

PEOPLE v. MANNION  
MURRAY

RECORD  
1982 - No 26  
212 ✓

COURT OF CRIMINAL APPEAL

Hederman J.  
Doyle J.  
Keane J.

BETWEEN:

THE PEOPLE AT THE SUIT OF THE  
DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

v.

THOMAS MURRAY

Defendant



JUDGMENT delivered the 24th day of February 1983 by

HEDERMAN J.

The applicant was tried in the Central Criminal Court before Gannon J. and a jury on the charge of having wilfully murdered one William Mannion. The trial lasted five days and resulted in his conviction and the passing upon him of the mandatory sentence of penal servitude for life. The applicant has applied to this Court for leave to appeal from that conviction.

The appeal was solely concerned with the admissibility of certain verbal statements of an incriminating nature made by the applicant. There was no other evidence before the jury on which

they could have convicted the applicant.

The dead man, William Mannion, lived at Ballynacorra ffrench, Newbridge, County Galway. He was found dead in the kitchen of his house by a Sergeant of the Gardai, who had been alerted by anxious neighbours, at about 11 p.m. on July 20th, 1981. He had been savagely and repeatedly stabbed with a knife.

The Gardai immediately began an intensive investigation, in the course of which they asked persons in the locality to assist them by giving answers to a questionnaire. The applicant, who is aged 17 and lives on an adjoining farm, was among those who answered the questionnaire. In the course of doing so, he gave an account of his movements on the night of the 19th/20th July. He said that he had been with his family until 10.30 p.m. when he left for a carnival at Ballinamore Bridge, arriving there about 10.55 p.m. He said that he then returned home, had tea with his mother and brother, left the house again at 11.30 p.m. and returned to the carnival. He said that he remained until the carnival was over and returned home at approximately 2.35 a.m. It was clear from other evidence that the fatal assault on Mr. Mannion had

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taken place at about 11 p.m. on the evening of the 19th and, accordingly, this statement of his movements by the applicant was clearly exculpatory.

One week later, the applicant, at the request of the Gardai, went to Ballygar Garda Station. On this occasion, he made a written statement which he signed in the presence of two Gardai. This statement gave a more detailed account of his movements on the night of the 19th/20th and was also exculpatory. While in the Garda Station, the applicant's finger-prints were taken by a member of the Garda Technical Bureau.

The following morning, the applicant was admitted to the County Hospital, Roscommon, in a coma, having taken an overdose of drugs. Later that day, when he was conscious, but talking in a rambling and incoherent manner, he said to a final year medical student, Miss Pauline Marran:

"I killed a man .... with a knife .... I didn't mean to kill him .... he was 71 ....."

The following morning, he told the consultant physician at the hospital, Dr. Patrick McHugh, that he had taken the overdose because

"the Guards are after me for a recent murder in Newbridge". He said that he wanted to kill himself. The doctor said that at that stage he was conscious and answering questions coherently although he was drowsy. He was also questioned in the hospital by Detective Sergeant Connolly, of the Criminal Investigation Bureau at Garda Headquarters, but the latter broke off the interview because the applicant appeared to be under sedation. His finger prints were, however, taken again while he was in hospital. He was discharged from the hospital on August 4th.

The statements made by the applicant to Miss Marran were excluded by the learned trial Judge, but those made to Dr. McHugh were admitted. There was no challenge to this ruling on the present application.

The applicant does not appear to have been interviewed by the Gardai again until September 2nd when he made the incriminating statements which were in issue at the trial and on this application. Shortly after noon on that day, D/Sergeant Connolly, accompanied by D/Sergeant Byrne, another member of the team of Detective Gardai from Dublin who were investigating the killing, met him coming from the bog near his home with a load of turf in a donkey and cart.

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Sergeant Connolly told him that they were investigating the death of William Mannion. He asked the applicant would he bring the load of turf home and the reply was: "No, my mother is at home". He then asked him to come down to the Garda car, which was parked on the road and asked him would he get in. The applicant got in and Sergeant Connolly then said: "Where will we go to have a conversation?" and the applicant said: "Anywhere you like". D/Garda Byrne then unyoked the donkey from the cart and tied him up to a gorse bush. Garda Byrne said he did this, because he did not want to leave the donkey and cart there with a load of turf for an indefinite period. The two Gardai then drove out of the bog down to near the village of Newbridge where they stopped at the side of the road. Garda Byrne was driving and the applicant was sitting in the back seat beside Sergeant Connolly. Sergeant Connolly asked him would he tell them where he was on the 19th July and he said:

"I told the truth about where I was in the forms that were filled out".

Sergeant Connolly then asked him to tell them again and the applicant said: "I left home about 10 o'clock and I cycled to

Ballinamore Bridge." He said he stayed there for a while, then cycled back home and was home at 11.30 p.m. The Gardai then asked him to name people that he had met on the journey to Ballinamore Bridge, while he was there, and on the return journey. The applicant could not name anyone. Sergeant Connolly then told him that he did not believe that he went to Ballinamore Bridge between 10 o'clock and 11.30 p.m.; that a number of people known to the Gardai who were in Ballinamore Bridge at that particular time had been interviewed and none of them had seen him; and that Sergeant Keane from Ballygar was in Ballinamore Bridge around that time and had not seen the applicant. Both Gardai then asked the applicant to "tell the truth" and said they believed that "he was some way involved in the death of William Mannion". The applicant then said:

"Alright, I stabbed William Mannion. That's the truth.

Now you have it."

Sergeant Connolly then administered the caution in the usual form and the applicant replied "I am in trouble now". Sergeant Connolly asked him if he would tell the whole story and he said

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"Alright, but some of isn't very clear".

At this point, Garda Byrne started up the car and drove to Ballinasloe Garda Station, which was approximately fifteen miles away.

During the course of the drive, the applicant said to the Gardai:-

"I didn't go to Ballinamore Bridge the first time. I cycled to William Mannion's. He let me in and we sat down and had a chat. I drew the knife and stabbed him a good few times in the neck and face. I left him sitting in a corner. He was all blood. I cycled home and I threw the knife away down the bog road."

When the Garda car arrived in Ballinasloe, Garda Byrne parked it in the yard of the Garda Station. The two Gardai then began to get out of the car, but the applicant said "Can we not talk here?". D/Garda Byrne said to him "Will you tell us everything that you done on Sunday, the 19th July?". The applicant said, "Alright".

The applicant then told the Gardai that he met William Mannion coming out of Mass in Ballygar that Sunday morning. He said they

walked up the street together as far as Kelleher's shop. He said he went home and had his dinner and he listened to the Cork V. Kerry match on radio. He left home at 5 o'clock and he went to the house of his uncle, James Mulvee. He returned home at 7 o'clock and had his tea. He dressed up and left home at 10 p.m., cycled down the bog road and got the knife. He said he got the knife in James Mulvee's house a few weeks before that. The applicant's statement continued:-

"I sharpened the knife as I decided to kill William Mannion. I cycled to William Mannion's house, put the bicycle in around the side. I knocked at the door and he let me in. We sat down at a table and we talked for a while. I took out the knife and just stabbed Willy in the neck and face. He shouted at me to get out of the house. I had a hatchet in my hand when I was stabbing Mannion but I did not use it. I put it back in the same place that I got it. I left him sort of sitting in a corner. He was all blood. I cycled home. I threw the knife into Cusack's Bottom, home around half past



eleven, washed my hands because they were all blood."

The applicant said that he left the house at about 11.45 p.m.. and cycled to Ballinamore Bridge. Sergeant Connolly asked him how he felt now that he had told the Gardai. He answered: "I do not know why I did it and I am not sorry over it".

The interview in the yard of Ballinasloe Garda Station lasted approximately an hour. Sergeant Connolly asked the applicant would he make a written statement and the applicant said:

"I suppose I might as well now."

The two Gardai and the applicant then went into the Garda Station. It was now 2.20 p.m.

On entering the Garda Station, D/Garda Byrne again cautioned the accused and asked him to draw a sketch and indicate to the Gardai where he had thrown away the knife. The applicant said to D/Garda Byrne:

"If you draw a sketch of the bog road, I will mark where it is."

D/Garda Byrne drew the sketch and the applicant indicated on it with a "X" where he had thrown the knife. D/Garda Byrne then asked the applicant to draw a sketch of the knife and he did so. Garda Byrne then drew a rough sketch of Mr. Mannion's home and the applicant indicated on the plan the position of various items of furniture,

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where he had left the hatchet and where he had left the dead man sitting. The applicant then made a statement which was reduced to written form and signed by him in the presence of the two Gardai, who also signed the statement as witnesses. The Statement, which is recorded as having been completed at 4 p.m., incorporates a description of the killing which corresponds in all essentials to the verbal description given by the applicant prior to his entering the Garda Station.

After making the written statement, the applicant remained at the Garda Station. His finger prints were taken by D/Sergeant Hogan, who was accompanied by D/Inspector McDonagh from the Garda Technical Bureau. D/Sergeant Prior, of the local Gardai and D/Garda Moran from Galway spoke to the applicant at about 6.05 p.m. At that stage he was again cautioned by D/Garda Moran and a conversation ensued between the applicant and the two Gardai, in which he again admitted to having killed William Mannion. At 6.35 p.m., Doctor Arnold of Ballinasloe took samples of the applicant's hair and blood, with his consent. At 7.40 p.m., he was arrested by D/Sergeant Prior for the murder of William Mannion and cautioned again. He was at that stage charged by D/Sergeant Prior with the murder and again

cautioned. He replied to the caution:-

"I understand that, I don't want to say anything."

At 8.10 p.m., he was charged before a Peace Commissioner with the murder of William Mannion, and, after D/Sergeant Prior had given evidence of arrest, charge and caution he was remanded to the District Court at Mountbellew on the 3rd September. As the hearing before the Peace Commissioner came to an end, the applicant's father entered the room and the applicant said to him:

"That is it, daddy, I gave in, I told them everything."

On the 3rd September, the applicant was brought before Mountbellew District Court and remanded in custody to Loughrea District Court on the 9th September. The custodial institution was St. Patrick's, Dublin, and the applicant asked D/Garda Johnston if they could travel past his home on the way to Dublin. They took that route and as they passed a point near his house, the applicant said:

"that is where I threw the knife across the ditch".

Sergeant Connolly said in evidence that the first time he was satisfied that the applicant was involved was when he indicated on the plan of the house the location of the different household items. He said, notwithstanding the admissions made by the applicant at an earlier stage, he was not prepared to arrest him then, as he was not satisfied

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on that evidence alone, that he was the person responsible. He said that another person in the locality had, prior to September 2nd, confessed to the killing and that, accordingly, it was not appropriate to arrest the applicant until he had provided the detailed material already referred to. He could not offer any explanation as to why the applicant was not arrested until 7.40 p.m. on that evening. He said that, so far as the charge was concerned, it was necessary to seek the directions of the respondent in cases of murder before a charge was actually made. He was, however, satisfied that the applicant was not free to leave the Garda Station after he had indicated on the sketch the location of different items in the house at some time between 2.30 and 2.50 p.m.

Inspector McDonagh said in evidence that he went to Ballinasloe Garda Station that evening in order to obtain a further set of finger prints from the applicant, the earlier sets of finger prints taken having proved unsatisfactory. (The Gardai wished to ascertain whether the applicant's finger prints corresponded to finger prints left at the scene, but no such correspondence was established in the evidence). Inspector McDonagh agreed that he had travelled from Dublin that day, but denied that he had gone there as a result of an

arrangement with the Gardai investigating the murder under which the applicant would be brought into <sup>the</sup> station in Ballinasloe in order to have his finger prints taken again. He said that he was in any event travelling to Limerick on other Garda business and also to attend a funeral.

Sergeant Connolly denied a suggestion made to him in cross-examination that he had struck the applicant while they were in the car. There was no suggestion at the trial that any of the Gardai had offered any inducement to the applicant to make the statements in question. Nor was any suggestion made to any of the Gardai that the applicant at any time on September 2nd expressed any desire to leave the car, the yard of the Garda Station at Ballinasloe or the Garda Station itself.

No evidence was given by the applicant at his trial in relation to any of these matters.

At the point in the trial when Counsel for the prosecution was about to tender the evidence of Detective Sergeant Connolly and Detective Garda Byrne, Counsel for the Defence informed the Judge that he was objecting to the admissibility of their evidence and the

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evidence of the other Gardai in relation to the statements made on September 2nd on the grounds that his client was in unlawful custody at the time they were made and that, accordingly, the statements were obtained as a result of a deliberate and conscious violation of his client's constitutional rights. The learned trial Judge then heard evidence in the absence of the jury as to the circumstances in which the statements had been taken. Further submission were made by Counsel, and the learned trial Judge then ruled on the admissibility of the statements. It was not suggested at the trial or on the hearing of this application that the procedure adopted by the learned trial Judge was not appropriate to the circumstances. As none of the evidence of the Garda witnesses was controverted, there was no conflict of evidence to be resolved and, accordingly, it was not necessary to leave any issue of fact to be determined by the jury in accordance with the decision of the Supreme Court in Director of Public Prosecutions v. Lynch (ILMR, No. 1, p. 389).

The learned trial Judge said that he was satisfied on the evidence that the applicant had gone to Ballinasloe voluntarily with the Gardai and that the statements made by him, from the time

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Detective Sergeant Connolly and Detective Sergeant Byrne met him on the bog until they entered the Garda Station at Ballinasloe, were made voluntarily by the applicant and at a stage when he was not in unlawful custody. He accordingly ruled that the statements were admissible. The learned trial Judge further found, however, that at the stage when the applicant was in the yard of the Garda Station at Ballinasloe, a point had been reached at which the Gardai intended to charge the applicant. He was satisfied on the evidence that the Gardai at that stage deferred charging the applicant because they wished to complete their assembly of the evidence before presenting that evidence to a Peace Commissioner. The learned trial Judge said that in so doing the Gardai were holding the applicant for the purpose of assembling other evidence and that his detention for that purpose was unlawful. He accordingly ruled as inadmissible the statements made by the applicant after he had entered the Garda Station.

This Court, accordingly, is only concerned with the correctness of the learned trial Judge's ruling that the statements made prior to the applicant's entering the Garda Station at Ballinasloe were admissible. The evidence of D/Sergeant Connolly was to the effect

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that it was not until the applicant indicated the items of furniture on the sketch plan in the Garda Station that he was satisfied that he should be arrested. It is not altogether clear why the learned trial Judge considered that the status of the applicant had altered at a slightly earlier point in time, i.e. after he had arrived in Ballinasloe but before he entered the Garda Station. It may be that the learned trial Judge was of the view that before entering the unfamiliar environment of the Garda Station the applicant should either have been expressly informed that he was not under detention and was free to go or should have been then and there arrested. It appears to the Court, however, at least doubtful whether the evidence was capable of supporting an inference that the situation of the applicant when he entered the Garda Station at Ballinasloe was materially different from his situation at the point in time when the car journey from Newbridge to Ballinasloe began, at which stage the Gardai had already told the applicant that they believed he was implicated in the crime and the applicant had made his first admission of guilt.



The Court, however, does not find it necessary to express any opinion as to whether, in the circumstances of this case, it would have been appropriate for the Gardai to arrest the applicant before they left Newbridge to go to Ballinasloe. The learned trial Judge found as a fact, not only that the statements made by the applicant during that journey were voluntary, but also that he went on the journey voluntarily. He was clearly entitled to make that finding on the basis of evidence by the Gardai which was not controverted in any way by the applicant. In these circumstances, he was also entitled to hold, as he did, that the statements made in the course of the journey were not obtained as the result of any deliberate and conscious violation of the constitutional rights of the applicant and thereby rendered inadmissible by virtue of the decision of the Supreme Court in The Attorney General v. O'Brien (1965) I.R. 142 as explained by the Supreme Court in D.P.P. v. Lynch.

It was also submitted that the statements should have been excluded because of the age of the applicant. The evidence established that he was some months past his seventeenth birthday at the time. It was conceded that, in these circumstances, he was not entitled to be treated as a "child" or young person within the meaning

of the relevant legislation. It was urged, however, that his youth should have been taken into account in determining whether the statements were admissible. No doubt, the age of the accused is one of the matters which a court should in certain circumstances take into account in considering whether a statement can properly be regarded as voluntary, or whether, even if voluntary, it shall as a matter of discretion be excluded. In the circumstances of the present case, however, no serious issue arose at the trial or on the hearing of this application as to the voluntariness of the statements. The real issue was as to the admissibility of the statements, having regard to the possibility that they had been obtained as the result of a deliberate and conscious violation of the constitutional rights of the applicant. In this context, the age of the applicant was clearly irrelevant: had the evidence been obtained as a result of such a violation, it would have been inadmissible on the principles already referred to, irrespective of the age of the applicant.

For the reasons stated the application for leave to appeal will be treated as the appeal and is refused.

*Castro &*  
*Philip J. Heenan*  
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