

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

THE QUEEN

-v-

McAULEY

MORGAN J

[1] The accused is charged on the only count with the murder of Brendan Patrick Doran on 18 September 1975. The Crown case is based largely on admissions allegedly made by him in the course of interviews with police officers. The defence objected to the admissibility of the alleged admissions and I conducted a *voire dire* at the end of which I ruled that the evidence was admissible. I was then invited by the parties to proceed on the basis that the evidence in the *voire dire* should be evidence in the trial

[2] Police Constable Quanborough is based at Blackpool Central Police Station. On 23 July 2004 at approximately 5.15 p.m. he was supervising the defendant who was in the exercise yard of the station in relation to burglary and deception matters. The defendant's solicitor Mr McNulty was also present. The defendant told the constable that he had mental health problems and alcohol problems. In the presence of his solicitor the defendant stated that he had killed one man, shot four others and had conspired to kill as well. Constable Quanborough immediately took the defendant back to his cell, called a doctor and contacted Detective Sergeant Colman. He made an entry in the custody record in respect of calling the doctor but no entry in relation to the alleged admissions. In cross-examination he accepted that the only reason why he would not have made an entry about the alleged admissions was because he thought the defendant was mentally damaged. He accepted that the custody record contained reference to mental health issues involving depression and anxiety. He accepted that there was nothing on the custody record to indicate that there had been consideration of the need for an appropriate adult at any interviews of the defendant. He referred to the entry in the custody record of 6:50 p.m. when the forensic medical examiner had passed the defendant fit for interview.

[3] D/S Colman is a police officer also based at Blackpool Central Police Station. He arranged to come into the station on 24 July 2004 to conduct an interview with the defendant between 5:35 p.m. and 6:06 pm. Throughout the interview the defendant's solicitor Mr McNulty was present. D/S Colman accepted that there was a complaint of mental health problems and that the circumstances created a suspicion of mental disorder. In those circumstances he accepted that in accordance with the Code of Practice under PACE and the Terrorism Act an appropriate adult should have been present. He said that in the course of the interview the defendant admitted that he had murdered a man, that he had attempted to murder four others near a carpet factory in Greenville Street Belfast, that he had conspired on two occasions to murder a man on Belmont Road and that he had conspired to murder persons in a social club in Holywood. He said there were going to be seven people involved in that incident in 3 carloads with guns and explosives. In the course of that interview the defendant described how he had been arrested for the murder but released because of lack of evidence. He stated that he had been questioned by Special Branch and they showed him photographs of a shopkeeper in a shop with bullet wounds in him and entry and exit points. During that interview D/S Colman asked the defendant did he shoot the deceased. The defendant replied that he was there. He then said that he was one of the shooters. D/S Colman suggested in the interview that there were four persons involved. The defendant corrected him and said there were three. The defendant said that they had 4 or 5 weapons between them and he, the defendant, had one. It is also clear from the end of the interview that at some stage prior to the interview the defendant had spoken to D/S Colman in some fashion about the Good Friday Agreement. The defendant also explained that he was making these admissions at this stage because he wanted closure and counselling. D/S Colman described how he contacted PSNI after this interview. He spoke to Sergeant McMurrin. He believes he told him that the defendant was an alcoholic who had anxiety and depression and he possibly told him about the defendant's PTSD.

[4] D/S McMurrin is a police officer in the PSNI. On 26 August 2004 he travelled to Preston police station and conducted three interviews with the defendant. On each occasion the defendant's solicitor was present. Prior to the interviews he was seen by a force medical examiner who found him fit for interview. Although this witness contended that an appropriate adult was not required the Crown in their submissions agreed and I accept that this was a case where there had been a breach of the codes of practice because no appropriate adult was present during the interviews. In cross examination D/S McMurrin agreed that the defendant had been interviewed about the murder of Mr Doran on 18 September 1978. He had no record of those interviews and was unable to say what facts were or may have been put to him. He agreed that considerable detail had been given in relation to the alleged conspiracy to murder persons at a social club in Holywood. He said that he had recommended a prosecution in respect of this but that the PPS

had taken a different view. Similarly he agreed that there had been considerable detail in relation to the conspiracy to murder a milkman in or about Belmont Road but the defendant had not been pursued in relation to that. He accepted that the position was the same in relation to the conspiracy to murder in Greenville Street.

[5] In his interviews D/S McMurrin agreed that the defendant had given conflicting accounts about the presence of other people. He initially said that he thought it was the deceased's wife or somebody else who was in the shop with the deceased as he entered the shop. He then stated in the same interview a short time later that he walked up to the shop with at least one other and "we told everybody to hit the deck." In his next interview he was asked were there any other people in the shop and replied "I'm near sure there was aye, wasn't many like." Mr McMurrin agreed that no statement had been obtained from anyone who had been present in the shop at the time of the murder.

[6] In his first interview with Mr McMurrin the defendant was asked in what part of the deceased's body he had shot him. The defendant replied "In the head and chest, that's where I aimed for anyway." In fact the deceased had been killed by four bullets to the upper part of the head which were all closely grouped. When asked how many times he had shot him the defendant replied "Three, four times, at least. I think I maybe missed one or two I don't know because I panicked sort of thing, well not panicked." In his second interview the defendant was asked about the manner in which the shooting occurred and stated that he thought he shot the deceased three times and then went round the corner of the counter and shot the deceased once more to make sure that he was dead. He said that the deceased got shot in the side of the head and he got shot in the front of the head. He stated that the deceased "got coup de grace".

[7] In his first interview with Mr McMurrin the defendant was asked when the murder had been committed. He said that it was early and he was near sure it was before dinner time. He then said that it could have been any time because everything was a blur. In fact it appeared that the murder had been committed of approximately 7 15 am. When it was pointed out to him in the course of this interview that the murder was committed at that time he said he thought it had been carried out at ten o' clock because he said the roads were busy.

[8] The defendant described the deceased as wearing "a shopkeeper's would have been an overall thing, a coat" whereas it is clear that he was wearing a pin striped suit.

[9] Throughout his interviews with D/S McMurrin the defendant indicated that the reason for his disclosures was his need to obtain closure in

respect of these events. He said that he was destroyed. It is also worth recording that at the end of his third interview with D/S McMurrin he raised the issue of the effect of the Good Friday Agreement in respect of possible consequences for him.

[10] The pathologist's report was read by agreement. The relevant portions were as follows:

"Death was the result of gunshot wounds of the head. Four bullets had entered the right side of the head, more or less in a horizontal line above the ear.....There was no blackening or powder peppering around any of the entrance wounds to indicate a very close discharge. However the grouping and situation of the bullets would suggest that the range was very short."

[11] Evidence was given by the photographer to prove the photographs. These included photographs at the scene depicting views of the shop and the deceased's body within the shop as well as post mortem photographs of the deceased.

[12] Medical evidence was given by Dr Bownes for the defence which largely agreed with that of Dr Browne for the prosecution. The defendant has a history of alcohol problems and suffers from a severe disorder of personality consistent with psychopathic disorder. He is manipulative. There was evidence of neuroticism. Dr Bownes gave evidence as to how the defendant had lied for his own ends. He claimed he had academic qualifications that he did not have. He claimed that he had participated in serious paramilitary offences, robberies, when he probably had not. He gave different reasons for leaving Northern Ireland. He alleged that he had witnessed murders in the Maze prison when he probably had not. These statements had generally been made either by way of lie or exaggeration in order to avoid custodial dispositions for various criminal offences. Both doctors were sceptical about the diagnosis of PTSD. This diagnosis related to his witnessing the scene of the Oxford Street Bus station bombing in 1972. Both consultants doubted that he had actually been there. Both agreed that he was capable of telling the truth but that he was capable of lying and likely to lie in order to serve his own needs. In cross-examination Dr Bownes agreed that there was nothing to suggest that the presence of an appropriate adult would have made any difference to the interview. He agreed that there was no evidence that the defendant was unduly upset and there was no indication of any disadvantage to him in not having an appropriate adult. Dr Bownes saw the defendant on 22 February 2006 and 6 March 2006. In his report he noted that the defendant had informed Dr Plunkett that in December 2004 he had completed a sentence in Magilligan Prison and "whilst in prison he

learned a lot about the progress of the Good Friday Agreement". At interview with Dr Bownes the defendant explained that he had decided to use things that he heard and the police photos that he'd seen to tell stories that would get him taken off the street and put back in prison. He had lost his home and family and was stealing to get by. He felt he would be safest in prison and wanted to get sent back home again.

[13] Four bullets were recovered from the deceased's head. Three were copper jacketed and one was lead jacketed. Mr Rossi, a senior scientific officer in the FSNI, examined the bullets. They were all .38 calibre. They all had gross rifling marks indicating 7 groove right hand twist. These marks were virtually exclusive to Smith and Wesson and Enfield barrels. All of the bullets could have been fired from the same .38 revolver but it was not possible to say if all of the bullets had been fired from the same gun because the fine detail necessary for that comparison was absent.

[14] The defendant gave evidence. He said that he joined the UDA in 1973 when he was 16 or 17. In 1976 he was imprisoned for aggravated burglary. While in the Maze prison he associated with the UDA. He was released on 1 September 1978. A couple of weeks later he was arrested and interviewed in respect of the murder of Mr Doran. Because he felt he was liable to be arrested for anything that happened in east Belfast he left Northern Ireland in 1978 but returned in 1979. He said that the peace people got him out of the country in 1986 and that he moved because of pressure from the UDA related to his not being prepared to go back to work for them. He said that he committed various offences by way of burglary and other dishonesty offences. He had been seen by psychiatrists but had not always told them the truth. He would embellish his story. He would tell them he had been involved in things that he had not been involved in. On occasions he did this in order to get out of going to prison.

[15] In July 2004 he was arrested for burglary and taken to Blackpool Central police Station. He confirmed that Police Constable Quanborough and D/S Colman had given an accurate account of what he had told them. In August 2004 he was interviewed at Preston police station by D/S McMurrin. He agreed that he made the admissions at interview recorded by that officer. It is clear from the transcripts that the interviews were conducted in a professional and appropriately rigorous fashion.

[16] He denied that he murdered Mr Doran or that he was involved in that murder. He said that the information he had given police had come from the detectives who had interviewed him in 1978 and the photographs he was shown of the deceased. He said that he was shown the photographs in front of his solicitor. He said that two of the photographs showed the deceased in his shop and two showed him in the morgue. He said that 95% of the details he gave came from his interviews and the remainder he made up. He said he

made up how he got from the Bunch of Grapes to Mr Doran's shop, how he got away and the part about his being involved. He said that he did this because he thought the Northern Ireland police would come over to Blackpool and take him back to Northern Ireland as a result of which the charges in Blackpool would be left on the file. He said he believed if he was brought back to Northern Ireland he would get 12 to 18 months and then go in front of the commissioners to obtain his release. He believed that all of the charges in England would be run in and would disappear. In fact he got 5 years imprisonment in October 2005 for the charges in England. He was charged with the Northern Ireland offences in July 2005 and transferred back to Northern Ireland on 29th of July 2005.

[17] In respect of the incident at Greenville Street Belfast he said that he heard about that when he was in the Maze prison. It stuck in his mind because it was in the area of east Belfast which he knew and he remembered the story about the gun not working and the magazine falling out. He was also told in prison about the incident concerning the milkman. He had placed it where he thought it had occurred and had made up some of the details. The story about the attack on the Hollywood club was mostly made up. He said that he had heard someone talking about going to do that church hall. He said that he had added these incidents in order to make it seem worthwhile to bring him back to Northern Ireland.

[18] He said that every detail he had given can be proved made up. He got everything wrong. He said that the murder happened at 12 o'clock and then brought it down to 10 o'clock but was still three hours out. He was wrong about what the deceased was wearing. He had made up the escape route. Even if he was guilty nothing was going to happen to him since he would get out under the Good Friday Agreement. He had no reason to lie. He had been asked by his mother to tell the truth. He said that he had described at interview shooting Mr Doran in the head and chest because the police photographs he was shown suggested there was blood in the deceased's chest. He said he was sorry for the Doran family because his admissions probably led them to believe they could get closure. He had only given evidence once before for a friend and had never given evidence as a defendant before this.

[19] In cross-examination he agreed that it was not a lie that he was in the UDA or that he had chosen to enter the UDA compound when he was sentenced to imprisonment. He agreed that at the time of the murder in 1975 he was in the UDA. He agreed that he had committed the aggravated burglary on behalf of the UDA. He said that he and another man were told to go to steal guns out of a house. The man who sent them gave them an imitation weapon which he said the other participant was carrying. He said that he and another man entered the house by the back door but that the occupants of the house jumped up and they both ran out. He was doing the

driving. He was sentenced to five years imprisonment and the gun was thrown out of the window. He agreed that he had followed his instructions to the letter.

[20] He said that he first became aware of the murder of Mr Doran when he was in prison. He had not heard anything in the news because there were so many murders at that time. He agreed that his girlfriend lived very close to this area, only two streets away. He said that he was not going with this girl at that time. He said that he might have seen some reference to the murder on the news two or three days later. He denied seeing Mr Doran's wife on the television despite the fact that he said in his first interview with D/S McMurrin that he watched the news on the night of the murder and the deceased's wife was on television. He said that he told police that he had done so because there was usually a wife on the television afterwards. No evidence was led as to whether the deceased's wife actually appeared on television on the night of the murder. He said he knew the deceased was married because the police told him that Mr Doran was a 28 year-old married man. He agreed that he told police that he had become so ill that he was physically sick. He said that he decided to embellish the story in order to persuade the police that he had done it.

[21] He said that he was interviewed about the murder in September 1978. He said that UDA men all over Belfast were arrested at that time. He could not remember their names now. He knew at the time who was arrested but 30 odd years had passed and he had consumed a lot of drink and drugs in that time. He said that he could recall the photographs which police put to him and would never forget them. He said he left the UDA at Christmas 1976 and served the remainder of his sentence in the Crumlin Road prison. He said that he was not certain how long he spent in Castlereagh but it might have been three days. He said the police told him that the weapon was a 38, that a car was involved and that the deceased was shot in the head. He said that the photographs had entry and exit wounds. He said the photographs showed that the counter was L-shaped and suggested that the shopkeeper was wearing a coat. He agreed that he told police in his recent interviews that a commander had decided who would be shot. He agreed that he said that he had followed his orders to the letter. He agreed that he said that this was to be a blooding for him. It was then put to him that he said that the commander had come along with him. In reply he said "that's not the way it happened." When asked how it had happened he said that he did not know because he was not there. He agreed that he told D/S Colman that he was one of the shooters and that he had informed that officer that there were three persons involved when that officer had suggested there were four. He said that he had later changed the number involved to two but in fact he described two persons going into the shop and a third person acting as driver.

[22] He said that he had made the confession because he wanted the Northern Ireland police to take him back to Northern Ireland so that the charges in England would be left on the file. He said that he did not tell Dr Bownes this because he had not been asked. He said that if he was convicted he would only serve two years in prison. It was put to him that if he re-offended while on licence he could be in difficulties and that was why he had changed his story. He said that the police had not told him what time the shooting had taken place other than to say it was early morning. He said that the grouping of the shots meant that the shooter was a professional and not someone being blooded. He said his detailed account of the preplanning and departure from the scene was all made up. He said his account of the coup de grâce was made up. He said when he was shown the photographs of the bullet marks he knew the shooter had to be close and this was why he had said this.

[23] In his closing submissions Mr Fowler QC who appeared with Mr Ramsey QC for the prosecution submitted that the defendant's guilt could be established either by the court being satisfied beyond reasonable doubt that the defendant was the gunman or alternatively by the court being satisfied beyond reasonable doubt that the defendant had played some part in the operation which resulted in the murder. The latter submission was made as a result of an inquiry by me as to the basis upon which the prosecution could succeed. That could arise in his submission in circumstances where I concluded that the defendant had embellished his admissions and could not, therefore, be satisfied that he was in fact the gunman.

[24] Mr Fowler then turned to those matters which allegedly undermined the reliability of the interviews. He noted first that in his second interview the defendant said that the deceased was shot in the side of the head and the front of the head. He submitted that this was consistent with the pathologist's report. He suggested that the reference to the chest in the first interview was not an inconsistency because it was a qualification. I have set out the relevant passage at paragraph 6 above. In relation to the variation in timings Mr Fowler pointed to the passage of the interview where the accused said "everything is a blur". He relied upon the fact that the accused had corrected D/S Colman when the officer had suggested that four people were involved. He submitted that the photographs did not suggest that the deceased was wearing a grocer's overall and that this impression must have arisen as a result of the accused seeing the top half of the deceased just before he shot him. He suggested that the extent of detail about the events surrounding the murder were unlikely to have been remembered as a result of a series of interviews in 1978.

[25] For the defendant Mr Adair QC who appeared with Mr Campbell B. L. submitted that the prosecution case depended upon the court being satisfied that the admissions were true. He accepted that as a matter of law if

the evidence justified a finding of guilt on an alternative basis to that upon which the case was opened the court would be entitled to return a conviction on that basis. He submitted, however, that if the court rejected the admissions in part that would tend to lead to a reasonable doubt about the admissions as a whole.

[26] Mr Adair looked first at the reasons expressed by the defendant for making his admissions. He submitted that the starting point was that one could place little reliance on any account given by this accused. In his interviews he had suggested that the reason for his admissions was because he was destroyed and could not live with what he had done. Mr Adair pointed out that one of the symptoms of his personality disorder was an inability or incapacity to experience guilt. He submitted that in this case motivation has a direct connection with reliability. He submitted that this was a case where in order to be satisfied beyond reasonable doubt of the reliability or truthfulness of the admissions one would require some corroborative evidence.

[27] In addition to the psychiatric evidence which undermined the reliability of the defendant's admissions Mr Adair pointed to the defendant's ability to give the account which he did. It was common case that he had been interviewed in September 1978 at Castlereagh. It was highly probable that details of the murder were put to him in the course of an interview. His interview with D/S Colman in July 2004 supported the proposition that photographs were also shown to him at that time. There is no detail in his admissions which contradicts the real possibility that he gleaned the information in the course of interviews in 1978. In respect of the issues of preplanning and the escape after the murder the nature of that detail was such that it did not disclose any personal knowledge in respect of the events.

[28] In addition to this there were clear inconsistencies. Firstly at interview he suggested that the deceased was shot in the chest. Secondly his timing of the events was wrong. Thirdly he had incorrectly described the clothes worn by the deceased. Fourthly he had given conflicting accounts about the number of people in the shop at the time of the shooting. Fifthly the evidence from the pathologist contradicted the assertion that there had been a coup de grâce.

[29] In this case the accused admits that he made the admissions which have been recorded by the various police officers. The issue for me is whether I am satisfied beyond reasonable doubt that the admissions are truthful and reliable and in order to do that I have to look at all the circumstances in which the admissions were made and in particular whether there are any circumstances which might cast doubt upon their reliability. In consideration of this man's admissions I have to bear in mind that he suffers from a severe personality disorder, that he is manipulative and that he is likely to lie in

order to serve his own ends. Against that background I give little or no weight to his protestations of innocence or his expressions of regret.

[30] The first question is why he did he make the admissions. He suggests that he was destroyed and could not live with his guilt any longer. The medical evidence would tend to suggest that he is a person who has little or no appreciation or insight in relation to his responsibility for the numerous offences which he has committed. At the time of these admissions he had just been arrested for an offence of burglary. He was being investigated in relation to deception charges. As appears from the eventual sentence these were serious matters. He had in the past regularly played the "troubles" card in order to avoid a custodial sentence. He had built up a considerable psychiatric history of post traumatic stress disorder much of which appears to be without foundation. It is clear from his interview with D/S Colman on 24 July 2004 that he was alert to possible advantages under the Good Friday agreement. Having regard to his background and history I consider it probable that he made his admissions because he believed that he could achieve some advantage from being dealt with in respect of older terrorist offences rather than having to face up to the English offences. It does not necessarily follow that his admissions are untrue but it is necessary to look at them very carefully to assess whether they are reliable.

[31] The focus of the prosecution case as opened was that the accused was the gunman who murdered Mr Doran. The accused described the shooting on three occasions. The first was to D/S Colman when he was asked whether he shot the deceased. He stated initially that he was there and then that he was one of the shooters. He was then asked about this by D/S McMurrin in his first interview. When asked how many times he shot the deceased the accused said 3, 4 times at least. He thought he may have missed one or two but didn't know because he panicked. When asked in an interview where he shot the deceased he replied "in the head and chest, that's where I aimed for anyway." He returned to this topic in his second interview with D/S McMurrin. In that interview he said that he shot him three times before going round the counter and then delivered coup de grâce by walking round the counter.

[32] None of these accounts match the forensic evidence. The first account to D/S Colman suggests that there was more than one shooter. Although the forensic scientist does not rule out the possibility that more than one weapon was used the pathologist's report on the grouping of the bullets strongly suggests that all of these shots were fired from one weapon at the same time at the deceased. There was no evidence of bullet strikes other than those which struck the deceased. The second account suggests that three or four bullets were fired at the head and chest. It is clear from the pathologist's report that there was no injury to the chest and that four bullets were fired in a horizontal line just above the deceased's ear. The third account suggests

that there was a coup de grâce. That is not consistent with the pathology evidence. There was no blackening or powder peppering around any of the entrance wounds to indicate a very close discharge such as one might expect in those circumstances. Secondly the grouping of the bullets strongly supports the view that all were fired at the same time from the same weapon.

[33] The shooting occurred more than 30 years ago. It would not be surprising if there was some variation in the detail given by a person who was involved. The passage of time and the impairment of recollection might in my view explain the differences in respect of the first and second accounts. I do not consider, however, that such an explanation can be advanced in respect of the third account. I consider it likely that this account was an invention or embellishment and that it is evidence of deliberate untruthfulness by the defendant in the course of his interviews.

[34] Given that none of these accounts match the forensic evidence I have concluded that there are three possibilities. The first is that the defendant carried out the murder but has deliberately given false accounts of what exactly occurred. That would be consistent with his manipulative, deceptive character. The second possibility is that he finds it difficult to remember the precise circumstances in light of the time that has passed and his dissolute lifestyle but that accounts one and two represent his best recollection and account three is an embellishment. The third possibility which I cannot dismiss is that he did not in fact himself carry out the shooting and consequently is not in a position to give an accurate account of how it was carried out. Accordingly I cannot be satisfied beyond reasonable doubt that he was the gunman.

[35] I now turn to the alternative basis upon which the Crown say a conviction can be justified. Given my findings on motivation and my conclusion that there has been at least a deliberate embellishment it would require evidence of a compelling nature before I could be satisfied beyond reasonable doubt that he was present and an active participant at the scene of the murder. His evidence about the timing of the incident might be a product of faulty recollection but it would be surprising if he had not appreciated that his preparations must have commenced sometime before 6 am on the morning of the murder. It is, of course, possible that this is a deliberate ploy by him to mislead the interviewer and the court but the other possibility is that he was not involved. There are discrepancies as to the number of persons, if any, who were present at the scene and the clothing worn by the deceased. I can find no evidence of some independent fact which underpins his admissions. There is nothing to suggest how many people were involved in this killing or the status of those involved. There is no evidence one way or the other as to whether Mr Doran's wife gave a television interview on the day of the shooting and one can well understand that with the passage of time it becomes difficult to bring forward such evidence. Taking all of these

factors into account I find it impossible to be satisfied beyond reasonable doubt about the truthfulness and reliability of the accused's admissions.

[36] It may be that this accused was involved in the murder of Mr Doran but I have concluded that I cannot be satisfied of his guilt beyond reasonable doubt on the available evidence and must find him not guilty. The kindest thing one can say of him is that if he has falsely suggested that he committed this murder then he has put Mr Doran's grieving relatives through yet further suffering and distress. On any view he is a truly despicable human being.