

THE CROWN COURT IN NORTHERN IRELAND
SITTING IN BELFAST

REGINA

-v-

LOUIS MAGUIRE & CHRISTOPHER POWER

RULING (Prison confession)

DEENY J

[1] In this matter the Crown have served, by way of additional evidence, a statement of GB of 19 September 2016. This gentleman is a serving Prison Officer and at one point he was responsible in HMP Maghaberry for the first Defendant in this trial, Louis Maguire. He was moving him within the prison to a new landing and Maguire had with him some documents, implicitly referring to his case, and an A4 size book, as the Prison Officer describes it in his statement, which was ring bound and which sounds, from his description, as though it was the main book of photographs in this case. That book of photographs included, of course, several photographs of the deceased on the sofa in Louis Maguire's house. The kernel of what the Crown wish to adduce in evidence is that as the Prison Officer was bringing Maguire on to the landing, Maguire was a few metres ahead of him and spoke to a prisoner called RC through the key hole of his cell and as the Prison Officer got closer, perhaps just a metre away, held up the book against the spy glass of the cell and said something to the effect that he Maguire had '*stiffed*' someone. These matters obviously not to be reported during the duration of this trial but, to quote the Prison Officer's statement:

"He definitely used the words, 'I', 'stiffed' and 'guy'. While saying this Mr Maguire Junior -" that is the Defendant,
"was pointing to a picture in the book and I can

remember there was a sofa in this picture. I only glimpsed at this and I cannot remember anything about the sofa or anything else in the picture.”

[2] So the Crown wish to adduce this in evidence and Mr Murphy in support of his helpful submissions referred two decisions of the Court of Appeal in Northern Ireland. One The Queen v McKeown, [2006] NICA 42, I do not think is relevant. The Court of Appeal upheld a decision of the trial Judge to admit in evidence against the Defendant quite detailed admissions which he had made to criminal offences to a journalist who was interviewing him for a proposed book. That is a very different matter from a Prison Officer over hearing a remark passed by one prisoner to another.

[3] Mr Maguire also helpfully drew the court’s attention to The Queen v William Mawhinney [2012] NICA 27 which was based on contested admissions by the Defendant. One relates to interviews that had been taken with the Defendant more than a decade before and whether they could be admitted against him. With regard to those they are obviously in a different category from this admission, but I note that their Lordships in the Court of Appeal point out that in both sets of interviews, the Appellant was legally represented by the same firm of solicitors. Obviously there is no question of that with regard to this ex tempore remark from, allegedly made by, the Defendant to another prisoner. Furthermore their Lordships point out that the Defendant Mawhinney in that case had been properly advised of his right to remain silent. Again there is no question of a caution here.

[4] There was also admitted evidence of the former wife of Mawhinney to the effect that Mawhinney had confessed to the murder of his wife but again that is a very different situation from here. The man and wife, as they then were, had a couple of beers but there was nothing else to detract from the reliability of a confession which Mawhinney thought was inadmissible against him because she was his wife and which was made over a period of time with a degree of detail. So it is entirely proper of the prosecution to draw those to my attention but I do not think they really assist the prosecution.

[5] Mr Stein QC in his helpful submissions on behalf of Louis Maguire, makes a number of points which I think are of substance. I have already mentioned that the man obviously would be neither cautioned nor represented at the time of this admission. We have the Prison Officer’s own response to it which is important - that this was or may have been bravado on the part of Maguire, moving to a new landing and seeking to, it might be said, I'm extrapolating from the Prison Officer’s statement to a degree, protecting himself by trying to convey that he was somebody not be treated lightly because he had been responsible for this murder and that seems to me a plausible explanation. Now, it is true to say, it is a plausible explanation that would be put to Mr Blair in cross examination or might, if Mr Maguire gives evidence, be put to Mr Maguire and it might be left to the jury on

that basis and indeed it might be left then for me to caution them, not to put too much weight in to it and if it was that alone that might be sufficient. But as well as the points I've mentioned, I have to take in to account the fact that there is no contemporary note of the exchange partly because the Prison Officer didn't put great store on it. He was later asked by another prisoner, who is apparently a friend of the second Defendant, Christopher Power, was it true that he had heard Maguire say this and then the procedure followed. Unfortunately, even the second incident, where it is raised with him, there seems to be no written record of that. There is a dispute between the Prison Officer and his superior as to whether there ever was a written record of it. When he comes to speak to his superior in September, about the first or second of September, he does use a different form of words from those that he records in his own statement. It would have been preferable if the matter had been raised as timeously as possible, as that always is likely to lead to a more reliable recollection of events. The Prison Officer acknowledges, and this is again a relevant factor, that he cannot remember the exact words and Mr Stein submits on behalf of Louis Maguire that the words he does remember, i.e. the individual words, 'I' and 'stiffed' and 'guy' might have been preceded by the words, 'the police say' I stiffed this guy or 'the prosecution say' it or something of that sort. It may be that that is far from the case but taking all these factors together including the fact that apparently (the other prisoner) has been spoken to and is not verifying the Prison Officer's recollection of this matter, it seems to me that, although as Mr Maguire submitted, it is potentially relevant evidence that in the exercise of my general discretion I would have an apprehension that the effect would be unfair on the accused. The prosecution have already edited the statements in this matter to a considerable degree to avoid any potential unfairness to the accused and no doubt at the request of his counsel but I conclude that putting in this off the cuff remark which may have been bravado in the light of all the other factors, is not the appropriate course to take and I exclude it.

[6] I do want to say that it seems to me that -- leaving aside the issue as to whether a written report was or was not prepared, that the Prison Officer did the right thing when it was raised with him, of reporting it to his authorities and I make it clear that this is not a general prohibition on prison cell confessions, or anything of that sort, coming forward. I am dealing with this on the particular facts that arise only and I exclude it on that basis. I will have the ruling transcribed for the assistance of counsel.