days after Christmas for it. The Dublin lad then said beating up young lads isn't their thing. They then left in a blue caddy – type van with a sliding door on the driver's side. I couldn't see the reg. I was trying to keep the young lads in."

40. In his evidence in chief, asked about the evening in question, Mr. Kavanagh said that he withdrew his statement the day after that and withdrew his statement "*five or six times after that*". He said he did not recall anything because he had been drinking all day and did not recall much of what happened on the night. He recalled being at the house because it was Christmas Eve but did not recall where he was sitting. He remembered Linda coming in and saying there were a lot of people at the front door and that he did not really remember much after that. He remembered that she went out and answered the front door and was out there for about five minutes and came back in. He remembered going out to the front door and there were two or three men, but he could not really remember because he had had a few drinks on the day. He said he did not know any of the men. He said he thought the conversation had something to do with Stephen but he was not 100 percent sure. He told them to get away from

the door. He said he was at the door for five or ten minutes but does not really remember how long because he was "after drinking a good bit" on the day. He could not remember if there was any discussion about money. He said that he closed the door and they left.

41. Concerning his making a statement to the Gardaí, he said that because he had been drinking that day "*the statement was taken under false pretences I'd say*". He remembered the Gardaí arriving at his house very late that night. At this point the jury were sent out and prosecution counsel had an application to treat him by means of s.16 of the 2006 Act.

Application pursuant to s.16 in respect of Mr. Kavanagh

42. Detective Garda O'Shea was called by the prosecution and described the taking of a statement from Mr. Kavanagh. The usual witness declaration was included in the statement and he said that the statement from the witness "flowed freely". It was read back over to him and he signed it. (It may be noted that no complaint was made at this stage as to the absence of any statement from Detective Garda O'Shea dealing with these matters, although a complaint was subsequently made on behalf of the appellant, which also featured in this appeal).

43. Mr. Kavanagh was then recalled to the witness box in the absence of the jury and asked about the references in his statement to John Reilly being at the door on the night in question. He said he did not remember and that he did not know who John Reilly was. He insisted that he did not remember anything because he had drink taken that day.

44. Counsel on behalf of the defendant submitted to the judge that the identification within the statement was clearly predicated on information from another source insofar as he was told

that John Reilly was at the door, and that he went out and spoke to a person he believed to be John Reilly. This was not an identification by the witness because the information as to who the man was stemmed from another source. He submitted that even if the statement were to go before the jury pursuant to s.16, it should go in without mention of the name John Reilly because this was hearsay.

45. The trial judge ruled that the statement should be admitted pursuant to s.16. He said that there were numerous references to John Reilly in the statement without any suggestion that Mr. Kavanagh had any difficulties in relation to recognition, identification or knowledge of John Reilly. The trial judge referred to his evidence in court and his explanation that he had been drinking that day and did not remember matters. He went through each of the conditions for admissibility of the statement in s.16 and decided that the statement should be admitted and that the weight of the statement would be a matter for the jury. He referred to having presided over the trial and watched the demeanour of the witness both on the first day and today and said that he was satisfied that it was "*very much an appropriate case in which to admit the statement of Declan Kavanagh also under s.16*".

Evidence in front of jury after the s.16 ruling in respect of Mr. Kavanagh's statement

46. The jury was brought back and Mr. Kavanagh was brought through his statement. He agreed with parts of it, disagreed with others, and in places said he could not remember. In cross-examination, he was asked whether on 24 December 2017 he knew a John Reilly, and he answered no. He said that "maybe" Linda told him that John Reilly was at the door but that he did not know him. There was no further cross-examination of him.

47. Detective Garda O'Shea was then called. At this point, in the absence of the jury, and for the first time, counsel on behalf of the appellant raised a complaint that there was no statement on the book of evidence from this Garda. He submitted that if s.16 is to be utilised, a statement should have been taken from the witness and served by way of advance notice before any ruling was made. Counsel for the prosecution offered to take a statement and serve it over lunchtime, and the judge agreed with that course of action. There was mention of another matter, the jury were sent away for lunch, and then counsel complained again about the absence of a statement from the Garda who had taken the statement from Mr. Kavanagh, saying that "if I can just reserve my position… I may have an application in that regard". The judge told him that if he had an application to make, now was the time. Counsel then made an application to have the jury discharged.

48. The trial judge refused the application. He said that when the Garda gave his evidence on the *voir dire*, there was no cross -examination of him in relation to his evidence at all. No objection was made prior to his giving evidence or during it. If it had been made at that time, he would have allowed time for him to make a statement, but now he had completed his evidence in the absence of the jury. He ruled that Garda O'Shea was to make a statement over the lunch period and he did not see that there was any prejudice to the defence nor that it was appropriate to discharge the jury at this stage. Subsequently the jury came back and Detective Garda O'Shea gave evidence of the taking of the statement from Mr. Kavanagh.

Submissions on appeal in respect of the trial judge's ruling pursuant to s.16 in respect of Mr. Kavanagh's statement

49. The appellant complains that the Garda tasked with taking Mr. Kavanagh's statement had not provided any statement for the book of evidence and only produced a statement in

respect of same after he had already given oral evidence to the court on the *voir dire* relating to s.16. The Court has no hesitation in rejecting this complaint. In the first instance, the issue was not raised until *after* the *voir dire* on the admissibility of Mr. Kavanagh's statement had been held and a ruling delivered by the trial judge. The horse had already bolted by the time counsel for the appellant sought to bolt this particular stable door. In any event, it is not an essential precondition to the admissibility of a s.16 statement that the Garda who took the statement from the witness have made a statement concerning this aspect of matters which is included in the Book of Evidence. If, in a particular case, it is anticipated by the Gardaí that the issue may arise, it would of course be prudent to include such a statement from the relevant Garda. However, if it has not been done, and counsel on behalf of an accused person indicates that he or she considers it necessary to have notice of what the Garda witness would say before they give evidence on the *voir dire* concerning the admissibility of the witness statement, this should be flagged to the court in order that a direction may be given if necessary that such a statement be provided. This was not done in the present case before the *voir dire* took place. The issue was raised by counsel only when the witness was about to give evidence in the presence of the jury, at which point the trial judge directed that a statement be made and served on the appellant. There is no valid ground for complaint in these circumstances.

50. The appellant also submits that the threshold for the admissibility of the statement pursuant to s.16 was not reached; that there was a failure to engage with his explanation that he was intoxicated on the day; and that if the statement were to be held admissible, at the very least the identification of the appellant should not have been included because it constituted hearsay).

The Court's decision on the admission of the statement of Mr. Kavanagh

51. The Court is of the view that there was indeed a material inconsistency as between Mr. Kavanagh's statement and his evidence in front of the jury such that the first condition for admissibility within s.16 was fulfilled. The material inconsistency was that Mr. Kavanagh had described the appellant's involvement in the incident, naming him several times, without any quibble or caveat as to his knowledge of who John Reilly was. At the trial, he claimed that the only reason he mentioned Mr. Reilly was that Ms. Ring had called the man at the door by that name, thereby erasing his prior knowledge of Mr. Reilly. Thus, he was, like Ms. Ring, seeking to remove the appellant from his narrative of the incident on the night in question, albeit in a slightly different manner from Ms. Ring. We have no doubt that this was a very material inconsistency as between his statement and his evidence. Further, we agree with the trial judge's ruling that, if the statement were to be admitted, the identification of the appellant should not be excised from it as his narrative in the statement, taken in its totality, suggested that he was familiar with the appellant by the time he came to the door on the night in question and it was a question of recognition at that stage. Either the jury accepted the statement as reliable or it did not, but the hearsay objection was not made out, in our view.

52. As to the issue of whether the trial judge sufficiently took account of Mr. Kavanagh's explanation, which was that he had drink taken/was intoxicated on the day in question, it would have been preferable if the trial judge had explicitly dealt with this. However, the circumstances were that Mr. Kavanagh had given a detailed and coherent narrative to the Gardaí on the night in question and the Gardaí were not cross-examined as to his capacity to give such a narrative by reason of intoxication. Further, the witness had earlier in the trial expressed a desire to withdraw his statement (and indeed went further said he *had previously* withdrawn his statement, although there was no such evidence from the Gardaí and no cross-

examination on the point on behalf of the appellant). The trial judge also referred to having observed Mr. Kavanagh's demeanour in court, and as we have seen, the trial judge had several interactions with him over the issue of attending court and giving evidence. In the Court's view, it is entirely obvious that the trial judge did not consider Mr. Kavanagh's explanation of intoxication on the day in question to be sufficiently persuasive to rule the statement inadmissible, even though he did not explicitly say so in his ruling. Whether Mr. Kavanagh was intoxicated and whether intoxication undermined the reliability of his account to the Gardaí, was a matter which could then have been pursued in cross-examination in front of the jury, but it was not. We are of the view that the failure to specifically reference the explanation offered by Mr. Kavanagh for his inconsistent evidence should not succeed as a ground of appeal.

53. Accordingly, the Court considers that the trial judge did not err in admitting the statement of Mr. Kavanagh pursuant to s.16 of the 2006 Act.

Ground 2: Refusal to grant the Appellant's application for a directed acquittal

Application for a direction

54. At the conclusion of the prosecution case, counsel on behalf of the appellant applied for a directed acquittal. He referred to a passage in an edition of Charleton and McDermott on *Criminal Law* for the proposition that the demand must be communicated to the victim before the offence can be proved. He submitted there was no evidence that any of what was said at the door to Ms. Ring or Mr. Kavanagh was ever communicated onwards to Stephen Ring. He pointed out that, during cross-examination, Ms. Ring had agreed that her understanding was that it was Stephen who was the subject of the demand. He complained that if the prosecution

were now advancing the case that Ms. Ring and/or Mr. Kavanagh were the victims of the offence, the goalposts were being moved as this was not the case the appellant had come to court to meet. Counsel accepted that *Treacy v. DPP* [1971] AC 537 was against his argument. In that case, the appellant posted in the Isle of Wight a letter written by him and addressed to a Mrs. X in West Germany demanding money with menaces. The letter was received by Mrs. X in West Germany. The appellant was charged with blackmail contrary to section 21 of the Theft Act 1968. The certified question for the House of Lords was whether the posting of the letter in England was sufficient to establish the jurisdiction of the Central Criminal Court. A majority (Lord Hodson, Lord Guest and Lord Diplock) decided that it was, while a minority, Lord Reid and Lord Morris of Borth-y-Gest decided that it was not.

55. The prosecution opposed the application, contending that the facts clearly disclosed a demand being made (for money) accompanied by menacing circumstances (a balaclava, a sinister reference to another person "Coco" having been dealt with and being in the A&E).

56. The trial judge referred to the facts as described in the witness statements and said he was satisfied that there was sufficient evidence of the offence to go to the jury.

Submissions on appeal

57. The appellant submits that the appellant's application for a directed acquittal should have been acceded to. He submits that the offence was not made out, in that Stephen Ring was not threatened. At the oral hearing, it emerged that an amended indictment had been used at the trial, which did not refer to any particular victim. The prosecution submits that the trial judge was correct in refusing to withdraw the case from the jury.

Decision

58. S.17 of the Criminal Justice (Public Order) Act 1994 provides as follows:

> (1) It shall be an offence for any person who, with a view to gain for himself or another with intent to cause loss to another, makes any unwarranted demand.
>
> (2) For the purposes of this section –
>
> (a) A demand with menaces shall be unwarranted unless the person making it does so in the belief –
>
> (i) That he has reasonable grounds for making the demand, and
>
> (ii) That the use of the menaces is a proper means of reinforcing the demand;
>
> (b) The nature of the act or omission demanded shall be immaterial and it shall also be immaterial whether or not the menaces relate to action to be taken by the person making the demand.

59. The Court takes account of the decision in *Treacy*, referenced by counsel on behalf of the appellant. The Court also finds of assistance the decision in *R v Austin* [(1989) 166 CLR 669, [1989] HCA 26, a decision of the High Court of Australia (Brennan, Deane, Dawson, Toohey and McHugh JJ) where special leave to appeal was granted in respect of the specific question of when a "demand" might be said to have been made in the context of a similar offence of demanding money with menaces. The *Austin* decision is referenced in the same section of Charleton and McDermott, Criminal Law, in which the reference to *R v. Treacy* appears, although it was not mentioned by counsel for the appellant either at trial or on appeal.

60. The Court is of the view that the analysis of the High Court of Australia in *Austin* clearly and comprehensively explains why the argument of the appellant should be rejected. In *Austin,*

the context was that a demand was alleged to have been made by the applicant who had left a letter in a public telephone box. The letter warned that the Pope, who was about to visit Adelaide state, would be attacked, and that “fire bombing” would be carried out, unless certain actions were taken in respect of certain prisoners by Mr. Blevins, the Minister of Correctional Services. There was no evidence that the demand was communicated to Mr. Blevins. Having been convicted, the applicant sought special leave to appeal concerning the question of whether it was necessary that at the demand have been communicated to Mr. Blevins. In rejecting his argument, the High Court said:-

> “9. Whilst it is clear that there can be more than one view of the meaning of the words "demands ... of any person", it is, we think, in accordance with the ordinary usage of language to regard a demand as having been made at a point short of its actual communication to the person to whom it is directed. To do so is neither to conceive of the demand in an abstract form nor to use the word proleptically. Of course, a requirement, however peremptory, cannot amount to a demand unless it is made with the intention that it should be conveyed or communicated to the person to whom it is directed and in circumstances which are apt to achieve that end. A message put to sea in a bottle or a request shouted to the four winds cannot, except in the most extraordinary circumstances, amount to a demand of any person. On the other hand, a demand advertised in a newspaper may, even in the absence of actual communication, amount to a demand made of a person if the advertisement is an apt means of bringing the demand to the attention of that person.
>
> 10. As Lord Diplock observed in Treacy v. Director of Public Prosecutions (1971) AC 537, at p 565, "(a)rguments as to the meaning of ordinary everyday phrases are not susceptible of much elaboration", but a person who has sent a letter containing a demand would say that he has made the demand and would not say that he will make a demand

when the letter is received. In that case the House of Lords, by a majority, held that a demand contained in a letter was made when the letter was posted rather than when it was received. Accordingly, it was held that the offence of blackmail under s.21(1) of the Theft Act 1968 (U.K.) was committed in England when a letter making an "unwarranted demand with menaces" was posted there, notwithstanding that it was received in Germany.

11. Whether the circumstances in which an alleged demand is made are apt to lead to its communication will be a question of fact and it is possible to think of borderline cases. For example, a message sent by a messenger under an arrangement whereby the message might be recalled in the event that the sender changes his mind, may not, depending upon the particular circumstances, amount to a demand at the time the message is sent. But that is because the means adopted may not be apt to convey the message. On the other hand, there is no reason to think that a demand cannot be made at the time a letter containing the demand is posted or dispatched, provided that the letter will in the ordinary course of things reach its destination.

12. Not only does such a view accord with ordinary usage but, in the context of s.3(1), it is consistent with the evident intent which lies behind the sub-section. It is the behaviour of the offender in making a demand with menaces or threats which is the gist of the offence and not actions or events over which the offender may have no control. There are, of course, crimes in which the actus reus is incomplete until certain consequences occur as a result of the offender's conduct. Murder by shooting or poisoning, where death is the consequence of the offender's act, are examples. But where the definition of an offence can be construed either to include or to omit the consequences of the offender's act as an element of the offence, the immediacy of the consequences and their subjection to supervening events or actions are material to the construction to be placed upon the

definition. Thus it is appropriate to regard the offence of demanding money with menaces or threats as complete when the demand has been made in circumstances apt to achieve its communication to the person to whom it is directed and with the necessary intent. It is inappropriate to regard actual communication as a necessary part of the offence.

13. It was suggested in argument that an uncommunicated demand is in reality an attempted demand and that it should be penalized as such: see Criminal Law Consolidation Act s.290. But there are difficulties in that notion, as the case of Moran (1952) 36 CrAppR 10 shows. A demand is itself a species of attempt - an attempt to secure the object of the demand - and it is not easy to conceive of an attempted attempt. Whilst it is not possible to assert categorically that there cannot be an attempted demand, there is in many cases - and perhaps in this case - good sense in the observation of the Court of Criminal Appeal at p 12 that:

> "A man may form the intention of demanding money with menaces and then not put his intention into practice. In that case he would not be guilty of demanding. But the court cannot see how a person can be guilty of an attempt to demand; there is either a demand or there is not."

The question does not, however, arise in this case once it is concluded, as we think it should be, that actual communication forms no necessary part of a demand."

61. We agree with the above analysis. In the present case, there was undoubtedly evidence from which a jury could conclude that (i) an unwarranted demand for money was made; and (ii) the demand was made with menaces. These are the essential ingredients of the offence pursuant to s.17. It is not necessary to go further and prove that the demand was communicated to Stephen. This was not a case of an uncommunicated demand. It was, in the words of the judgment in *Austin,* "a communication made with the intention that it should be conveyed or

communicated to the person to whom it is directed and in circumstances which are apt to achieve that end". Far from being a "message put to sea in a bottle or a request shouted to the four winds", the evidence was that the men arrived at the door of Stephen's mother, in circumstances where she had previously made repayments on his behalf. There was every reason to assume she would pass on the message: the circumstances were "apt to achieve that end", again to use the language of *Austin.* That being so, it is not necessary to enter into esoteric discussions of borderline cases. There was in the present case evidence capable of amounting to the conduct required for the offence which was correctly left to the jury.

62. By way of footnote to the decision of the House of Lords in *Treacy,* it may be noted that a decision of the Court of Appeal in *R v. Pogmore* [2018] 1 WLR 3237, [2018] 2 Cr. App. R. 2, made clear that English legislation subsequent to the decision in *Treacy*, namely the Criminal Justice Act 1993, conferred jurisdiction in the English courts in the converse situation i.e. where the demand was posted outside the jurisdiction and received within it. In *Pogmore,* the defendant had sent the emails in question from Nepal but they had been received in England. The Court held that the English courts had jurisdiction. In the course of its judgment, the court described the offence of demanding money with menaces as a "*conduct*" offence and not a "*result*" offence (see para 29). We consider this characterisation to be correct.

63. Further, we doubt that the passage cited by the appellant from Criminal Law, Charleton and McDermott was intended to have the meaning contended in this appeal and assume that what the authors had in mind was a different scenario, such as where no communication was made to anybody, or the chances of the communication reaching a particular person were extremely slim (the "message in a bottle" example). In any event, it is not necessary, as

already stated, to consider hypothetical examples which have no relevance on the facts of the present case.

64. Accordingly, we reject the ground of appeal relating to the refusal of the application for a directed acquittal.

Ground 3: The hearsay issue

Hearsay evidence application

65. The grounds of appeal do not contain this third ground of appeal. The appellant's written submissions nonetheless dealt with the issue and the prosecution written submissions replied to those submission. At the hearing of the appeal, the Court criticised the appellant for failing to bring a motion to amend the grounds of appeal but ultimately, and reluctantly, acceded to hear submissions with regard to this ground, in effect treating it as a third ground of appeal despite the absence of a formal motion to this effect. The Court deprecates the appellant's approach, however, and wishes to reiterate that if new grounds are to be added in appeals, the appropriate application should be brought in a timely fashion.

66. At the very outset of the trial, as noted earlier, an application was made by the appellant's counsel to have certain evidence ruled inadmissible as being hearsay. This was prior to either Ms. Ring or Mr. Kavanagh giving any evidence and was based upon what was contained in their Garda statements, the status of which was, at that point in time, merely that the statements were intended to give notice of the evidence to be given by each of the witnesses.

67. It was pointed out by counsel for the appellant that Stephen was not a witness in the trial, and accordingly three items in the statements of Ms. Ring were objected to as being inadmissible hearsay, as follows:

(a) Ms. Ring's statement said that her son had told her that he had a drug debt;

(b) Ms. Ring's statement that her son had been smoking cannabis (which counsel said was also hearsay unless Stephen had been smoking it in front of his mother);

(c) Ms. Ring's statement that Stephen owed the debt to John Reilly.

68. It was also submitted, as regards item (a) that reference to the debt being a "drug debt" would create irretrievable prejudice in the minds of the jury at the trial quite apart from its hearsay nature.

69. As regards the evidence/witness statement of Mr. Kavanagh, counsel submitted that the source of his identification of John Reilly as being one of the men at the door was unclear. He also submitted that things said at the door (as reported by Mr. Kavanagh) amounted to hearsay.

70. The trial judge ruled that all the items of evidence objected to were admissible. He said that the assertion by Ms. Ring that her son was smoking cannabis was not hearsay; nor was the evidence that her son owed a drug debt to John Reilly because she had particular knowledge of the matter, having been involved in previous repayments of tranches of the debt. As regards the words spoken by the men at the door on Christmas Eve, he said that, in a case of demanding money with menaces, all the relevant words spoken in making the demand were admissible. In relation to the argument that any reference to a drug debt would be more prejudicial than probative, he said that if the court were to try and sanitise the evidence, such as ruling that the

jury should be simply told that a debt was owed, the jury would start to speculate on the surrounding circumstances in the view of the evidence that would be given, and would probably speculate that the debt was owed in the context of very serious criminality in any event. Accordingly, the reference to the debt being a "drug debt" was more probative than prejudicial.

71. In oral argument at the appeal, counsel for the appellant focussed on the argument that Mr. Ring's statement that Stephen had a drug debt was hearsay. It was also argued that it was more prejudicial than probative in all the circumstances, and that this would have been so even if Stephen had been a witness in the trial (rendering the statement non-hearsay in nature).

72. Much ink has been spilled over the hearsay rule, and no doubt this judgment will do little to assist the confusion that is frequently encountered in connection with the principle and its exception. Nonetheless, the basic statement of principle is always a useful starting point. As was stated by Kingsmill Moore J. in *Cullen v. Clarke* [1963] IR 368:

> "[I]t is necessary to emphasise that there is no general rule of evidence to the effect that a witness may not testify as to the words spoken by a person who is not produced as a witness. There is a general rule subject to many exceptions that evidence of the speaking of such words is inadmissible to prove the truth of the facts which they assert. … This is known as the rule against hearsay."

73. In our view, the assertion by Ms. Ring that he son owed a "drug debt" to the appellant was indeed hearsay, because the purpose for which it was adduced to prove the truth of the statement i.e. that Stephen did in fact have a drug debt with the appellant.

74. That does not dispose of the "drug debt" point however. The question is whether the admission of this piece of hearsay evidence, having regard to the totality of the evidence, renders the conviction unsafe because of its prejudicial effect. In truth, this appears to have been the main concern of the appellant and on the appeal, as counsel on his behalf made clear that the objection would have been made even if Stephen had been a witness in the trial and available to give evidence as to the nature of the debt (rendering it non-hearsay). Clearly, the main concern was the prejudicial effect on the jury of the fact that the debt was said to be drug-related (and not for example, a concern arising from the statement being incorrect or inaccurate, or from the inability of the appellant's counsel to be able to cross-examine in respect of its truth).

75. The Court is of the view that even the word "drug" was removed from the word "debt" in front of the jury, the jury would in any event have started to speculate as to the circumstances and what the debt was for. Given the words spoken at the door about Coco being in the A&E as result of having been dealt with, and the fact that one of the men at the door was wearing a balaclava, they would likely have reached the conclusion that some form of criminality was involved. In our view, the prejudice caused by the reference to the debt being a "drug" debt as distinct from any other debt did not cause such prejudice as to result in an unsafe conviction. We accordingly uphold the trial judge's ruling that references to "drug debt" should be allowed in front of the jury.

76. As to the statements of Ms. Ring and Mr. Kavanagh as to the words spoken at the door by the men, these were manifestly not hearsay. The purpose of adducing this evidence was not to prove the truth of the words allegedly uttered by the men. For example, it was entirely

irrelevant whether or not it was true that Coco had actually been 'dealt with' or was in the hospital or not: the prosecution's purpose in adducing evidence of the words spoken was to show that the circumstances were "menacing" within the meaning of the legislation and the reference to how Coco had been dealt with was capable of being treated by the jury as an implicit threat that Stephen would be similarly dealt with if he did not pay up. Whether the threat was based on something that had actually happened to Coco in reality, or not, was irrelevant. Similarly, the claim by one of the men that 'the' debt was now owed to him instead of to the appellant was part of the 'demand' within the meaning of the legislation: it did not matter whether it was true that the debt had shifted from the appellant to him: the point is that the words were spoken as part of the commission of the offence (the "demand" part). Thus, the purpose of adducing evidence of the words used by the men at the door was to prove a fact in issue, being the very ingredients of the offence, namely a demand with menaces.

77. Accordingly, we consider that the hearsay/prejudice ground of appeal should be rejected.

Conclusion

78. In all the circumstances, we have concluded that the conviction should be upheld and the appeal dismissed.