Judgment of the Court: 23rd September,1985.

Before David Charles Calcutt, Esq., Q.C. President
The Hon Mr. Justice Hoffman,
John Martin Collins, Esq., Q.C.

Mr. Calcutt: On the 15th of May of 1985, after a trial lasting three days, this appellant was convicted on the unanimous verdict of the jury of robbery, he now appeals against that conviction. The brief facts are these, there is in St. Helier,in Belmont Road, a betting shop known as B. J. O'Connor Limited. The appellant had himself worked there for several years sometime ago, and as a result of that he was himself familiar with the premises and the system of working at those premises. The present manager of those premises is a Mr. Brown, who in October, 1984, the time when the robbery took place, was working there with Mr. Connor. Following his usual practice, Mr. Brown arrived at the premises in Belmont Road, at about 9.30 on Thursday the 25th October of 1984. He was carrying with him at that time something over £1,000.00 in cash, purpose being to open up for the day and Mr. O'Connor was with him at that time... (I'm sorry, I mean Mr. O'Neill,I do apologise) Very shortly after those two people entered the shop in order to open up for business, two masked men entered the shop, and there is no doubt that those two men commited robbery.We will- one of those two - we are not concerned to-day - his name is Lagan - he pleaded guilty to the charge of robbery and he has been dealt with.

The prosecution alleged in the case of McLaughlin, that he was the second man and that the only issue in this case was whether the prosecution proved that this appellant was indeed that second man. I've already said the defendant, the appellant in this case was familiar with the place and with the system of work. He was arrested on that evening and the police in the form of Detective Chief Inspector Quinn says, he said that the appellant said that time that he, the appellant, had been grassed upon. On the following day an interview took place with the police when the appellant gave, as he said, a full account of his movements. Thereafter a further interview took place between Detective Sergeant Follain and the defendant - the appellant in this case and the Crown's case is that that officer then took notes of what was said on that occasion. It's quite plain, that if what was said was indeed said then the appellant was admitting his involvement in this matter.

According to the police this appellant agreed with the notes which had been taken by the officer, but he refused to sign them. Detective Chief Inspector Quinn was called in, and the notes which were taken, this is the Crown's case were repeated according to the police, again according to the police case, the defendant, the appellant here agreed that those notes were correct, again refused to sign and Detective Chief Inspector Quinn himself signed the notes. The appellant's case, the defendant in this trial, through-out was that he denied that this had happened. It was he said invention, that was one of the principle matters which was for this jury to have to consider.

On the hearing of this appeal, amended notice of appeal has been put in front of us, and we have given leave for that notice to be put in front of us and it raises five grounds of appeal. I shall say at this stage that the Court is indebted to Mrs. Whittaker who has presented the case on behalf of this appellant concisely and to the point. I think it's probably convenient if I take each of the grounds in turn and express our view about them.

The first ground appeal is in these terms - it is said the learned Deputy Bailiff erred in that he failed to rule that the admissions allegedly made by McLaughlin to the police in contemporaneous notes

should go before the jury as exhibits, as there were features on the face of the notes made by both Detective Sergeant Follain and Detective Chief Inspector Quinn which in conjunction with their evidence would have assisted the jury to resolve the issue of alleged fabrication. Mrs. Whittaker has made it perfectly plain to us in the course of her submission what the point is which she seeks to make on this first ground of appeal and it is this. She does not complain that the notes which were taken ~~in~~ the Crown's case they were true notes by Sergeant Follain were admitted into evidence, what she does complain is that a Judge failed to exercise the power which he no doubt would have had, had he been asked to exercise it, to admit the notes which were taken by Detective Chief Inspector Quinn. Now the matter arises in this way, and I turn to Page 77 of the transcript which is in front of us, which is part of the evidence of Detective Sergeant Follain. The transcript is in these terms:-

SOLICITOR GENERAL: Before the officer continues, I have had copies made of the sergeant's pocket book.
The Deputy Bailiff interrupted - Has Mr. Pallot (who was then acting for this appellant) seen them?
ADVOCATE PALLOT said: No Sir.
SOLICITOR GENERAL: Perhaps my learned friend would like to see a copy they're going to be asked to be distributed? It's a photostat copy of his book, is it?
SOLICITOR GENERAL : It is, Sir.
ADVOCATE PALLOT: I have no objection, Sir."

As I say, it is quite plain that there was no objection taken to the introduction of the notebook of Follain, so that it was in front of the jury when they retired ultimately to consider their verdict. So I say, the complaint is that at no stage was the notebook of Detective Chief Inspector Quinn before the jury. The Court takes the view, first of all I think it is conceded that no application was made by Advocate Pallot then acting for this appellant, that that notebook should be before the jury. It seems to us there is no duty on a judge in those circumstances to suggest of his own volition that this is a document that should necessarily be before a judge, in our view there is no substance in that first ground of appeal.

The second ground of appeal is in these terms, that the learned Deputy Bailiff misdirected the jury as to the time Mr. Robson left his house contrary to the evidence, this factor was crucial to the corroborative evidence of the prosecution and may have caused the Jury to convict where the may not otherwise have done. The point here is this, there was a witness who gave evidence in these proceedings by the name of Robson, and in the substance of his evidence was that he had seen the appellant in the vicinity of the betting shop at approximately the appropriate time. The defendant's case on the other hand, was that he had never been in that time of that place at that time, and indeed he suggested that the evidence of Robson was indeed untrue and he was telling lies. In support of the prosecution case, the prosecution left certain evidence with regard to timing, and it is quite clear from the evidence of Robson that he did say, that he did say in evidence that he left home at approximately 9.20., being common ground that the robbery took place at or about 9.30. There were certain timings of how long it would take to cover certain distances, it's common ground that one of those distances would have taken about 4½ minutes to cover.

This matter was dealt with by the learned trial judge, his part of his summing up, and it occurs on page 236 of the transcript and it is in these terms:-

"He said the accused denies being there at all, but Mr. Pallot quite rightly for the accused put the hypothesis to you that even if you were satisfied he was there, therefore he was mistaken when he remembered and told you he was n't there, thatthetime factor would be such that even if Mr. Robson left his house at 9.30(those were the words that the trial judge apparently used)then he would have met 4½ minutes later - he would have met the accused in Vauxhall Street, a few moments before the robbery took place, which it is said by the defence counsel proves clearly that the accused could not have been at Great Union Road at the time alleged. Now it well maybe, as the transcript shows, that the Deputy Bailiff in summing this case up for jury, did say 9.30. when the evidence shows that the witness Mr. Robson left at approximately 9.20., but taking a view of this passage of the summing up, it seems to us inconceivable that the jury would have misunderstood what the learned Deputy Bailiff was saying because had he used the word 9.30 as it appears he did, it would not have made sense, it only makes sense if indeed he left at the time when he said in his evidence he left at 9.20. This as it appears to us as probably a slip of the tongue on the part of the learned Deputy Bailiff, and we do not believe that the jury was in any way mislead by this matter. Accordingly we take the view that there is nothing in that second ground of appeal.

We now pass for the third ground of appeal which is in these terms, that the learned Deputy Bailiff misdirected the jury, in that he stated that the accused accepted what he said to the police on the 26th October, when he was first arrested. There is a reference to Page 234 of the transcript contrary to his evidence, the words allegely use by McLaughlin at his arrest, according to the police were tantamount to an admission stating in his summing up that McLaughlin acceptance may have influenced the jury in their verdict. Now so far as this matter is concerned, the position is that it is common ground that the appellant was arrested on the day on which this robbery took place. That is the evening of the 25th not on the 26th. It is perfectly plain from the evidence which was given by the defendant, both in examination-in-chief and in cross-examination that he was denying what was being contributed to him by Detective Chief Inspected Quinn to the effect that the defendant said "We've been grassed" On the 26th it's quite plain that this appellant gave a full account of what he said his movements were at the relevant time. He was interviewed again on the 27th and it's quite plain again, that

he was saying through-out his trial that he made no admissions and the evidence given by the police on this matter is fabricated. So it seems to us perfectly plain that the whole of this trial must have been conducted on the basis that here was the defendant who had never admitted his guilt in any form. Now the relevant passages in the transcript of the summing up begin at page 232 about half-way down the page. The learned Deputy Bailiff said - "Now, the Crown relies, as I am sure you realise, on three main submissions; that is to say the admissions by the accused himself. First, when he was arrested in the pub at Great Union Road, where you remember the Crown says that he complained about being grassed and swore about Lagan having shaved off his beard. You will remember incidentally, that in evidence when he testified before you, the accused agreed that Lagan had in fact had a beard at some stage." So it appears to this Court that the learned trial judge was making it perfectly plain that this was what the Crown was asserting as part of its' case, and was making the distinction between what Detective Chief Inspector Quinn had said about grassing and the shaving off of the beard. There is nothing in that passage to indicate that this defendant was at any time accepting that he ever said that he had been grassed upon. The second relevant passage in the summing up is at page 234 about half way down the page where the learned judge says this - "these are the two essential matters you have to apply your mind to. The accused accepts of course, that what he said to the police on the 26th October, when he was first arrested, and when he made a statement to them about his movements, and also what he said on the 28th October on the Sunday and partly what he said on the 27th October, were correctly put down by the police and it is only in respect of the passages which he attacks that he cast doubt upon them and totally rejects them and indeed says they weren't made at all." I pause to look at that passage because quite understandably criticism of it, is made of it, and the Crown does not suggest it is totally accurate, because for the learned judge to have said "the accused accepts of course what he said to the police when first arrested is plainly not so." Equally it's quite clear that he was not arrested on the 26th October, once again we believe that the learned Deputy Bailiff when he spoke of first arresting, meant first interview. I'll return to the substance of that matter in one moment. The third passage is on page 235 it's at the bottom of the page.

Now, I turn, said the judge, to the question of the Great Union pub, that is to say, the events of the arrest of the accused. You remember that I have already said on that occasion, the accused is supposed to have said that he had been "grassed" and he then swore about Shuan Lagan having shaved off his beard and evidence was given to you by Detective Chief Inspector Quinn. It is suggested, therefore, that as regards the "grassing - and this is the point put to you by defence - that the words used by the police that the accused blurted the word 'grassed' out, meant that he would have spoken them in a sufficiently loud voice with other people being able to hear it, having regard to the fact, as now appears, that there were few people in the pub at the time. On the other hand, Detective Chief Inspector Quinn is sure that those words were used; on the other hand, the witness, MrMcCoach for the defence, didn't hear them, but on the other hand Detective Chief Inspector Quinn you remember, said that the words regarding Lagan's beard were added more softly at a later time. The defence was firstly, of course, that these words were not said at all and they weren't heard, as I've already said, by Mr McCoach but, of course, at some stage, you will remember that Mr McCoach could not have been paying full attention to what was being said because he was more interested as to what was going on at the back of the bar where there were some policemen or a policeman looking for evidence, I suppose, in that place. I don't think it is necessary for me to read any more of that passage, once again it is perfectly plain that the judge and at that point is making it quite clear, that the defence was not accepting what was alleged to have been said by the defendant in the evidence of Detective Chief Inspector Quinn. Accordingly, we have to asses as best we can, the effect which the passage which I have mentioned on page 234 is likely to have had upon this jury. In our view, it is inconceivable that the jury would have misunderstood what the trial judge was saying, because to take a contrary view, had no stage was this defendant admitting that he had ever been involved in this robbery. Whereas if one gave literal effect to what the judge appears to have said, at the trial, it would imply that he has in part admitted what the police had said he said. Accordingly we take the view that the error on the part of the judge, the words which he used could not have persuaded the jury. In our view there is no substance in this point.

The next ground which we take them, and we take them in the same order as they were taken by counsel, was ground number 5. It reads in these terms -

That in his summing up the learned Deputy Bailiff put a rhetorical question regarding the non-recognition of the accused by Mr Brown in the pub, when they happened to meet later the same day. The learned Deputy Bailiff asked - did the wearing of a mask -could that distort a robber's voice in anyway; no evidence had been produced on this point by either prosecution or the defence, neither had the opportunity of commenting upon the question The learned Deputy Bailiff erred in putting to the jury a matter not in evidence.. . The learned Deputy Bailiff in the opening of his summing up had said this to the jury. It's half way down page 231 He said, "I shall in due course be reminding you of some of the evidence that you have heard and I may make some comments on the evidence as I go along. It is however important that you should remember that if I express any view of the evidence, or indeed, if I do not express one) you think I held a view of the evidence, you should not act on the view I hold or that you think I hold, unless it accords with your own.

The passage which is complained of is to be found on page 237 of the transcript at the foot of the page, it's only right that one should read it in context - towards the bottom of that page, the learned Deputy Bailiff had said this. He said this -

"I turn now to the question of the voices of the two robbers because there can be no doubt in your minds, members of the jury, and it is not denied, that there were, in fact, two persons there at the time. Now, did one or both of the robbers speak to Mr. Brown or Mr. O'Neill at that time? Mr. Brown is not sure that there might possibly be two; Mr. O'Neill was fairly sure that it was only one robber who spoke but he wasn't a hundred per cent sure, and I must remind you that there has been no positive direct identification of the accused by means of voice otherwise; Mr . Brown didn't recognise his voice when the accused was required to say at Police Headquarters what it was said the robbers had said (or one of them had said): "Lie down". Did Mr. Brown recognise the accused later in the pub where they happened to meet in the same day? You may want to ask yourself,however, did the wearing of a mask, which is not disputed both robbers were wearing, could that distort a robber's voice in any way?" He completes the second part by saying "Again, all of these matters are for you to consider". In our view it is the function, and the proper function of a trial judge to express such views as occurred to him in the course of his summing up, which reasonably arise upon the evidence, and it is not necessarily in th. circumstances of this case, that there should have been a foundation of evidence for what a person voice might have sound like when he was wearing a mask. In our view there is no substance in this ground of appeal.

The final ground of appeal is ground 4, that is the order which was taken by counsel. It is in these terms - that the learned Deputy Bailiff failec to direct the jury in the light of 'the disputed oral confession' the prosecution should reduce substantial corraborative evidence, the Crown itself referred to the corroborative evidence as ..indistinct.. Reference is given in the Notice of Appeal... page... transcript. It is conceded on behalf of the appellant that this is not one of those kind of cases, which falls into a particular catagory where it is necessary for the Crown to produce corroborative evidence. In our view there was no burden on the prosecution to produce any corroboration in this case. The question in our view, the one which was put by my colleague in the course of argument, whether or not this verdict is unsafe or unsatisfactory. We've considered with care the whole of the transcript and the whole of the summing up, and our answer to that broad question is that there is nothing unsafe or unsatisfactory about this decision. We note incidentally that after a summing up which strikes us as a fair summing up which put the defendant's case very fully, the points which could be argued on his behalf, the matter was left to the jury, the jury return with an unanimous vote. In those circumstances it appears to us that there are no valid points which can be taken on this appeal. This appeal will accordingly be dismissed.