

THE HIGH COURT

THE STATE AT THE PROSECUTION OF
MAURICE MARLEY

-V-

THE HONOURABLE MR. JUSTICE ROE AND
THE DIRECTOR OF PUBLIC PROSECUTIONS

Judgment of Mr. Justice Barron delivered on the 3RD day of December.
1986.

This case has a long history. The prosecutor was charged in 1977 with a number of offences in relation to the forgery and uttering of cattle feed vouchers. The Book of Evidence was served on him on the 7th June 1978. Following this the hearing of depositions took place which lasted for 110 days. This preliminary examination terminated on the 4th March 1982 when the prosecutor was returned for trial. This four year period was required not because of the length of the preliminary examination alone, but because of a series of State Side proceedings brought by the prosecutor.

On the 10th July 1978 the prosecutor obtained a Conditional Order of Prohibition to restrain the District Justice from proceeding with the preliminary examination. Cause was shown and such cause shown was allowed and the Conditional Order discharged on the 23rd July 1979. This order was appealed to the Supreme Court and such appeal was ultimately disposed of against the prosecutor on the 23rd June 1980. On the 27th of August 1980 the prosecutor obtained a Conditional Order of Certiorari against the District Justice because of a remand for

more than thirty days. This order was made absolute on the 3rd November 1980. On the 1st December 1980 the prosecutor obtained a Conditional Order of Certiorari and Prohibition contending that the order of the 3rd November 1980 prohibited the District Justice from continuing any preliminary examination whatsoever in the matter. These proceedings were determined against the prosecutor on the 4th of May 1981.

Following his return for trial the prosecutor was indicted on seventeen counts. Counts one to twelve related to obtaining money on forged documents, counts thirteen to fifteen related to the uttering of forged documents, count sixteen related to conspiracy and count seventeen related to receiving. The prosecutor was convicted on eleven counts of obtaining money on forged documents and on the three counts of uttering forged documents. He was sentenced to seven years penal servitude.

He appealed against conviction. This appeal was heard on the 2nd and 3rd April 1983. Judgment was reserved by the Court of Criminal Appeal and was not given until the 2nd of April 1984. The convictions of the prosecutor on the counts of obtaining money on forged documents were quashed and a retrial was ordered of the three counts of uttering forged documents.

Following this order, the prosecutor obtained bail and has been on continuing bail ever since. While he was in prison, his papers relating to the case including the Book of Evidence and copy depositions were stolen.

On the 18th May 1984 the retrial of the prosecutor was fixed for the 23rd July 1984. On the 6th June 1984, the prosecutor sought from the Chief State Solicitor an attested copy of the indictment and a list of the witnesses which it was intended to call on behalf of the State at the second trial. No such list of witnesses was furnished in reply

to that letter.

On 8th October 1984, the prosecutor issued a plenary summons seeking a declaration that he was entitled to have his trial transferred to the Central Criminal Court. The substantial argument being made was the same as that raised in Tormey .v. Ireland. Judgment in the latter case was delivered by the Supreme Court on the 16th May 1985. Following such decision, the retrial of the prosecutor was fixed on the 29th November 1985 for the 23rd April 1986. On 16th December 1985, the prosecutor wrote to the Chief State Solicitor asking for the relevant list of witnesses and exhibits. The Chief State Solicitor has no record that such letter was ever received. I see no reason to suppose that it was not sent. The request contained in it was not dealt with.

It was not until 24th March 1986 that Junior Counsel was asked to advise which witnesses would be required to attend the retrial. On 16th April 1986, the prosecutor sought an adjournment of his trial upon the ground that he had not been supplied with the information sought by him in his two letters. This application was heard on the afternoon of the 18th April 1986 when Junior Counsel acting for the State informed the Court that all witnesses and exhibits would be called and introduced so far as he was aware. The reason for these last words was that on the same day the Director of Public Prosecutions had directed that Senior Counsel should be briefed. This statement satisfied the Circuit Court Judge who refused the application.

On the 22nd April 1986 the prosecutor obtained a Conditional Order of Prohibition to restrain the Circuit Court from proceeding with the retrial on the ground that the failure of the Director of Public Prosecutions to furnish the prosecutor with a proper list of witnesses and exhibits prevented the prosecutor from preparing his defence as a result of which he would be deprived of a fair trial. The Respondent

showed cause by Notice of Motion without filing any affidavit. The matter came on for hearing on the 21st July 1986. On that day, Counsel briefed to appear at the trial was apparently still unable to indicate what witnesses and exhibits would be required. The matter was adjourned for one week. An affidavit was filed on behalf of the State during that week which inter alia indicated that all those who had given evidence at the original trial in relation to count thirteen, fourteen and fifteen would be required. At the hearing on the 28th July 1986, the matter was adjourned to this term. Following the hearing, in the precincts of the Court, the prosecutor was handed a complete Book of Evidence and set of depositions. He refused these on the ground that he wanted only those which were to be used at his retrial.

By two letters dated 29th September 1986 and 9th October 1986, the prosecutor has been informed which witnesses would be called at his retrial and which exhibits would be tendered in evidence. At an adjourned hearing on the 24th November 1986 he was given and accepted the Book of Evidence and set of depositions. He was not given copies of the relevant exhibits.

The prosecutor now submits that the State has not complied with the terms of the Conditional Order and that such order should be made absolute. The prosecutor makes no case based upon any prejudice by reason of delay. The State contends that it has met the prosecutor's objections to the trial proceeding.

I am satisfied that the prosecutor should now be in a position to prepare his defence. He will be in an even better position when he has received copies of the relevant exhibits. I am equally satisfied that the prosecutor would not have had a fair trial if the retrial had proceeded on the 23rd of April 1986.

It seems to me that the reason for this lies in the total failure

of the Chief State Solicitors Office to prepare its case in time. It appears that neither the Chief State Solicitor nor Counsel briefed to appear on behalf of the Director of Public Prosecutions had decided what evidence was required and it followed that they were not in a position to so inform the prosecutor. On the 28th of July 1986 the prosecutor was offered the Book of Evidence and a full set of copy depositions. By letters dated the 29th September and 9th October 1986 respectively he was informed which of the witnesses referred to in the Book of Evidence and on the depositions would be called to give evidence against him. He was also informed which exhibits would be tendered in evidence. On receipt of the latter of these letters he would had he accepted the documents offered to him on the 28th July 1986 have been in a position to prepare his defence. He could following an examination of these documents have sought such copy exhibits from the Chief State Solicitors Office as he required.

In the circumstances I will allow the cause shown and discharge the Conditional Order. Nevertheless, I think this is a case in which costs should be awarded to the prosecutor. In order to avoid any further complications I will also direct that the Chief State Solicitor do furnish to the prosecutor copies of the exhibits referred to in the two letters dated the 29th September, 1986 and 9th October, 1986, respectively within fourteen days of this date.

Henry Barron
3/12/86