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Finlay P.
Hederman J.
McWilliam J.

COURT OF CRIMINAL APPEAL

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BETWEEN:

THE PEOPLE AT THE SUIT OF THE
DIRECTOR OF PUBLIC PROSECUTIONS

.v.

THOMAS HEALY

Judgment of the Court delivered on the 12th day of December 1984 by Finlay P.

This is an application for Leave to Appeal against the conviction of the Applicant by the Special Criminal Court on 23rd of June 1983 of the offence of robbery in respect of which he was sentenced to 12 years imprisonment and in respect of an offence of carrying a firearm with intent to commit robbery in respect of which he was sentenced to 10 years imprisonment.

The Applicant appeared in person at the trial and submitted and prosecuted his own appeal before this Court. His grounds of appeal submitted in writing were as follows:-

"(1) My Constitutional right to prepare a proper defence was taken from me by the confiscation of my written legal instructions in Portlaoise Prison. Therefore my trial was not a fair one.

(2) During the trial, evidence was given that men armed with rifles threatened two witnesses, Mr. and Mrs. Ryan, in the early hours of the first day of the trial. The President of the Court said after hearing this 'that this is most prejudicial to the Accused'. The Prosecutor made known to the Court that he accepted that the other Accused, Mr. McKeon, had nothing to do with such threats and the Court in accepting this and giving

consideration to it acted in a very unfair manner to me.

(3) I want to appeal against the conviction on the weight of the evidence. The President of the Court told me I could do this".

Upon the hearing of this Appeal, the Applicant did not develop any of these grounds of appeal to any extent but did with the permission of the Court insofar as the Ground No. 3 was concerned adopt arguments and submissions which had been made by Counsel on behalf of an applicant, Sean McKeon, who was jointly indicted with this Applicant in respect of these offences and whose appeal against conviction was heard immediately prior to the hearing of this application and in the presence of this Applicant.

This Court in the judgment just delivered has quashed the conviction and directed a re-trial of this Applicant's co-accused Sean McKeon on a ground which does not arise in the case of this Applicant, there being no question of this Applicant having previously appeared in the Special Criminal Court before any of the members of the Tribunal presiding at his trial.

Ground No. 1

Before the commencement of the trial of this Applicant, which was on the 15th June 1983, Counsel and Solicitor retained on his behalf, sought for permission from the Court to withdraw on the grounds that their instructions had been withdrawn. The Applicant stated that he had withdrawn these instructions because a note of matters pertaining to his trial which he had made whilst in Portlaoise Prison had been taken from him during the course of a search and had not been returned to him. The Court took evidence on these matters and came to the conclusion that the Applicant had been returned for

trial on the 29th of June 1982, that he had been represented by Counsel and Solicitor on the taking of depositions including the cross-examination on his behalf of deponents in June and July 1982 on a number of days, that in the course of a search of his cell at a time when explosives were found in Portlaoise Prison, that documents had been taken from him in March of 1983 and that one book containing notes made by him in preparation for his trial had not been returned to him. The Court was satisfied that the Accused had, since the time of the loss of this document, which the evidence before it suggested was mislaid, ample time to prepare for his defence at the trial and to instruct his Solicitor and Counsel but had chosen instead to withdraw their instructions on the morning of the hearing. In those circumstances, the Court decided not to adjourn the trial of the Applicant and with that decision this Court must agree and could not possibly interfere. This ground must therefore fail.

Ground No. 2

Mrs. Mary Ryan, one of the witnesses called on behalf of the Prosecution, stated that she had shortly before being called to give evidence intimidated by a visit of armed men who tried to prevent her from coming forward to give evidence. The Court of Trial stated that this matter should not have been introduced before them but immediately stated that they did not in any way associate it with either of the Accused who would have had no opportunity to take part in such intimidation, being both in custody and specifically upon the matter being subsequently raised by this Applicant stated that they did not associate him in any way with this event. There can be no question therefore that the introduction of this irrelevant evidence into the case could or did prejudice a fair trial of the Applicant. This ground

must also fail.

Ground No. 3

In its judgment in the case of The D.P.P. .v. Sean McKeon the Court has already dealt with the findings as to the credibility of witnesses and the approach of the Court of Trial to the evidence of Mr. and Mrs. Ryan having regard to the position of Mr. Ryan as an accomplice. It is unnecessary to repeat those findings again. Insofar as this Applicant was concerned, the evidence of Mr. Ryan was to the effect that he, Mr. Healy, had accompanied the Applicant Sean McKeon, from Ryan's premises having loaded a gun and placed it in the waistband of his trousers at a time shortly prior to the occurrence of the robbery in Clane that he returned with McKeown to the premises again and then requested Gerard Ryan to bury money which he had in a plastic bag and which was subsequently identified as the money taken in the robbery. The evidence thus adduced and accepted by the Court of Trial of the implication of this Applicant in the robbery was corroborated by the fact that he was found by the Gardai at approximately 1.00 p.m. in the shed where Ryan stated that he remained; furthermore, by the finding of firearms residue on the sleeve of his dufflecoat and furthermore, by the finding of fibres from his clothing, in the car, the property of the Bank Official which was taken by the robbers from the scene of the robbery. Being satisfied, as has already been indicated, that the Court of Trial was entitled to accept the evidence of Gerard Ryan and of his wife Mary Ryan and being satisfied that there was corroboration of that evidence which the Court of Trial was also entitled to accept, the Court must reject the submission on this ground that the conviction of the Accused was against the weight of the evidence. This application for leave to appeal must therefore be dismissed.