



**THE COURT OF APPEAL**

**[106/22]**

**The President**

**McCarthy J.**

**Kennedy J.**

**BETWEEN**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)**

**RESPONDENT**

**AND**

**LARRY O'CONNOR**

**APPELLANT**

**JUDGMENT of the Court delivered on the 11<sup>th</sup> day of July 2023 by Birmingham P.**

**Introduction**

**1.** Following a trial in the Circuit Criminal Court in Limerick, which began on 22<sup>nd</sup> February 2022, on 1<sup>st</sup> March 2022, the appellant was convicted of a number of offences, these involving: (i) two counts of possession or control of firearms and one count of possession and control of ammunition, in circumstances giving rise to an inference of an unlawful purpose contrary to s. 27A(1) of the Firearms Act 1964 as amended; (ii) one count of reckless discharge of a firearm contrary to s. 8 of the Firearms and Offensive Weapons Act 1990; (iii) one count of criminal damage contrary to s. 2(1) of the Criminal Damage Act 1991; and, one count of aggravated burglary contrary to s. 13(1) and (3) of the Criminal Justice (Theft and Fraud) Offences Act 2001. Subsequently, on 31<sup>st</sup> May 2022, the appellant was sentenced to an aggregate term of 12 years imprisonment.

**2.** The appellant now appeals his conviction and does so on a single ground: that the trial judge erred in law in permitting background evidence of a prejudicial nature [of connections] between one of the complainants and persons not on the indictment. The words "of connections" did not appear in the Notice of Appeal or the written submissions.

**Background**

**3.** The background to the trial is to be found in events that occurred on 13<sup>th</sup> July 2019 at 4, Deelside, The Quay, Askeaton, County Limerick. The address mentioned was the home of Ms. Noreen Dooley and Mr. Danny Harty and their three children. At trial, the prosecution case was that the occupants of the house were awoken from their sleep at around 3am by the sound of banging at the door and the sound of a car, which was very loud, immediately outside. Ms. Dooley and Mr. Harty looked out at different stages to try and see where the sound was coming from, and at a certain point they saw the appellant getting out of the car, holding a gun. Shots were discharged and shots entered the house. The appellant entered the house, and more shots were discharged inside the house, causing damage in the kitchen area. The car initially drove off but returned. The prosecution case was that, upon return, the driver of the car was recognised as Mr.

Daniel O'Connor, the appellant's brother, who was a co-accused at his trial. He initially pleaded not guilty but changed his plea during the course of the trial. It should be explained that Mr. Harty, one of the occupants of the house and the partner of Ms. Dooley, is a first cousin of the appellant.

4. In the course of the opening, and this is a matter relevant to the ground of appeal, the jury was told that Mr. Harty had a child with Ms. Joanne O'Connor, a sister of the appellant and Mr. Daniel O'Connor.

### **The Appeal**

5. The issue that now arises in relation to the appeal first surfaced at trial during the opening address by counsel for the prosecution. Counsel commented:

"Now, I told you during your empanelment yesterday it was just part of my function to give you some information about the parties, and it was explained yesterday that Danny Harty, the partner of Noreen Dooley, is a first cousin of the accused, and it is part of the circumstances that Danny Harty has a child with a Joanne O'Connor who is a sister of Larry and Daniel O'Connor, and it is the prosecution case that there has been bad feeling and that is part of the background between the parties."

When counsel for the prosecution finished her opening address, counsel on behalf of the appellant was quickly on his feet. He protested that counsel for the prosecution had, improperly, in his submission, raised "matters that were entirely speculative to the level of motivating factors in the case." Counsel drew attention to two passages from the book of evidence, the first of which is an extract from the statement of evidence of Ms. Dooley, which reads:

"My partner, Danny Harty, has a child with Joanne Connors. I think that's what all this is about. Danny Harty and Joanne Connors are first cousins. Danny's father and Joanne's mother are brother and sister, Paddy and Peggy. Larry Connors is not as big a man as Danny."

Counsel for the then accused, now appellant, said that this was entirely speculative. He then turned to the statement of evidence of Mr. Harty, quoting the following extract:

"I don't know why the [O'Connors'] would do this. I was in a relationship with their sister Joanne for about eight years and we have a son Paddy who is seven. I don't get to see my son because Joanne won't leave me. We broke up about six and a half years and I started going out with Noreen. That's the only thing I can think of that the brothers would be angry about. But why would they wait nearly seven years to do something."

Again, counsel for the appellant stressed the speculative nature of what was contained in the statement of evidence. He said that while it had been stated to the jury in the course of the opening, that here was the motivating factor, that it was speculation. In the course of the intervention, counsel referred to two aspects of the book of evidence that might, on one view, have relevance to the question of motive, but he said that the passages were far too tenuous to provide a basis for evidence of motive. Accordingly, counsel's application was for a discharge of the jury, and, in that regard, he was supported by counsel for the then co-accused. The application for a discharge was advanced, notwithstanding that counsel for the prosecution, when indicating that she was going to give the jury a roadmap or an outline of what was alleged, stated expressly:

"Now nothing I say is evidence. The evidence is what you're going to hear from the witnesses in the case but it is important that you get your bearings and you know what the case is involved and the charges will make more sense, the alleged allegations in the charges will make more sense once you hear an outline [of] what is involved. So, the health warning is, nothing I say is evidence. The evidence will be what you hear from the witnesses in the witness box, but I am going to give you some outline of what is involved in the case."

6. In responding, counsel on behalf of the prosecution referred to the proposed statement of evidence of Ms. Dooley, drawing particular attention to the fact that, in her statement of proposed evidence, she had referred to the third occupant of the car, Mr. Jimmy O'Connor, a brother of the appellant and co-accused who, it was suggested, had been involved in a number of incidents. This caused counsel to observe:

"So, I don't see how it could be suggested that there wasn't bad blood or bad feeling between the parties, when one looks at what's outlined in the statements of proposed evidence."

In ruling on the matter, the judge made reference to the proposed statements of evidence of Mr. Harty and Ms. Dooley, observing:

"And I think that it does add context to the events. I refuse the application."

7. Counsel on behalf of the accused interrogated the judge on his ruling, asking whether it followed that in consequence of the ruling, the prosecution would be permitted to adduce the speculation of witnesses, Ms. Dooley and Mr. Harty, that the root cause, the motivating factor, was the previous relationship between Mr. Harty and Ms. O'Connor. In responding to this intervention, counsel on behalf of the prosecution referred to the decision of the Supreme Court in *DPP v. McNeill* [2011] IESC 12, the well-known decision relating to the circumstances in which what has come to be referred to as background evidence will be admissible.

8. The trial judge indicated that, in his view, Ms. Dooley and Mr. Harty were the alleged victims in the matter, who, in the course of giving statements to Gardaí, provided an explanation as to what they thought was the motive in the matter. The judge said he felt that if the evidence was excluded, it would not be comprehensible to the jury, and he thought the background evidence was relevant and necessary so that the jury could have a complete and comprehensible understanding of the relationship between the parties.

## **Discussion**

9. In the course of his submissions in the trial court, counsel for the appellant pointed out that this was, as he described it, a "who case", *i.e.*, it related to who actually did the offence alleged; "[w]ho did this?" He went on to acknowledge that an important question that arises in relation to who did something is, "why would they do it?", that being the question of motive. He suggested that if the prosecution sought to adduce motive, they had to do so to the standard of proof of beyond reasonable doubt. In so submitting, it seems to us that he may have gone too far. What the prosecution has to do is to establish guilt beyond a reasonable doubt. In any case, where the identity of a perpetrator is in issue, the presence or absence of a motive will be a matter for

the consideration of the jury. The presence of a motive would be a piece of circumstantial evidence that is capable of being weighed in the balance.

**10.** At one level, the intervention by the defence legal teams, which has been echoed in the appeal before this Court, might seem slightly surprising. On another day, the defence might have seized upon evidence of tensions and ill will to seek to undermine the identification/recognition evidence by arguing that what was happening is that people were recognising those who they would have expected to see there. In any event, it does not seem to us that the proposed evidence of Ms. Dooley and Mr. Harty was inadmissible. It seems to us that to demand of them that they describe the incident that occurred, during which they referred to the fact that they recognised the perpetrators, and then to prevent them to put into context what had occurred, would be a highly artificial exercise, one that would be unfair to them, and by extension to the prosecution and the people of Ireland.

**11.** The issue that had arisen in the course of the opening address by counsel for the prosecution resurfaced when Ms. Dooley was called to give evidence. She was asked how she got on at 4 Deelside, Askeaton, to which she responded, “[w]e were getting on great. There was just a couple of incidents with say, with the accused’s brother, Jimmy Connors ... and I reported all that to the guards.” At that point, counsel asked, “[C]an you tell us what --what those incidents were?” At that point, counsel for the appellant asked for the jury to withdraw, and in the absence of the jury, requested the Court to direct the prosecution to focus their questioning on the events of 13<sup>th</sup> July 2019. It was pointed out that Jimmy O’Connor was not named on the indictment and had never been charged with an offence. The judge ruled on this by saying:

“Well, at the commencement of the trial I made a ruling, and since then the evidence before the Court is that on the 999 call, which was played to the jury, Danny Harty indicated that Jimmy Connors was in the car on the night, and I will allow the evidence that’s proposed to be adduced to be made.”

It might be noted that, in his evidence at trial, Mr. Harty had stated that there was a passenger in the back seat and that the passenger in the back seat was Jimmy O’Connor. The prosecution then proceeded to refer to a number of incidents, some more serious than others, involving Jimmy O’Connor, and some at a time proximate to the events of 13<sup>th</sup> July 2019.

**12.** When the matter resurfaced, the trial judge’s approach was to take the view that this was a matter he had ruled on at the start of the trial. His approach reinforces the fact that a consideration of what happened at the start of the trial is central to the outcome of this appeal. We have expressed our view that, in a recognition case, where those providing the recognition evidence were extremely well acquainted with those they were recognising, it would have been unreal that the jury would have been prevented from hearing about the nature of the relationship between the occupants of the house where the incident occurred, and those the occupants say called to the house and acted in the manner described.

## **Decision**

**13.** In summary, we have not been persuaded by the arguments advanced in relation to the sole ground of appeal relied on that the trial was unsatisfactory or the verdict unsafe.

**14.** In the circumstances, we are obliged to dismiss the appeal.