Neutral Citation No: [2018] NICA 1 *Judgment: approved by the Court for handing down* *(subject to editorial corrections)**	*Ref:* **MOR10533** *Delivered:* **12/01/2018**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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REGINA

-v-

ALFRED DAVID BEATTIE

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Before: Morgan LCJ, Deeny LJ and Treacy LJ

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MORGAN, LCJ (delivering the judgment of the Court)

[1] This is an appeal with the leave of the single judge against conviction. On 18 February 2016, the appellant was arraigned and pleaded not guilty to one count of intending to pervert the course of public justice contrary to common law. He was convicted at Craigavon Crown Court after a trial before His Honour Judge Lynch QC and a jury on 25 October 2017. On 7 December 2017 he was sentenced to 6 months' imprisonment. Mr Farrell appeared for the appellant and Mr Tannahill for the PPS. We are grateful to both counsel for their helpful oral and written submissions.

Background

[2] The appellant was a serving police officer. He returned home on the evening of 25 April 2015 and drank a half bottle of wine that he had already opened. He texted his girlfriend and at approximately 1.00am on 26 April 2015 he got into his motor vehicle to drive to Carnmoney. Approximately a mile from his home he lost control of his car as a result of which he swerved into a tree. He remembers being in a state of shock and left his vehicle in order to walk home. He was confused and was not sure what to do but believed that he did not need to report the accident to the PSNI as no other people or vehicles had been involved.

[3] After returning home he drank more alcohol "in order to calm himself". He then decided to return to the vehicle and cause damage to the steering column and one of the windows of his car with a screwdriver in order to make it look as though the vehicle had been stolen. He states that he was very drunk at this stage. After returning again to his home he continued to drink until he fell asleep.

[4] At mid-day on 26 April 2015 uniformed police officers called at the appellant's home in connection with the recovery of the vehicle. He advised the officers that he had parked the car at the side of his house at 6:30pm on 25 April 2015 and did not go back out in it thereafter. The statement noted that he had been told that a black handled screwdriver was in the foot well of the driver seat and he stated that he did not own such a screwdriver and that it was not his. He also stated that no one had permission to steal his property.

[5] The following day the appellant reflected on what he had done and contacted his brother-in-law who was also a police officer. His brother-in-law accompanied him to Lisburn Police Station where he informed the duty sergeant at approximately 6:50pm on 27 April 2015 that he had had a few drinks and made it look as if the car was stolen. He was then arrested and cautioned.

[6] The appellant was then transferred from Lisburn Police Station to Antrim Custody Suite. Sergeant Todd was the custody sergeant. The appellant was assessed at Antrim Custody Suite at 7:55pm on 27 April 2015. He was asked if there was anything regarding his welfare that he wished to make the custody sergeant aware of and he said that he was frightened where he stood now. He was noted to be very upset, shaking and deep breathing. He was making noises indicative of crying but there were no tears. The custody sergeant noted that on the journey to Antrim Custody Suite in the rear of the police vehicle he stated that he had handed his firearm in to police "to protect himself from himself". The firearm had in fact been handed over by his brother-in-law. The custody sergeant considered that he needed to be assessed for fitness for both detention and interview and pending that assessment by the forensic medical officer ("FMO") he directed that the appellant should be subject to 15 minute checks.

[7] Dr Harrison, the FMO, commenced the medical examination at 8:38pm that evening. He completed the examination at 8:55pm and then informed the custody sergeant that the appellant was fit for detention and interview. In relation to his well-being Dr Harrison had no concerns that he would cause any harm to himself if he was released from police custody as the appellant had informed Dr Harrison that he loved his parents too much to do any harm to himself. Dr Harrison also advised the custody sergeant that a family member would be coming to collect him from the

police station. Dr Harrison also recorded in the FMO medical form "to be released into care of relatives".

[8] A solicitor was then arranged for the appellant and he was accompanied by that solicitor during an interview which commenced at 10:08pm that evening and finished at 10:36pm. During the interview the appellant made straightforward admissions in relation to the offence.

The issues in the appeal

[9] At the trial the appellant objected to the admission of the interview evidence. He relied upon the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers ("Code C") issued pursuant to the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE"). In particular Paragraph 1.4 provides:

> "If an officer has any suspicion, or is told in good faith, that a person of any age may be … mentally vulnerable …, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code."

The notes to Code C provide that:

> "mentally vulnerable" applies to any detainee who, because of their mental state or capacity, may not understand the significance of what was said, of questions or of their replies.

[10] The learned trial judge conducted a *voir dire* in which he heard evidence from Mr Wright who had been the arresting and interviewing officer, Dr Harrison and Prof Farnan, a forensic medical officer called on behalf of the appellant. Prof Farnan, who had never examined the appellant, maintained that the appellant was mentally vulnerable when he was being interviewed. He took into account that the appellant had a past history of depression, was reported as appearing very upset, shaking and deep breathing on initial booking into the police station and was also reported to have given up his personal protection weapon to his brother-in-law "to protect himself from himself". That was indicative of suicidal ideation. He considered that the appellant would have been vulnerable to giving unreliable information and a false confession.

[11] Dr Harrison, who like Prof Farnan was a very experienced FMO, had the advantage of examining the appellant immediately prior to the interview. The appellant volunteered a clear account of the background. The appellant told him about his previous history of depression but he was no longer on medication for that or concerned about it. He was aware that the appellant had handed in his firearm

but was not aware that he had said it was to protect himself from himself. In cross examination he did not accept that this was an indication of suicidal ideation which he had explored with the appellant. He was satisfied that the appellant was not mentally vulnerable.

[12] Mr Wright also gave evidence indicating that the appellant was clearly upset to find himself in this situation. The custody sergeant had considered it appropriate to obtain a medical examination because of the remark made to Mr Wright in the motor vehicle on the way to Antrim Custody Suite. Mr Wright had liaised with the custody sergeant and the custody record demonstrated that Dr Harrison had also spoken to him.

[13] It is common case that it was the responsibility of the custody sergeant to determine whether the appellant was mentally vulnerable and whether an appropriate adult was required. The custody sergeant was not called as a witness.

The judge's conclusion

[14] The learned trial judge was satisfied that subsequent to the examination by Dr Harrison, Mr Wright harboured no suspicion that the appellant was mentally vulnerable. He was also satisfied that Mr Wright had liaised with the custody sergeant, who was the ultimate decision maker, and that the criteria and reasoning applied by Mr Wright were shared by the custody sergeant. He also accepted the evidence of Dr Harrison that the appellant was orientated, understood the situation that he was in and was perfectly able to answer questions. Dr Harrison had the advantage of seeing the appellant at the time. Accordingly he was satisfied beyond reasonable doubt that the appellant was not mentally vulnerable at the time of the interview. The evidence was relevant and there was no reason to exclude it.

Consideration

[15] The admission of confession evidence in a criminal trial is governed by Article 74 of PACE:

> "74. - (1) In any criminal proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.
>
> (2) If, in any criminal proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained-

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid."

[16] We agree that we should apply the law as set out at paragraph 68 of R v Gill and others [2004] EWCA Crim 3245. There was no question of oppression in this case and the issue is not whether the confession was true but whether the circumstances existing at the time were likely to render the confession unreliable.

[17] The case made by the appellant was that the omission in this case was the failure to provide an appropriate adult contrary to the requirements of Code C. The learned trial judge had no evidence from the custody sergeant and indeed no statement had been taken from him. We accept Mr Tannahill's submission that it may be onerous to require retired officers to return to give evidence in all cases in which there is some issue concerned with a custody record. Often these issues can be dealt with by agreement. This, however, was a case in which the appellant had given notice through his defence statement of the basis upon which he was going to challenge the admission of the interviews. The issue was directly concerned with the determination by the custody sergeant of an important protection under Code C. In our view this was a case in which it would have been appropriate for the custody sergeant to be called.

[18] The appellant submitted that in the absence of the custody sergeant the learned trial judge should have adopted an adverse inference about whether the custody sergeant had a suspicion of mental vulnerability. We do not accept that submission. The custody sergeant was careful in light, in particular, of the comments made in the police vehicle on the way to Antrim Custody Suite. His decisions to require assessment by the FMO and to order a 15 minute check on the appellant were indicators of that care.

[19] It is clear, however, that Dr Harrison was able to deal with the concerns about the appellant's vulnerability and the custody record shows that he communicated this directly to the custody sergeant. The fact that Dr Harrison saw the appellant placed him at a considerable advantage. His conclusion was supported by Mr Wright. It was also supported by the fact that the experienced solicitor attending

the appellant did not raise any issue about the need for an appropriate adult. We consider that the drawing of an adverse inference in this case was not supported by that evidence.

[20] We accept, therefore, that the conclusion of the learned trial judge that there was no breach of Code C was unimpeachable. Mr Farrell accepted that his case depended upon him establishing a breach of Code C. The jury had heard evidence from Prof Farnan on the question of unreliability and had clearly come to a view. It was accepted that the charge of the learned trial judge had been scrupulously fair.

Conclusion

[21] For the reasons given the appeal is dismissed.