

UNAPPROVED

NO REDACTION NEEDED



THE COURT OF APPEAL

[205/20]

Neutral Citation No: [2022] IECA 4

The President

McCarthy J.

Murray J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

RITA O'DRISCOLL

APPELLANT

JUDGMENT of the Court delivered on the 17th day of January 2022 by Birmingham P.

1. On 28th October 2020, the appellant was convicted of the offence of murder. She had stood trial charged (a) that she had murdered Timmy Foley on 8th October 2018 at 12 Dan Corkery Place, Macroom, County Cork, and (b) that she had committed an offence contrary to s. 4 of the Non-Fatal Offences Against the Person Act 1997 against one Jason Foley on the same occasion and at the same location. She was acquitted on this second count, and now appeals her conviction on the first.
2. While a number of grounds of appeal were initially formulated, the appeal has proceeded on two linked grounds of appeal. These were that the trial was rendered unfair and unsatisfactory by reason (a) of the fact that the principal prosecution witness, Jason Foley, was

permitted to give evidence *via* video link, and (b) of the fact that that witness was permitted to give evidence with the assistance of an intermediary.

Background

3. The deceased, Timmy Foley, was the appellant's former husband, Jason Foley being his brother. At the relevant time, Timmy and Jason Foley resided at 12 Dan Corkery Place. The prosecution case was that the appellant visited there on 7th October 2018. There was evidence of drink being consumed by all parties present, and at some time in the early hours of the morning of 8th October, there was a fracas, in the course of which Timmy Foley sustained fatal knife-inflicted stab wounds. Jason Foley also received serious injuries, and again, these were inflicted by a knife. It was the prosecution case that the appellant inflicted the injuries on Timmy and Jason Foley, although as noted she was acquitted in relation to the s. 4 charge in respect of the latter. So far as the trial is concerned, it will be readily apparent that Jason Foley's evidence was significant, both as a witness to the relevant events, and indeed as a complainant in relation to the assault charge.

Video Link Evidence and the Use of an Intermediary

4. The relevant provisions governing the taking of evidence by video link and with the assistance of an intermediary appear in the Criminal Evidence Act 1992 ("the 1992 Act"), as amended by s. 257 of the Children Act 2001 and s. 30 of the Criminal Justice (Victims of Crime) Act 2017. Sections 13(1) and (1A) of the 1992 Act provide as follows:

"13.—(1) In any proceedings ... for an offence to which this Part applies a person other than the accused may give evidence, whether from within or outside the State, through a live television link—

(a) if the person is under 18 years of age, unless the court sees good reason to the contrary,

(b) in any other case, with the leave of the court.

(1A) In any proceedings ... relating to an offence, other than a relevant offence, a court may, subject to section 14AA, grant leave for a victim of the offence to give evidence, whether from within or outside the State, through a live television link.”

Section 14 enables certain persons in certain circumstances to give evidence through an intermediary. It provides at s. 14(1), (1A), and (2):

“14.—(1) Where—

(a) a person is accused of an offence to which this Part applies, and

(b) a person under 18 years of age is giving, or is to give, evidence through a live television link,

the court may, on the application of the prosecution or the accused, if satisfied that, having regard to the age or mental condition of the witness, the interests of justice require that any questions to be put to the witness be put through an intermediary, direct that any such questions be so put.

(1A) Subject to section 14AA, where—

(a) a person is accused of an offence other than a relevant offence, and

(b) a victim of the offence who was under 18 years of age, is giving, or is to give, evidence through a live television link,

the court may, on the application of the prosecution or the accused, if satisfied that the interests of justice require that any questions to be put to the victim be put through an intermediary, direct that any such questions be so put.

(2) Questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his age and mental condition the meaning of the questions being asked.”

Section 19 provides, under the title “Application of Part III to persons with mental handicap”:

“19.— The references in sections 13(1)(a), 14(1)(b), 15(1)(b) and 16(1)(a) and (b)(ii) to a person under 18 years of age . . . shall include references to a person with a mental disorder within the meaning of section 5 of the Criminal Justice Act 1993, who has reached the age concerned.”

5. Section 5 of the Criminal Justice Act 1993 (“the 1993 Act”), as amended by s. 4 of the Criminal Procedure Act 2010 (“the 2010 Act”) defines “mental disorder” as including “a mental illness, mental disability, dementia or any disease of the mind”. The 1993 Act is further amended by the 2010 Act with the insertion of s. 5B thereof:

“5B.— (1) Where a child or a person with a mental disorder is giving, or is to give evidence through a live television link, pursuant to section 5A, the court may, on the application of the prosecution or the accused, if satisfied that, having regard to the age or mental condition of the witness, the interests of justice require that any questions to be put to the witness be put through an intermediary, direct that any such question be so put.

(2) Questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his or her age and mental condition, the meaning of the questions being asked.

(3) An intermediary referred to in subsection (1) shall be appointed by the court and shall be a person who, in its opinion, is competent to act as such.”

6. In summary, the position is that insofar as the proceedings were for a relevant offence, being an offence involving violence or the threat of violence to a person, a person other than the accused may give evidence through a live television link with the leave of the Court. In the event that the Court determined to make such an order in respect of a particular witness, then, if the person giving evidence was a child (which was obviously not the position here) or a person with a mental disorder (which the prosecution contended was the case), the Court might, on the application of the prosecution or the accused, direct that any questions be put to the witness through an intermediary. Before making such an order, the Court must be satisfied that, having regard to the age or mental condition of the witness, the interests of justice required that any questions be so put. Thus, the Court's jurisdiction to appoint an intermediary was dependent on Jason Foley being a person with a mental disorder as defined.

7. Counsel for the prosecution introduced her application to this end by explaining that it had two limbs. In the first instance, to have evidence through video link, the application was under s. 13 of the 1992 Act. In the second instance, to have an intermediary appointed to enable an accused to have assistance in the course of giving evidence, the application was being advanced under s. 14(1) of the 1992 Act. For this latter purpose, counsel submitted that the Court would need to be satisfied that the person in respect of whom she was making the application – namely, Jason Foley – was a person who suffered from a “mental disorder”, as defined by s. 5 of the 1993 Act, as amended by the 2010 Act.

The Evidence of Dr. Monahan

8. Counsel indicated that she proposed to call evidence as to whether Jason Foley could be considered to have a mental disorder as so defined. Dr. Eoin Monahan (of whose general practice Jason Foley was a patient) was called to that end. In the course of his evidence, Dr. Monahan explained that it was his understanding that in 2009, Mr. Foley fell down a stairs and

suffered a brain injury, which he described as a right frontal lobe contusion and compression and a decompression. He referred to a bilateral frontal craniotomy, which required Mr. Foley to have holes drilled in his cranium in order to relieve the inter-cranial pressure. The witness stated that Mr. Foley suffered a further fall with further frontal contusions in 2011, and that, in 2012, he was admitted to an intensive care unit because he had a prolonged convulsive status epilepticus. The consequence of this was that he was left with a left hemiparesis, resulting in a weakness all the way down the left side of his body, meaning he cannot move his left hand and has a weakness in his arm and his gait, in that he drags his left leg when he is walking.

9. The witness testified further that Jason Foley's speech was "slow and slurred". When asked how this affected his intelligibility to others, the doctor replied that one had to be able to give him time to articulate and had to listen carefully to what he was saying, but that he was able to articulate himself. Because of his injuries, however, he said that Mr. Foley can make poor decisions in relation to personal care and housing, and finds it hard to understand and follow rules and directions. Dr. Monahan stated he was under the care of Acquired Brain Injury Ireland, and accordingly, when he presented at the GP's surgery, he was always in the company of a representative of that organisation. He said that sometimes Mr. Foley would need prompting to remind him of what was happening. Dr. Monahan was conscious that whenever he attended Mr. Foley there was always someone else there to help. After the brain injury, the patient had spent time in a residential unit in Macroom, but developed so well there that he was able to go back into the community. Acquired Brain Injury Ireland had applied for him to have twelve hours care per day and the HSE had agreed to this.

10. It was said that Mr. Foley was an individual who had "somebody with him the whole time", and that this was because he could make poor decisions in relation to his personal care. If Acquired Brain Injury Ireland were not involved, Mr. Foley would have issues in relation to washing, dressing, and getting going, but it was said that when he was prompted, he behaved

very well. The doctor clarified that the role of the person from Acquired Brain Injury Ireland who would attend with Mr. Foley was for the patient's assistance, or if he (the doctor) needed assistance in terms of collateral history *etc.* He referred also to the medication that the patient took, which was prescribed by psychiatrists. They included an anti-depressant drug and an anti-psychotic drug, mainly for agitation or diminishing aggressive issues, and that he was also on two anti-epileptic medications. The doctor expressed the view that the patient, in a court setting, would need help in understanding questions, in that they would need to be put to him in simple, plain language. They might need to be repeated and he would need time to answer. He testified that Mr Foley's speech could be difficult to understand, and that the room would need to be as quiet as possible with little distraction in order to maximise his concentration.

11. The witness was cross-examined by defence counsel who asked him whether he was aware that in the course of the investigation into the allegations against his client, Mr. Foley had made a statement to Gardaí, and there was no reference in that statement to his requiring any assistance. The doctor said that he was not aware of this, nor was he aware of the fact that on the night of the alleged assault, Mr. Foley had spoken to paramedics and did not appear to require assistance. The doctor accepted that he had not been aware of the fact that since acquiring the brain injury, Mr. Foley had been prosecuted for offences on approximately 25 occasions and there was no record of him ever requiring assistance. The doctor accepted that he was not aware of any previous involvement with the legal system. Counsel drew attention to the fact that a statement by Mr. Foley was videotaped, and showed a Garda reading back the statement and asking him as to whether he understood the terms of the declaration. The doctor's view was that if the declaration to tell the truth, and an awareness of the consequences of not telling the truth were explained to his patient, that he would be able to deal with that adequately. The doctor indicated further that he felt it was beyond his experience to express views in

relation to video linking, or the necessity for it. His experience was limited to that of being able to interview Mr. Foley and of having a generalised understanding of his abilities.

The Evidence of the Intermediary

12. The trial judge also heard from the proposed intermediary, Caroline Cosgrove, a speech and language therapist and registered intermediary from Northern Ireland. She explained that she had met with Mr. Foley over the previous days and had been provided with information similar to that which had been opened to the Court in relation to his acquired brain injury. She indicated that Mr. Foley presented as quite sociable, and that he came across as someone who liked to chat, with quite good conversational skills, and who would make eye contact. Mr. Foley had told her he was not really concerned about court, that he felt comfortable being in court because he had been there a number of times before, but that his care manager had explained to her that he appeared to have “a certain amount of bravado”, when, in reality, he was quite stressed. Ms. Cosgrove said that Mr. Foley presented with slower than normal processing speed, and that on a number of occasions when she asked him questions, she paused and he then changed the answer – this happened three or four times over the course of an hour. He could respond to all types of questions, but he had some difficulty in responding to multi-part questions, by which she clarified she meant situations where one question is asked, but there are two separate parts to it. Because of his understanding difficulty, he would sometimes then become quite verbose in his response and talk off-topic. However, she said he could cope relatively well with tag questions, clarifying that by this she meant questions in the form of a short phrase tagged on the end of a statement. She referred *inter alia* to his intelligibility, the fact that his speech came across as quite slurred, his ability to read a statement, his comfort with dates and times of events, and his ability to deal with numbers and basic mental arithmetic. She was of the view that he would benefit from an intermediary in terms of being able to

understand the questions that were put to him. If a question was asked with a lot of preamble, or if there was a complexity in the question, in the way the question was asked, Mr. Foley would benefit from having those questions rephrased.

13. Ms. Cosgrove observed (and this is a matter with which counsel for the defence takes issue) that an intermediary is only there to assist, not to change the evidence or to ask somebody to change questions just for the sake of changing questions. She explained that if she felt there was confusion and was concerned that he was not answering a question appropriately, she would ask for the question to be rephrased. Dealing with the question of video link, she said that separately and independently that she felt that Mr. Foley would benefit from giving his evidence *via* video link for two reasons. One of these was that Mr. Foley was reportedly concerned about his family and he may behave differently in front of them: he might not wish to appear weak, concerned, or worried. Secondly, it was relevant that he had respiratory issues and a requirement to clear his throat. The Court had heard earlier that Mr. Foley, as a heavy smoker, was someone who produced quite a lot of sputum and can need to spit that out and tends to do that at any time and without warning at any location.

14. In cross-examination, defence counsel probed with the witness the fact that Mr. Foley had appeared to understand the declaration that accompanies a statement in his dealings with the Gardaí. Counsel made the point that because the likelihood was that members of the public observing the trial would, on account of issues arising from the pandemic, likely be following the trial from another courtroom, concerns about Mr. Foley becoming distracted by the presence of people, including family members, would be ameliorated.

15. In re-examination, counsel on behalf of the prosecution discussed the physical layout of the courtroom with the witness and explained that if Mr. Foley was to give evidence from Court, from the witness box, that he would be within about six feet of the accused. Ms.

Cosgrove felt that was a fact that would certainly increase Mr. Foley's level of stress, and that, in itself, could impact on his ability to follow information and to follow verbal questions.

The Application

16. Counsel on behalf of the prosecution submitted to the Court that it was entirely a matter within the trial judge's discretion as to whether or not there should be evidence through television link. If there was evidence given through a television link, the Court should consider separately whether an intermediary ought to be provided if the Court was satisfied that the witness had a mental disorder. She said that the evidence led by the prosecution suggested that Mr. Foley did have a mental disorder, and that it would be helpful for him in that context to have the assistance of an intermediary. She pointed out that when attending his General Practitioner, he required or had the assistance of a person from Acquired Brain Injury Ireland to assist in that process, and was a process which, by any standards, was less arduous, less complex, and less time-consuming than the process upon which the Court was engaged.

17. Resisting the application, counsel on behalf of the defence submitted that the relevant statutory provision provides for video link in respect of minors, but he suggested it was permitted only in exceptional cases for other witnesses. He was not suggesting that the Court would be acting perversely in holding that Mr. Foley was a witness in respect of whom such an order could be made. However, he said on the basis of the evidence before the Court, the facility should not be extended. Counsel said that the thrust of the evidence was that a video link would not assist in terms of the evidence to be given. He pointed out that Gardaí were in a position to engage with Mr. Foley even though they were dealing with someone with an acquired brain injury. Ten years had passed since the injury was acquired and it had not stopped a number of prosecutions being brought. He submitted that a defendant in a trial in this jurisdiction, particularly one accused of murder, is entitled to confront their accuser. He

addressed issues about the layout of the courtroom, and said if that was a concern, there was no reason why the accused, if it was thought appropriate, could not sit further back in the courtroom. Counsel referred to his understanding of how the intermediary system works, which was that the intermediary would address the barrister and ask counsel to rephrase a question or to break it down if there was something unfair about it.

The Judge's Ruling

18. In ruling on the matter, the judge referred to the fact that the witness in question was an adult male, and was the injured party in respect of the charge under s. 4 of the Non-Fatal Offences Against the Person Act 1997 on the indictment. She said it was not in dispute between the parties that he had an acquired brain injury. She summarised the effect of that as being that he was left with a serious physical weakness on the left side of his body, that his speech was slow and slurred, that he can make poor decisions in respect of his personal care and housing, and that he finds it hard to follow rules and directions. The judge quoted the general practitioner as stating that the witness would need help in Court in understanding questions, that he would need those questions to be put in simple and plain language, and that he would need time and might need repetition. Others might have difficulty understanding his speech. She recalled that Dr. Monahan had indicated that Mr. Foley was always accompanied to the GP surgery by a carer from Acquired Brain Injury Ireland. The judge then proceeded to summarise the evidence of Ms. Cosgrove.

19. The trial judge pointed out that the application was opposed by defence counsel, who pointed to the fact that Mr. Foley had been prosecuted on numerous occasions and that the prosecution had never sought the involvement of an intermediary, and also to the fact that he had given a number of interviews in the course of this investigation, but Gardaí had never sought to have him accompanied at the interviews. The judge noted that counsel had stressed

that Mr. Foley appeared to fully understand the process. She said that the defence argued that the concerns of the prosecution could be met by counsel adhering to short questions and by allowing the witness regular breaks. She said that the defence argued that not having the witness present in court was prejudicial to their client and that what was sought was an exceptional measure which should not be acceded to by the Court.

20. In terms of the Court's decision, the judge said that the Court always had the accused's right to a fair trial at the forefront of its mind. While the culpability for the violence which occurred on the evening in question was a matter to be determined by the jury, the Court was satisfied that the charges before it were charges of violence such as to engage the statutory provisions. The provisions would not have been available to Mr. Foley as an accused in previous prosecutions. While the defence had argued that Gardaí did not seek to have the witness accompanied when being interviewed in the course of the investigation, the trial judge said that she was satisfied that this was not determinative of the issue: what the Court had to consider was the giving of evidence by the witness in the course of this criminal trial. The judge stated she had listened carefully to the evidence of the GP and had read his report. The fact that the witness had an acquired brain injury was not in dispute between the parties, and having considered the evidence – in particular, the impact on the witness – the Court was satisfied that the witness' medical profile came within the definition of "a mental disorder", as defined. The Court had also listened carefully to what the intermediary had to say and was satisfied that the interests of justice were met by providing the assistance of the intermediary who will ensure quality, completeness, and accuracy of the witness's evidence. Saying that was not to cast any aspersions on the ability of counsel to tailor their approach to the witness, but the thrust of the legislation was to assist vulnerable witnesses, and in the Court's experience, a qualified intermediary provides the best assistance in that regard. The Court was satisfied that there was

no prejudice to the accused in taking this approach, and accordingly, acceded to both of the applications of the prosecution.

21. The Court then went on to encourage the parties to engage in a ground rules discussion. While the matter was not specifically referenced by the trial judge in the course of her ruling on the applications, it is worth noting the first reports of the incident were *via* the Tunstall Emergency Response Service, of which Jason Foley was a client and had been provided by them with an alarm which he activated resulting in contact with the emergency services, including Gardaí, at Macroom Garda station.

Discussion

22. In written submissions, it was contended that the trial court could not possibly have been satisfied that the witness was suffering from a mental disorder. However, the approach taken in the course of oral submissions was slightly more nuanced, in that it did not seem to be disputed that it might be possible to conclude that post-acquired brain injury, Mr. Foley was experiencing a mental disability. What was said, however, was that the threshold to justify acceding to the applications was not met. It was argued that what was sought was significant and a departure from the norm.

23. The appellant attaches considerable significance to the decision of O’Neill J. in *D.O’D. v. DPP* [2009] IEHC 559. That judgment arose from judicial review proceedings in which the applicant sought an order of *certiorari* quashing a decision directing the use of video link facilities. The applicant was facing trial in respect of five offences alleged to have been committed by him contrary to s. 5 of the Criminal Justice (Sexual Offences) Act 1993, which provides for the offence of having sexual intercourse with mentally impaired persons. There were two complainants, one aged 42 and one aged 46. The judgment of O’Neill J. referred to the fact that the applicant at trial intended to contest that the complainants suffered from a

mental impairment. The trial judge quoted counsel for the applicant as objecting to the prosecution's application for the complainants to give evidence by video link on the grounds that it would create an inference that the complainants were vulnerable persons and persons who suffered from a mental impairment if they were permitted to give evidence by way of video link. O'Neill J. said that, in essence, counsel was arguing that the issue of their mental impairment would be predetermined and would impinge on his client's right to a fair trial. He said that it was clear that evidence by video link in the circumstances of that case did carry with it a real risk of unfairness to the accused which probably could not be remedied by directions from the trial judge or statements from the prosecution. At para. 5.6, he commented:

“Where the Court reaches the conclusion that the giving of evidence in this way carries with it a serious risk of unfairness to the accused which could not be corrected by an appropriate statement from the prosecution or direction from the trial judge, it should only permit the giving of evidence by video link where it was satisfied by evidence that a serious injustice would be done, in the sense of a significant impairment to the prosecution's case if evidence had to be given in the normal way, *viva voce*, thus necessitating evidence by video link in order to vindicate the right of the public to prosecute offences of this kind. The fact that the giving of evidence *viva voce* would be very unpleasant for the witness or coming to court to give evidence very inconvenient, would not be relevant factors.”

24. Since the delivery of that judgment, the courts in this jurisdiction – across all divisions and in cases of every kind – have for a variety of reasons had frequent recourse to the use of evidence via video link. That experience suggests that in many situations witnesses can give evidence in chief and be cross-examined via television or video link without impairing the fairness of a trial or affecting in any way the efficacy of a cross examination (see, in particular, the discussion in the context of civil proceedings in *IBRC v. Browne* [2021] IEHC 83). While

it is certainly the case that presumptively all parts of every trial will be conducted in person, while some good reason must be given for departing from that default position, and while video evidence from a witness will not be permitted where a party can establish that to do so will result in a demonstrable unfairness, it may well be that the test suggested by O'Neill J. will fall for reconsideration in an appropriate case.

25. For present purposes it suffices to say (a) that *D.O'D. v. DPP* makes it clear that an accused has no absolute right to insist on an in-person confrontation with a witness, and (b) that the reason for the decision not to permit the giving of evidence by video link in that case was very much rooted in the particular facts that presented themselves to the Court. There, the offences charged involving having sexual intercourse with persons who were mentally impaired. Thus, proving that the complainants were mentally impaired was an essential prosecution proof. Part of the defence in the case involved the contention that the complainants were not mentally impaired. In those circumstances, it was understandable that the view might be taken that if special accommodation was provided for the complainants, that this could only have been because they were in need of such assistance as persons who were mentally impaired.

26. Clearly, this does not apply in these proceedings. On the particular facts that presented themselves here, it is obvious that on the one hand Mr. Foley was on any version a vulnerable witness, and on the other that there was no disadvantage to the appellant in his giving evidence *via* video link. Mr. Foley had suffered a serious brain injury, required on-going assistance with many aspects of day-to-day living, and the evidence accepted by the trial judge showed that his delivery of responses to questions could be arrested under the stress of a live confrontation. Critically, while it is obviously not necessary that a witness suffer a mental disorder before the Court can exercise its broadly worded discretion to permit that witness to give evidence by video link, the fact that the trial judge determined that Mr. Foley's medical profile did come

within the definition of “mental disorder” was critically relevant to the exercise of that discretion.

27. The trial judge’s conclusion in this regard was, in our view, dispositive on the facts of both the application to have the evidence taken *via* video link and to her conclusion that Mr. Foley should be permitted to give that evidence with the assistance of an intermediary. We believe that that conclusion was more than justified having regard to the evidence before the Court.

28. While neither party to this appeal opened authority to the Court addressing the proper construction of the term “mental disorder” as it appears in the provisions under consideration, the definition now appearing in s. 5 of the 1993 Act is wide, and falls to be addressed in light of the purpose of those sections in which it appears: “a mental illness, mental disability, dementia or any disease of the mind”. Here, the evidence disclosed *inter alia* the following :

- (i) Mr. Foley sustained a serious brain injury, which has impacted on his speech and resulted in a situation where he required more time to articulate and which was liable to result in his making poor decisions affecting his personal welfare;
- (ii) That, in consequence, he required ongoing assistance with everyday living and was, to that end, under the constant daily care of Acquired Brain Injury Ireland;
- (iii) That Mr. Foley was taking an anti-depressant drug and an anti-psychotic drug, mainly for agitation or diminishing aggressive issues, and that he was also on two anti-epileptic medications, these having been prescribed by psychiatrists;
- (iv) That in a court setting, Mr. Foley would require assistance in understanding questions, which might need to be repeated and which he could require time to answer, it being necessary that there be as few distractions as possible as he did so;

- (v) That he had an “understanding difficulty”, presenting with slower than normal processing speed, being liable to change his answers, and facing difficulty in responding to multi-part questions;
- (vi) That stress could on his ability to follow information and to follow verbal questions.

29. While counsel for the appellant was correct in distinguishing between a brain injury and a mental disorder, and in submitting that it is possible to sustain the former without suffering the latter, the evidence here clearly established both a physical trauma to Mr. Foley’s brain and a subsequent limitation on his powers of comprehension and articulation which, on any version, entitled the trial judge to conclude that Mr. Foley suffered from a mental disability. The combination of that finding and the evidence that his ability to respond to questions in a court environment would be impaired more than justified the judge in exercising her discretion to enable him give his evidence by video link. The same evidence established the power to direct that his evidence be given with the assistance of an intermediary, and the propriety of exercising that power in the circumstances.

30. It is clear from the exchanges between defence counsel and the proposed intermediary in the Central Criminal Court that all involved with the issue envisaged that the intermediary’s role would be to intervene where there was a concern about the possibility of confusion or lack of comprehension, and to request that a question be reformulated by counsel. In fact, this is precisely what occurred; there was no occasion when the question was actually formulated and put by the intermediary.

31. In all the circumstances, we are satisfied that the rulings of the trial judge on these twin issues of video/television link and intermediary are unimpeachable. Certainly, they were rulings that were open to her.

32. We must dismiss this appeal.

