

THE HIGH COURT
IN THE MATTER OF SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT
1961

[2019 No.371 SS]

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF GARDA PADRAIG MCWEENEY)

PROSECUTOR

AND

LAURA DOYLE

ACCUSED

JUDGMENT of Ms. Justice Mary Rose Gearty delivered on the 6th day of March, 2020

Introduction

1. This is a consultative case stated based on a series of events which began with a car chase through a quiet townland in County Longford and ended with the arrest of the accused as she sat in the driver's seat of her Toyota Avensis. The legal issue concerns the accidental deletion of footage of part of that chase, obtained from CCTV cameras installed to monitor the car park of Feerick's Hotel, Rathowen. The case, therefore, is one in the category of "Missing Evidence" cases. Before outlining the facts, the authorities are briefly described.

Lost or Destroyed Evidence – Rationale for Halting a Trial

2. The first in a series of cases seeking prohibition of criminal trials on the basis of missing evidence in this jurisdiction was *Braddish v. Director of Public Prosecutions*, [2001] 3 IR 127. Much earlier cases, going back to the 1800's, acknowledged the duty of the prosecution to preserve evidence relevant to innocence as well as guilt and in the case of *Murphy v. Director of Public Prosecutions*, [1989] ILRM 71, Mr. Justice Lynch injuncted a trial on similar grounds; in that case a car had been scrapped for salvage value before the applicant could test the steering wheel for finger prints in order to suggest that he was not driving the car at the time of the alleged road traffic offences. Over 20 years later, Mr. Braddish sought to prohibit his trial, relying on *Murphy* and heralding a slew of similar cases, on the basis that material evidence had been lost by the gardaí investigating the case. He succeeded in prohibiting his trial for robbery, despite his having confessed to the offence, as CCTV footage of the incident was not preserved for the trial. The Supreme Court confirmed that if the investigating arm of the State lost or destroyed the main evidence in a case against an accused person, the courts would consider prohibiting the trial on the basis that there was a real risk of an unfair trial. In the words of Hardiman J. in *Braddish*, "*this is a video tape which purports actually to show the robbery in progress. It is not acceptable, in my view, to excuse the absence of so vital and direct a piece of evidence simply by saying the prosecution are not relying on it but prefer to rely on an alleged confession*" (page 132). The Supreme Court noted that the rule requiring the preservation of evidence goes beyond direct evidence such as the tape in question, to include items which, quoting Lynch J. in *Murphy*, "*may give rise to the reasonable possibility of securing relevant evidence*".

3. The instant case does not involve evidence having been deliberately lost or destroyed. This could bring into play a culpability factor, which some commentators refer to as the integrity principle, which may, in an appropriate case, persuade a court to halt a trial in the absence of the missing evidence based on the culpability of the investigator rather than on the materiality of the evidence. Most Irish superior court cases which address the issue of missing evidence suggest that the integrity principle will not assist an applicant if the evidence is not also relevant and material. Most judges have also expressly held that any culpability in the loss or destruction of evidence is irrelevant. This is not the universal view, however, and logic suggests that, in the right case, this factor may yet emerge more decisively, even if it is not dispositive of the case. Mr. Justice Clarke, for instance, commented obiter in *Wall v. Director of Public Prosecutions*, [2013] 4 IR 309, that the degree of culpability relating to the absence of the evidence might possibly form part of the test in an appropriate case (MacMenamin J. concurring with this proposal). The culpability factor in such a case may yet surface in sufficiently egregious circumstances, as acknowledged in *Wall*, above, and it has been useful in analysing the current superior court authorities relied upon in this case, some of which did not otherwise sit comfortably together.
4. Mr. Justice O'Donnell held (at page 392 of *Wall v. Director of Public Prosecutions*) that in determining whether or not the absence of evidence should result in a trial being prohibited: *materiality is perhaps the factor to which most weight should be given*. This sums up the current position as to the test to be applied by a trial judge when assessing whether or not the risk of an unfair trial is real. It was also in *Wall* that O'Donnell J. pointed out that the principles in such cases were, by the time of that decision, well known in the courts. The tenor of his judgment, with which most members of the Supreme Court expressly concurred, was to encourage practitioners to resolve these issues at trial because the trial judge, having heard the evidence in the case, was best positioned to rule on whether or not there was a real risk of an unfair trial. The role of the trial judge will be considered below. The history of the missing evidence judicial review application, culminating in this (largely successful) attempt to remove the issue from the judicial review list and return it to the trial court is pithily described by Paul Anthony McDermott in "From Boom to Bust: the Rise and Fall of Fair Trial Judicial Review", in *The Irish Jurist*: 2016, 56(56), 261-285.

Role of the Trial Judge

5. The Supreme Court has emphasised the role of the trial judge in assessing the materiality of the missing evidence. In *Z v. Director of Public Prosecutions*, [1994] 2 IR 476, in an often quoted reference, this point was made clear by Finlay C.J. at page 507:

"...where one speaks of an onus to establish a real risk of an unfair trial it necessarily and inevitably means an unfair trial which cannot be avoided by appropriate rulings and directions on the part of the trial judge. The risk is a real one but the unfairness of trial must be an unavoidable unfairness of trial."
6. In *D(C) v Director of Public Prosecutions*, [2009] IESC 70, Mr. Justice Fennelly revisited the issue of the role of the trial judge. This case involved a relatively minor sexual

assault, but one which was captured on several CCTV cameras outside Leinster House. The case is instructive in that it was decided subsequent to *McHugh v. Director of Public Prosecutions*, [2009] IESC 15, which was relied upon by this Applicant. In *McHugh*, the same judge had decided that missing footage, albeit footage that had been viewed by the relevant gardaí, was so material to the case that the trial could not proceed fairly when the footage had not been preserved. In D(C), the footage from many, but not all, of the relevant cameras had been obtained and preserved. In the case of one piece of footage, there were only a number of still photographs available. Fennelly J, ruling that the trial Mr. D's trial should proceed, commented as follows on his own earlier decision:

"In McHugh v DPP [2009] IESC 15, I delivered a judgment with which Denham and Hardiman JJ agreed. The case concerned an alleged theft from a Lidl store. When the gardaí went to find the CCTV footage, they were provided, not with a copy of the moving footage, which was seen by both the gardaí but with a number of stills. The only evidence against the accused person at his trial was to be his identification by gardaí from their viewing of the CCTV footage which they had seen but which was no longer available, had never been seen on behalf of the defence and would not be available to the defence at trial. This Court was of the view that the still photographs could not assist "in any realistic way" in showing the accused person to be engaging in suspicious a manner. The facts of that case do not remotely resemble those of the present.

23. *At this point, on reflection, I wonder whether even that case could not properly have been left on the basis that it would be unfair to admit evidence of identification from unavailable CCTV footage, which would be a matter for the trial judge.*

24. *As has been emphasised many times, this type of application must be considered in the context of all the evidence likely to put forward at the trial. The key question whether there is a real risk of an unfair trial can not be viewed in vacuo. Evidence is never perfect. Neither the prosecution nor the defence can be assured that all conceivable evidence will be available."*

7. In *Savage v. Director of Public Prosecutions*, [2008] IESC 39, the principles governing such cases were summarised. The accused must show the real possibility that, in the absence of the evidence, the accused will be unable to advance a point material to his defence. Like the duty to seek out and preserve relevant evidence, this possibility must be interpreted in a practical and realistic way and 'no remote, theoretical or fanciful possibility will lead to the prohibition of a trial' (as set out in *Dunne v. Director of Public Prosecutions*, [2002] 2 IR 305). The application is considered in the context of all the evidence likely to be put forward at the trial and the extent to which prosecution evidence is contested. The applicant must engage with the evidence and show how the risk manifests itself. Risks which arise only on a speculative basis have not led to trials being prohibited. For instance, where there is ample other evidence of the allegation or where the potential for the evidence to be relevant is hypothetical or where there is secondary

evidence of what the missing evidence would have shown. This last occurred in cases such as *McFarlane v. Director of Public Prosecutions*, [2006] IESC 11, where items of evidence had been destroyed but had been forensically examined first, and in various cases in which CCTV footage was lost but had been viewed first, as occurred in the two cases referred to above, D (C) and McHugh.

8. Absent evidence of deliberate loss or destruction of evidence, which would raise the issue of the moral integrity and not just the reliability of a verdict, there are only two questions to be resolved: is there a real risk of unfairness to the accused, in that the absence of evidence means that he cannot advance a point material to his defence? If so, can the trial judge nonetheless ensure that this risk of an unfair trial is averted? If the risk is real and cannot be averted, the trial should not proceed.

Facts

9. The Applicant was travelling in a silver Toyota Avensis on the night of Friday the 4th of March, 2016. The car attracted suspicion in Granard, County Longford and a garda car was dispatched, the driver first spotting the Avensis in Ansagh, in Edgeworthstown. When signalled to pull over, the Avensis continued on its erratic course through Edgeworthstown and its surrounding townlands, before turning back to Rathowen where the car pulled into Feerick's Hotel. Throughout this period, the garda car maintained close chase as the Avensis veered onto the wrong side of the road and reached speeds of up to 120km per hour. The garda driver lost sight of the Avensis for a short period at Rathowen. Having seen headlights in the car park of Feerick's Hotel in that town, the garda driver turned into the hotel. There, he noted a silver Toyota Avensis and, concluding correctly that this was the same car, renewed the pursuit, turning on his siren and blue lights. The Avensis exited the car park, veered onto the wrong side of the road again, drove in the direction of Mullingar but came to a stop 60 metres further down the road. The Applicant was in the driver's seat, with the engine still running, and there was a male passenger. The garda driver and his passenger witnessed the whole of these events apart from a short period during which the garda car turned in Rathowen and returned to Feerick's Hotel.
10. On arrest, the Applicant was incoherent and unsteady on her feet. She gave a false name and, when told there was no person of that name at the address she had given, she gave her correct name. The Applicant was the owner of the car and, when asked at the Garda Station, confirmed that she had been driving. The passenger, when the Applicant was arrested, claimed that he had been driving.
11. A number of charges were brought against the Applicant including dangerous driving charges relating to her driving before entering Feerick's, failing to remain at the scene of an accident (which refers to an alleged collision in the car park), driving without a licence or insurance, and further dangerous driving charges which are directed at her driving after she exited Feerick's Hotel.

The Footage Evidence

12. The prosecuting guard, who was the garda driver on the night in question, sought CCTV evidence from the hotel and he viewed it himself before downloading it. It is common case that, in error, it was deleted as efforts were being made to download it. No fault attached to the gardaí in this regard and it is clear that immediate efforts were made to obtain the footage. Having viewed the footage, the garda witness told the District Court Judge what he had seen. He gave evidence that he could see the Avensis entering the car park, colliding with a parked car and exiting, followed by his garda car which had appeared in the footage moments later. He told the court that he could not see the driver of the Avensis at any stage on the CCTV footage, nor could he say if the driver had long hair or not. There was a period of 20 seconds when the car was out of shot as the cameras did not cover every angle of the car park. This garda evidence will be referred to as "the footage evidence".

The Cross-examination Evidence

13. The prosecuting guard, under cross-examination, accepted that he supposed it was possible that the CCTV, if obtained, could have been of evidential value to the accused. He agreed that, if enhanced, it had the potential to exonerate the accused. The main thrust of his evidence, however, was that the footage was clearly of evidential value to the prosecution and not to the defence, as it showed the collision. It also showed the car coming into, and then leaving the car park. It was not suggested to him that there had been no collision.

The Question asked and its Premise: there was no Evidence to assist the Defendant

14. The District Court Judge has found as a fact that the missing footage did not contain anything of evidential value that could assist the defendant in the case. He asks if, having so found, he is correct in finding that the defendant was not at a serious or unavoidable risk of receiving an unfair trial, taking into account the concessions made by the prosecuting guard and the admissions made by the Defendant.
15. The Applicant has argued that the High Court may not be bound by the question as framed by the District Judge, where it is said that evidence of the garda witness under cross-examination directly contradicts the finding and where, it is further submitted, the evidence of viewing the footage was itself inadmissible.
16. The law on this issue is clear. It is set out by Mr. Dermot Walsh in *Walsh on Criminal Procedure*, 2nd edition, as follows: "The general principle is that the District Court judge's findings of fact underpinning the case stated are conclusive, unless it appears that there is no evidence to support them".
17. Here, not only is there ample evidence to support the finding of fact, the only potential evidence to the contrary was the concession described above. The garda witness made it clear that at no point could he see who was driving. He also confirmed that it was not possible to see, in the CCTV footage he viewed, who was behind the wheel. The guard could not rule out, under cross-examination, that if the footage was enhanced, it was theoretically possible that the footage might have shown more clearly who was driving. It was this that was characterised in submissions as his concession that that the CCTV

footage might have provided evidence favourable to the Applicant. This does not contradict the findings of the Trial Judge, nor does it mean that the Judge was not entitled to find as a fact that there was nothing of evidential value to the defence on the CCTV footage. He was entitled to so find; the footage had not been enhanced and, as viewed by the Garda witness, it was of no value to the Applicant.

18. In *Director of Public Prosecutions v. Byrne*, [2010] IESC 54, O'Donnell J. made a comment, which could be applied to the proposal in this case that the footage might have been enhanced:

"On the evidence so far before this Court, that is a speculation which can properly be described as both remote and fanciful, and the absence of any real engagement of the accused with the facts of this case comes in to even starker relief ... this is not a case of inaction or incompetence on the part of the Gardaí. [The] Garda sought to copy the CCTV footage ... He did obtain what was available at the time ... The duty to seek out and preserve evidence, is one which must, on all the authorities, be interpreted realistically ... it would in my view be going too far to prohibit this trial on the grounds the Gardaí ought to have taken some unspecified steps at an unspecified time to secure more by way of evidence than [the] Garda had".

19. The concession was a minimal one. It was no more than a witness accepting a hypothetical or speculative proposition put to him. As such, it does not raise a real risk that evidence existed which might have exonerated the Applicant, had it only been made available. It would have to be not only available but enhanced and, when enhanced could only be exculpatory if, in the extremely short span of time available to her, a woman who had difficulty walking and speaking on arrest moments later, had chosen the only spot in Feerick's not covered by CCTV cameras to stop, switch places with her driver and restart the car. All this would have to occur without the occupants of the garda car (immediately behind her exiting the car park in the footage) even noticing the car stopping, let alone the switch. Insofar as the first hurdle in this case is to show that there is a real risk of an unfair trial, the Applicant has not cleared that hurdle.

The Admissibility of the Footage Evidence: best evidence, hearsay, provenance and reliability

20. The Applicant made further submissions based on the argument that the footage evidence was inadmissible. While the issue in this case has been decided on the basis that there was no risk of an unfair trial given the justified finding that the footage evidence was of no evidential value to the defence, substantial time was spent on the arguments in respect of admissibility and some comments may be helpful in that regard.
21. It was said that the Trial Judge could not justify the conclusion that there was no evidential value to the defence in the footage, not having seen it himself. References were made in written submissions to best evidence and to the hearsay rule, none of which was pursued in oral argument. To deal briefly with these propositions: judges accept evidence of what other people have seen every day; it is an intrinsic part of the job. If

the evidence comprises an account of what has been seen on CCTV, that too can constitute evidence in a criminal trial. The best evidence rule does not mean that a witness cannot describe what she has seen on CCTV footage, even if that footage is lost. To quote from Mr. Declan McGrath on Evidence, the best evidence rule “*has fallen into desuetude and has no continuing vitality in Irish law as an independent rule of admissibility*” (second ed. para 1.26). CCTV footage evidence is real evidence, not hearsay evidence (see the judgment of McKechnie J. in the Supreme Court in *Director of Public Prosecutions v. McD (A)*, [2017] 1 I.L.R.M. 176) and the testimony of a witness who has viewed CCTV footage may be admissible as evidence of what she has seen, depending on the circumstances, of course. It may or may not be fair to adduce it in all the circumstances of an individual case, but it is not inadmissible *per se*.

22. Arguments were also made in this Court about the provenance and reliability of the CCTV footage. These arguments were not raised in the District Court. This may have been because the garda evidence included a description of the owner of the hotel keeping the relevant video facilities, showing the system to the garda witness, the efforts of staff to download the material and the description of what could be seen matching what garda witnesses had observed. It will be recalled that the garda witness who gave this evidence as to what he saw on the footage was driving behind the vehicle at almost all relevant times in real time and, on the footage, could see his own vehicle following the Avenis out of the car park. It is in those circumstances that no argument was made about the reliability of the CCTV footage. Bearing in mind the Supreme Court guidance in relation to CCTV footage as set out in McD’s case, this appears to have been a sensible decision.

The Admissibility of the Footage Evidence: Opportunity to test by Cross-examination

23. The main focus of the argument at the hearing of this application was in respect of admissibility due to the suggested inability of the defence to cross-examine the garda witness, not having seen the footage in question.
24. The Applicant relied on the cases of *Stirling v District Court Judge Collins and Another*, [2014] IESC 13 and *McHugh v. Director of Public Prosecutions*, [2009] IESC 15. Given the reliance on these cases, it may be helpful to examine them in some detail. In *Stirling*, there was video footage of an incident which was described as being of prime importance. It apparently showed the entirety of the offence (criminal damage) and was lost by the gardaí “*in circumstances never fully explained*”, to use the words of Mr. Justice MacMenamin. It had been taken from garda storage without being signed out. The appellant in that case was not arrested at the scene but some distance away, and the allegation was that he was one of a number of youths involved in kicking a phone box and some shutters. He made no admissions. The trial was prohibited due to the central role of the footage in identifying that applicant and delineating his alleged role in the events depicted on film. The case is not authority for the proposition that a garda witness cannot give evidence of what he has seen on CCTV footage. In that case, it was the primary evidence of what had occurred and included an alleged identification of the appellant. Perhaps more pertinently, the circumstances of the loss of the footage, while unexplained, were clearly laid at the door of the investigators. None of these factors is present in the

instant case. Also of interest in this regard, and recalling the comments in respect of the integrity principle and the possible role of a moral, as opposed to a reliability-based objection to the trial of an accused in these circumstances is the case of *Sirbu v. Director of Public Prosecutions*, [2015] IECA 238. Here, Mr. Justice Hogan considered and distinguished the case of Stirling on the combined bases of culpability and materiality. He pointed out that the fact evidence was missing in Stirling was *most definitely the fault of gardaí* and that the case was one of mistaken identity. “*The height of the prosecution case in Stirling was the remote identification of a youth by an observing garda based on CCTV footage which was no longer available*”, (see paragraphs 17 to 19 of his judgment in this regard). In *Sirbu*, Hogan J. continued, the facts (like those in the instant case) involved footage which gardaí had conscientiously sought to obtain but which had accidentally been overridden. In Stirling, the positive defence of mistaken identity had been asserted but no opportunity was now available to test the identification made. In *Sirbu*, the accused accepted being at the location in question, so identification was not the issue. Looking at the facts of this case, this Applicant accepts that she was in the car but says that she was not driving. The CCTV footage here did not assist as to who was driving. The issue in this case is not one of mistaken identity, or certainly not in the same way as it arose in Stirling. If anything, the missing evidence has the opposite effect; the guards in Stirling used the footage to nominate that Applicant as the offender but here, the footage is not relied upon at all in that regard. There is ample other evidence as to who was driving but none available from the CCTV footage even before it was deleted. As to how the footage might be used in other ways, this is addressed below. Hogan J. emphasised the role of the trial judge in ensuring a fair trial pointing out that, in considering the descriptions of what had been seen in the *Sirbu* CCTV footage, the trial judge would be in the best position to consider what rulings or directions, if any, would vindicate the applicant’s right to a fair trial.

25. In *McHugh*, the second case specifically relied upon in argument, the issue was the identification of the appellant in CCTV footage which was then, without explanation, not provided to the defence. Here, a number of still photographs were provided to the defence but not the footage which apparently showed a person putting on a jacket over a stolen item of clothing and leaving. Crucially, according to the Supreme Court, this was the footage which was the basis for the identification of the appellant in that case. The trial was prohibited.
26. Firstly, this case was different in terms of its facts. As already set out above, there was ample other evidence in this case and the footage was not used to identify the Applicant. In terms of using the footage as evidence of a collision, that will be a matter for the Trial Judge at the hearing. It appears from the case as stated that the description of a collision was not contested by this Applicant in that it was never suggested to the garda witness that there had been no collision rather it was suggested that he could not see who was driving – with which proposition he readily agreed: he couldn’t see the driver.
27. But secondly and significantly, while *McHugh* was relied upon, the subsequent decision of the same Court in *D(C)* qualifies that judgment, as has already been set out above. In

D(C), Mr. Justice Fennelly candidly queried his own judgment in McHugh, reflecting that rulings of the trial judge in respect of the admissibility of the stills photographs might well have been sufficient to ensure a fair trial. In the D(C) case, Fennelly J. concluded that;

"it is clear that all questions of the admissibility of any such evidence and the weight to be attached to it are quintessentially a matter for the court of trial. This Court cannot express any view on that matter (though I have expressed a purely personal view about what is shown in the photograph). The trial judge has full jurisdiction to rule on any matters such as the admissibility of opinions concerning what the photographs show."

28. This Court has found that there is no risk of an unfair trial in the absence of the CCTV footage. The trial can proceed on the basis that the footage evidence will be evaluated by the Trial Judge so that the case can proceed fairly. There was other evidence available in respect of all the offences charged. There is no basis on which this application can succeed, either in demonstrating a real risk of unfairness or in showing that a trial judge could not avoid the risk by rulings or directions.
29. It appears that the only basis on which there could be a further objection to the Trial Judge relying on the description of the footage might be on the basis that he should not consider it as evidence of a collision. In this regard, the Trial Judge will be entitled to consider the other evidence of damage and the defence that has been raised in deciding whether or not to consider the footage evidence and, if he decides to admit it, what weight ought to attach to it. Is evidence of seeing a recording of one car colliding with another any different to evidence purporting to constitute an identification in terms of the ability to test the evidence? If the defence is confined to the issue of who was driving, then the footage becomes irrelevant to the defence and an opportunity to test what was seen on the footage by cross-examination is neither here nor there as, again, nothing in the footage is capable of advancing the defence case.

The Admissibility of the Footage Evidence: Prejudice

30. There were final arguments based on what was said to be the prejudicial nature of the evidence generally. It was said that the Judge should not have been offered evidence about the collision and that the Judge's question for this Court was unfairly based on his having heard this prejudicial evidence. In order to maintain such an argument, the defence must object to the admissibility of the evidence in the first place. If such an objection is made, it is this Trial Judge, sitting alone, who must hear the evidence to decide if it is admissible. This exercise cannot take place without adducing the evidence in the first place, a daily occurrence in the District Court. In the normal course, evidence which tends to suggest that an accused is guilty is easily and often omitted from a court's consideration when it is inadmissible. There is nothing in this case to suggest that the Trial Judge did otherwise here. Secondly, the question for this Court was based on a reasonable interpretation of the footage evidence as described to the District Court, there is no need to look elsewhere to explain the Judge's question. Thirdly, it is difficult to see how the evidence of a collision could be unfairly prejudicial. The fact that the garda

witness described a collision he saw on the CCTV footage was prejudicial only in the sense that most evidence in a prosecution case is prejudicial to the accused.

31. The suggestion was also made that the prosecution should not have relied on the footage evidence to prove a collision while also maintaining that it was of no evidential value. That submission is based on a mistaken premise. The prosecution never suggested that the CCTV was of no evidential value. The garda witness was at pains to point out that it was of significant value in that it showed the collision.

Rationale for Halting this Trial?

32. Going back to the initial assessment of the rationale for halting a case in which evidence has been lost or destroyed: In this case, the lost footage evidence was not material to the defence advanced at trial, nor was there any culpability in its loss. There is ample and cogent evidence of most, if not all, of the offences charged without any reference to the footage evidence. No purpose is served in ruling that the trial should not proceed. A court must examine critically how important the missing evidence was in the context of the case as a whole. Here, it was of minimal importance viewed in the context of the Applicant's stated defence, that she was not the driver. While it may have been theoretically possible to enhance the footage, this remains a speculative hypothesis about what might have been shown. The garda witness's evidence as to what he had been able to see is admissible evidence as to what the footage contained in that regard and it will be a matter for the Trial Judge as to whether or not he accepts evidence of all matters viewed on the footage.

Conclusion

33. Here, a woman was arrested having been seen to exit the driver's seat of the car involved in all the offences described to the Trial Judge. She admitted being the owner and the driver throughout, but now argues that her trial will be unfair without a few moments of footage from a hotel car park. The main focus of submissions to this Court was on the potential weight of such evidence, when what a witness has viewed on CCTV footage has been lost, and how difficult it is to contest such evidence. There was ample other evidence available to the Trial Court. The footage evidence was presented to the District Judge. Having heard that evidence, he was entitled to find, as he did, that the footage itself would not have assisted the defence. The question which then arose was whether, having so found, the Judge was correct to find that there was no serious risk of an unfair trial and the answer to that question is clearly, yes, in the circumstances of this case he was correct to so find.