



THE COURT OF APPEAL

[211/20]

The President

Edwards J.

Kennedy J.

BETWEEN

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

RESPONDENT

AND

SEAN NOLAN

APPELLANT

JUDGMENT of the Court delivered on the 25th day of July 2023 by Birmingham P.

Introduction

1. On 29th October 2020, following a trial in the Central Criminal Court, the appellant was convicted of the offence of murder. He had stood trial charged with the murder of his partner, Ms. Amanda Carroll, in her home at 24 Homestead Court, Quarry Road, Cabra, Dublin, on 21st October 2018. On the first day of the trial, a plea of guilty was entered to a charge of manslaughter, but this plea was not acceptable to the Director and the trial on the charge of murder proceeded. At the conclusion of an 11-day trial and following eight hours and eight minutes of deliberations, spread over a number of days, the jury returned a majority 10:2 verdict of guilty of murder. It is to be noted that, consistent with the offer of the plea of guilty to manslaughter, at trial, the appellant conceded that it was his actions which caused the death of Ms. Carroll – a death which was unlawful. Further, this was not a case where any positive defence was put forward in the sense of an accident, excessive self-defence, or provocation. The key area of dispute between the sides at trial related to intent, the defence contending that the jury should conclude that the appellant had not acted with the necessary intent – an intent to kill or cause serious harm, which would elevate the unlawful killing to murder.

2. Three grounds of appeal are live and relied upon, and paraphrased as follows:

- (i) The trial judge erred in law in allowing evidence to be given before the jury of two conversations that the appellant had with members of An Garda Síochána, namely:
 - (a) a roadside conversation between Gardaí and the appellant at the point at which they first encountered him; and,

- (b) a conversation between Gardaí and the appellant in a Garda car during the journey to "Cabra" Garda station, which occurred subsequently to the appellant having been arrested on suspicion of committing assault causing harm – in fact, the station was Mountjoy Garda station.
- (ii) The trial judge erred in law on his charge and recharge to the jury on the law relating to intoxication.
 - (iii) The trial judge erred in law in not directing the jury on what constituted serious injury.

In the case of each of the grounds, there is a complaint that the judge was in error in not recharging the jury in respect of matters raised in requisition in the manner sought.

Background

3. Before turning to address the grounds of appeal advanced and relied upon, it is appropriate to provide context by referring to the factual background. In circumstances where at trial there was little dispute about the facts, the summary below draws on the summary of the facts as set out by the appellant in his written submissions, coupled with references to the evidence at trial.

4. The appellant and the deceased had been in a relationship since around May 2018. A number of witnesses gave evidence of the dynamic of the relationship between the appellant and the deceased; by way of example, Mr. John Daly, a neighbour and good friend of the deceased, when asked by counsel for the appellant the following question, "And the impression one gets is that this is a relationship that one moment everyone is all loved up and then all of a sudden out of nowhere there can be a row and there's shouting and roaring?", responded, "yes". There was evidence that alcohol could see the relationship turn to violence and both parties were blameworthy in that regard.

5. On 20th October 2018, the appellant and the deceased had been drinking, along with the deceased's sister, Ms. Antoinette Carroll, and her partner, from about midday. They began drinking at Ms. Carroll's house and then headed to a public house in Howth and then back into a public house located in the inner city centre. In her evidence, Antoinette Carroll referred to the fact that her sister had been taking tablets throughout the day.

6. On foot of a report of a road traffic incident, on Goldsmith Street in Dublin city centre at approximately 4.40pm, the appellant was arrested by Garda Kylie Byrne for a suspected drink/drug driving offence. The deceased was arrested for a public order offence.

7. Following their arrest, the appellant and the deceased were held in Mountjoy Garda station between 5pm and 9pm.

8. Following their release, the appellant and the deceased continued drinking in various public houses in and around the city centre. At approximately 11pm, a passer-by and a concerned citizen, Ms. Claire Scott, saw the deceased and the appellant at Synott Place. At that point, the deceased was lying on the ground and the appellant stated that she had just been sick. The concerned citizen offered to ring an ambulance as the deceased's breathing appeared to be laboured. However, the appellant declined on her behalf, and it was the impression of Ms. Scott that the appellant appeared genuinely concerned about the welfare of his companion. However, as

a precaution, the witness decided to ring Store Street Garda station, and on foot of this, Garda Marian Blunt and Garda Wayne Eustace attended at the scene. They described seeing a male and female who were intoxicated and having a disagreement. Garda Eustace stated in relation to the deceased, “[s]he was stumbling, and she required help to stand.” However, Gardaí were reassured by the fact that the appellant was assisting the deceased and was bringing her home in a taxi. The taxi driver, Mr. Andrew Farrell, was a witness at trial, and he recounted driving them back to Homestead Court, the deceased’s address, and arriving there just before midnight. He saw no aggravation between them, and he formed the view that the appellant was genuinely looking out for the deceased.

9. In the course of the appellant’s interviews while in Garda custody, the appellant gave the following account of what occurred:

“I put Amanda on to the bed. She had boots up to past her knee. I had to unlace them. I got them off. I took her jeans off and left her top on. I undressed myself. Then she started calling me Rob. She was calling me names. She was [saying] Sean fuck off. She was calling me a prick and scumbag and she was calling me all sorts of names saying she never loved me. Rob is her ex-boyfriend. She was saying it aggressively and scraping me and trying to fight with me. We were lying beside each other. She was screaming at me and tried to hit me as I told you. [...] She was screaming at me and tried to hit me. As I told you I put my hand over her mouth to stop her talking. I put my hand over her mouth and one over her neck. It didn’t seem like too long. She wasn’t struggling. I just went to sleep.”

10. It may be noted that it is the situation that, in the course of the Garda interview, the appellant asserted, “I never went out with the intention of killing her”. The appellant describes himself waking up the following morning and noticing that his partner was “stiff and cold”. He said he attempted to wake her for an hour. Thereafter, the accused, now appellant, wandered around the streets, at one point calling into Cabra Garda station in order to enquire whether there had been any reports of an incident in the Homestead area; at that stage there had not been any reports. Later, he was encountered by two Gardaí, Detective Garda Enda O’Sullivan and Detective Sergeant Ken Hoare, on the Navan Road. Following his arrest, he was brought to Mountjoy Garda Station where he was interviewed on a number of occasions. In the course of interviews, in broad terms, he accepted responsibility for the death of his partner.

11. In the usual way, the trial court heard from the State Pathologist, Dr. Margaret Bolster. Her evidence to the jury was that:

“[t]he cause of death then in this case is complex. In my view the combination of drugs are a factor in the causation of death in this case... Death is due to blunt force trauma to the neck and mouth consistent with manual compression or compression by a hand, complicated by drug intoxication.”

While there was some focus at trial on the mechanics by which the death resulted, no issue was ever raised as to causation.

Ground (i): The Challenge to the Admissibility of Evidence in Relation to Conversations

12. As we have seen from the grounds of appeal set out above, there is a challenge to the admissibility of the conversations that occurred: (i) the roadside conversation following the first encounter between investigating Gardaí and the appellant; and, (ii) a conversation involving Gardaí and the appellant in a Garda car during the course of a short journey from the Navan Road to Mountjoy Garda Station. At trial, there was a *voir dire* which dealt not just with these two conversations, but also with what was recorded as having been said by the appellant in the custody area of Mountjoy Garda station. Evidence in the *voir dire* was heard on 12th and 13th October and the legal argument was made on 15th and 16th October, with the judge ruling on it on the latter day. When delivering his *ex tempore* ruling on the admissibility of the statements in issue, the net effect of which was to admit the roadside and Garda car conversations and to exclude the custody area conversation, the trial judge indicated he would provide a more detailed statement of reasons at a later stage. This he duly did, and it is in substance, if not in form, a reserved judgment, running to some 30 pages; it is a model of its type.

13. It is necessary to look in somewhat more detail at the information which emerged in relation to the conversations and what it was sought to be put in evidence. On the afternoon of Sunday 21st October, Mr. Denis Carroll, son of the deceased, returned to his mother's apartment, after playing a football match. He found her dead in the apartment. Emergency Services were contacted, but his mother was pronounced dead at 3.40pm. The two members of the Gardaí who were central to the issue that occupied the trial court in the course of the *voir dire*, and whose role is now central to this appeal, were not on duty that Sunday afternoon, but each were contacted while at home by Detective Inspector Aidan Flanagan. Each made their way independently to the apartment of the deceased, and in the case of Detective Sergeant Hoare, he arrived there at approximately 4.45pm. In the case of Detective Sergeant O'Sullivan, on foot of the telephone conversation with the Detective Inspector, he initially went to Mountjoy Garda station and went from there to the apartment of the deceased where he met with Detective Sergeant Hoare.

14. At the crime scene, Detective Sergeant O'Sullivan was made aware that the now appellant had been in a relationship with the deceased. Investigators were anxious to speak with the appellant in order to get an account of his movements and to ascertain what had transpired after the appellant and the deceased had left Mountjoy Garda station on the previous evening. While in the apartment complex, Detective Sergeant O'Sullivan received a phone call informing him that the appellant had been seen on the Navan Road. Detective Sergeant Hoare and Detective Sergeant O'Sullivan went in an unmarked car, with Detective Sergeant O'Sullivan driving, to the Navan Road area to see if they could locate the appellant. Detective Sergeant Hoare observed the appellant walking on the right hand side of the road. Detective Sergeant O'Sullivan did a U-turn and pulled in beside the appellant. Detective Sergeant Hoare lowered the car window and engaged in a conversation with the appellant. The evidence from Detective Sergeant O'Sullivan was that Detective Sergeant Hoare asked the appellant, "[d]o you remember me from last night?", a reference to the fact that Detective Sergeant Hoare had had some interaction with the appellant following his arrest in relation to the road traffic matter. In response to this enquiry, the appellant acknowledged that he did. Detective Sergeant Hoare got out of the car, and Detective Sergeant O'Sullivan, having turned off the ignition, also got out of the car. The three then went to the footpath and the conversation continued. According to Detective Sergeant Hoare, he asked the

appellant where he was coming from at that stage, and he replied he was coming from his house in Ashington. Detective Sergeant Hoare enquired of the appellant in relation to his movements after he was released from Mountjoy Garda station on the previous evening. On Detective Sergeant Hoare's account, the appellant indicated that he and the deceased went drinking at Caulfield's Hotel and then at The Auld Triangle public house, and eventually travelled by taxi to the deceased's apartment at Homestead Court, where he had stayed the night. The appellant referred to the fact that he had great difficulty in getting the deceased into the car and that he had to "twist her" into the taxi and was assisted in that regard by a female Garda. Detective Sergeant Hoare's evidence was that, at that stage, he asked the appellant whether he and the deceased had had an argument, to which the appellant replied that they had. According to Detective Sergeant Hoare, at that point, he cautioned the appellant and asked him whether he understood the caution, which the appellant confirmed that he did. After the administration of the caution, Detective Sergeant Hoare asked the appellant whether the argument had become physical in any way, and the appellant's answer was "[y]eah. I thought I choked her until she passed out. I just fell asleep." According to Detective Sergeant Hoare, the appellant said that, when he woke up the next morning, he tried to wake the deceased, but was unable to do so. Detective Sergeant Hoare records the appellant as saying, "I thought she might be dead she was so cold". Detective Sergeant Hoare recalled how the appellant, "... said how he had choked her and had described putting a hand on her neck and over her mouth..." When asked why he had taken such a course of action, the appellant replied, "... to shut her up." At 5.20pm, Detective Sergeant Hoare arrested the appellant for an offence contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997, the offence of assault causing harm. Following the arrest, the appellant was once more cautioned. The evidence is that at that stage, the appellant asked Detective Sergeant Hoare whether Ms. Carroll was dead, and on having it confirmed that she was, the appellant then said, "I probably killed her".

15. Of note is that, in the *voir dire* and on appeal, it was asserted that neither of the Detective Sergeants had an official notebook with them, which they explained by reason of the fact that they had come in from home, having been off duty; however, upon reading the transcripts, it appears that Detective Sergeant O'Sullivan had his notebook with him, but did not use it until he had arrived back at the station. In any event, the effect of this was that no notes were made during the roadside conversation, a matter that was to the forefront in the *voir dire* and is again centre stage in the course of this appeal. In the Garda car, Detective Sergeant Hoare was in the backseat along with the detainee. There was a blank witness statement continuation sheet in the car, and on this, Detective Sergeant Hoare began attempting to make some notes of the conversation he had just had. He described the appellant as speaking continuously in the back of the car. The appellant was described by counsel for the Director as "loquacious".

16. At the Garda station, the prisoner was brought from the backyard into the custody room, where the jailer is based and where the custody record is completed. What occurred in the custody suite is no longer in issue in the context of this appeal, and as a result, it is not necessary to deal in any detail with what occurred there. However, it is sufficient to say that the evidence is that there was a further conversation involving Detective Sergeant Hoare and the appellant. According to Detective Sergeant Hoare, the appellant said that the deceased was calling him by her ex-

boyfriend's name, saying "[t]hat she said she didn't love me" and that, "... he said he put his hands on her mouth and neck and he held it **for a long time.**" [emphasis added]. He was further quoted as saying, "[i]t probably was me that killed her" and "I think I knew she was dead this morning 'cause when I woke up, she was so cold". We think it is fair to say that the reference to a "long time", to which we have drawn attention, was probably the singular most significant remark attributed to the appellant during the course of the three conversations. The trial judge indicated, in what we have described as his reserved judgment, that senior counsel for the defence informed the court that, from the appellant's perspective, the most significant conversation to which an objection was raised concerned this conversation in the custody area. That challenge was successful, and to that extent, the major objective was achieved.

17. Counsel on behalf of the appellant was prepared to acknowledge that 90% of what was said on the roadside and in the car was probably innocuous and neutral, and that some of it might even reflect well on his client, but he said there was a very coarse line in there, saying "I thought I choked her, and she passed out". He identifies the other problem as being that we do not know what else was said and therefore we do not know in what context it was said. He makes the point that we do not know what preceded what was recorded and we do not know what came after it.

18. In the course of the *voir dire*, the main focus of criticism was on the fact that notes of the conversations in issue were not taken contemporaneously. Counsel on behalf of the appellant submitted that when Gardaí encountered his client on the Navan Road, his client was not just anyone in the investigation. Counsel stated, "[h]e is the prime suspect. He is probably the only suspect, ...". The appellant complained that while Gardaí notes were taken when they arrived back in Mountjoy Garda station, there was no accurate record of the time at which the record was made. Further, it was argued, in considering the reliability of the later written up notes, the similarity of the accounts offered by Detective Sergeant Hoare and Detective Sergeant O'Sullivan should give rise to concern. Counsel also drew attention to the fact that none of the notes were read back to the appellant, and on that basis, questioned the reliability of the contents of the notes and whether they were recorded when Detective Sergeant O'Sullivan and Detective Sergeant Hoare claimed to have recorded them. Counsel on behalf of the prosecution's approach at *voir dire* was to accept that while there might have been a breach of the Judges' Rules, that the Court had a discretion, which, in all the circumstances, it ought to exercise in favour of admitting the evidence. Counsel drew attention to the rationale for Rule 9, suggesting that it served two related purposes: first, to prevent circumstances in which an invented oral statement might be attributed to an accused; and, second, to avoid disputes as to what words were said and how they were said.

19. In the course of this appeal hearing, it was acknowledged by the appellant that the Judges' Rules were only applicable to what was said post-arrest. However, it is said that this distinction is a fine one and of no real consequence because it was said the factors that should lead to the post-arrest remarks being excluded would also see the pre-arrest remarks excluded on grounds of general unfairness. Additional arguments were advanced in relation to what was said in the custody suite which was the main focus of the challenge to admissibility in the *voir dire*.

The Approach of the Trial Judge

20. When ruling on the matter, the judge's approach was to first address the roadside conversation and the conversation in the back of the car, stating:

"... it seems to me that I should approach this by considering first whether I am satisfied that the conversation took place and whether they were voluntary. I should then consider whether by reason of any infirmity in the manner in which the conversations have been recorded, or the failure to read them back to Mr. Nolan, that this court should exercise its discretion to exclude those statements."

21. Addressing these two issues, the judge first indicated that he was satisfied that the conversations, as were recounted by Gardaí, had taken place, and that what was attributed to the appellant had been said by him. Counsel for the appellant says that what was attributed to the appellant on the roadside goes significantly beyond what the appellant, as a detainee, had to say in the formal interviews that were recorded. Counsel acknowledges that much of what was attributed was neutral, and even that some elements might be seen as advantageous to the appellant. He says there were aspects that did go further, but there was a certain crudeness which was disadvantageous to his client and which may well have been significant to what was a finely balanced case.

Decision

22. It appears clear to us that the trial judge approached the issues which had been raised with him in relation to what had been recorded as having been said by the appellant with scrupulous care and attention. It is also clear that he approached the issue on the basis that he should bend over backwards to be fair to the appellant. This saw him exclude the comments made by the appellant in the custody area – the comments which were the main focus of the application for exclusion on behalf of the defence, and which might have been seen as bringing the prosecution case further than was achieved during the formal recorded interviews. The judge did so in circumstances where what was said in the custody area was not raised with the appellant during the course of formal interviews, even though there was every opportunity to do so. In that regard, the judge felt those circumstances gave rise to an unfairness.

23. The situation in relation to what was said prior to arrival at the Garda station was quite different. It appears clear that a traditional caution was administered on two occasions on the roadside: first, after the appellant had made a reference to an argument; and second, after the arrest. There was no reason to doubt the voluntariness of what was said, nor was there any real reason to doubt the accuracy and reliability of what was being attributed to the appellant. In circumstances where neither Garda used their notebook at the time, it is true that notes were not taken on the roadside and the first attempt at any form of note taking involved making use of the continuation statement sheet found in the back of the Garda car and then the making of the notes in the Garda station. The accuracy and reliability of what was recorded was supported by what was said during the formal recorded interviews. In truth, when what was attributed to the appellant as having been said prior to the arrival at the Garda station is compared to what he had to say in the course of the formal interviews, it does not appear that the remarks made on the roadside and in the car gave any additional advantage to the prosecution.

24. We do not believe that the roadside conversation was indicative of a coarseness on the part of the appellant which would have cast him in a bad light, which would have been held against him when his later cautioned interviews, which were being recorded, came to be considered. It does not appear to be in dispute between the parties that, strictly speaking, Rule 9 of the Judges'

Rules applies only to what was said post-arrest, and not to the initial remarks on the roadside, and there does not seem to be much disagreement about the fact that little significance attaches to the distinction, because whether or not the Judges' Rules applied, the question of overall fairness fell for consideration. We have already pointed out that the manner in which the trial judge dealt with the various conversations in dispute showed he was fully alive to questions of fairness. We are satisfied he exercised his discretion correctly to admit the roadside conversations and the conversation in the car, limited as it was, and we are not prepared to uphold this ground of appeal.

Ground (ii): The Trial Judge Erred in Law on his Charge and Recharge to the Jury on the Law relating to Intoxication

25. The background to this issue is that there had been evidence at trial that the appellant had been drinking since midday, and over the course of the day had consumed a considerable amount of alcohol. He was arrested in the afternoon on suspicion of drink-driving. In charging the jury, the judge made it clear that the jury could convict of murder only if satisfied beyond reasonable doubt that there was an intention to kill or cause serious injury. True to the authority of *DPP v. Eadon* [2019] IESC 98, the judge pointed out that the question of intoxication was relevant to the question of whether the jury should be satisfied that there was present the specific intent required – the intent to kill or cause serious injury.

26. However, the appellant contended that there was an onus on the Court to explain how intoxication was relevant. Both at trial and in the course of this appeal, there was a tendency from time to time to discuss the issue in terms of how intoxication might prevent a person forming the requisite intention to kill, but in truth, the focus could more properly have been not on the question relating to whether there was anything to prevent the formation of an intention, but as to whether there was a doubt as to whether an intention was actually formed. In the course of charge, the judge commented:

“And it also seems to me that in respect of the question of intoxication, that you should essentially apply your common sense and your life’s experiences to your consideration of that aspect of the case”.

The appellant argues that the advice from the judge was inadequate, and that what was required of the trial judge was that he should have explained to the jury how alcohol affects the ability to form an intention to kill, and to have given illustrations to the jury.

Decision

25. In our view, the judge correctly sought to focus the attention of the jury on the question of whether there was present the intention to kill or cause serious injury and made it absolutely clear to the jury that if they were in doubt in that respect, the appellant could not be convicted of murder. The judge referred to the fact that there was evidence of the consumption of considerable amounts of alcohol, and it was for the jury to consider the relevance of that to the question of the formation of intention. The judge’s advice to the jury that they should use their common sense and draw on their life’s experience seems to us to have been quite appropriate. It has been suggested that references to life’s experience might have been adequate in the past, but are not appropriate in the context of a modern, multicultural Ireland. We cannot agree. We do not believe that the trial judge should have sought to go further and address the jury on how intoxication

would impact on the formation of intent. Still less do we believe that there was an obligation on the trial judge to provide examples. We are not prepared to uphold this ground of appeal.

Ground (iii): The Trial Judge Erred in not Directing the Jury on what Constituted Serious Injury

27. The background to this issue is to be found in the fact that, on 23rd October 2021, the jury raised a number of questions with the trial judge, one of which related to the meaning of “serious injury”. The judge responded in these terms:

“Now, on the question of serious injury, this is the second of the three questions that you asked, you may recall that I indicated to you in my charge that the Criminal Justice Act 1964 is essentially phrased in the negative and I am going to define -- I am going to give you the definition. It says, ‘Where a person kills another unlawfully the killing shall not be murder unless the accused person intended to kill or cause serious injury to some person whether the person actually killed or not.’ That’s the definition of -- in the Criminal Justice Act 1964. That legislation does not define what serious injury means. Now, if it had been the intention of the legislature that serious injury should have a particular definition then it seems to me that the legislature would have made or given that specific definition in the context of the legislation. Now, it seems to me therefore that in determining whether an injury is serious, it is a matter of judgment, taken in the context of the facts as you find them to be beyond reasonable, and you should be able to bring your bear your experience and common sense in deciding whether the injury is a serious one and in that context we are referring to the intention to kill or to cause serious injury. So, essentially it seems to me that it is a matter for you. It is a matter that you must consider and apply your experience and common sense and remember if you have any doubt about this, this too is -- if you have a reasonable doubt on the evidence, bearing in mind everything that was -- the evidence that’s before you, I am not going to go through it again, but bearing in mind all the evidence that I have asked you to consider and that has been adduced in this court, if you have a reasonable doubt about that issue, again you must resolve that in favour of the accused.”

The judge’s approach to the issue raised with him was in accordance with a long-established practice. The question of whether additional guidance should be offered by way of definition was considered in the past by the Law Reform Commission in its report “Homicide: Murder and Involuntary Manslaughter”, and it favoured maintaining the *status quo* to the point where the law on homicide was codified. In the circumstances, it seems to us that the judge had little choice but to adhere to the long-established practice. He did so, and we do not think he is to be criticised for that. In the circumstances, we reject this ground of appeal.

Conclusion

28. The situation, therefore, is that we have not been persuaded to uphold any of the grounds of appeal. We have not concluded that the trial was unfair or the verdict unsafe. Accordingly, the appeal is dismissed.