Criminal Justice Notes

In this month's edition of KLS Criminal Justice Notes:

- **A draft final report on national implementation of EU policies on preventing and combating environmental crime, tabled at the December 2019 meeting of the EU Council of Justice and Home Affairs Ministers, presents a mixed picture in which there is much room for improvement.**

- **In a decision handed down less than two weeks ago in *E.R. v DPP* (2019) IESC 86, the Irish Supreme Court emphasised that 'plea-bargaining', even in a diluted form, has no place in the Irish criminal trial.**

Environmental Criminal Law

Introduction

Fuelled partly by increasing awareness of the precarious state of the planet's natural life support systems, environmental protection has been rising rapidly up national and international policy agendas in recent years. The moral and coercive power of the criminal law is being harnessed (albeit hesitantly) to punish certain forms of environmental harms, and to send out the public message that they breach basic standards of behaviour required of individuals, corporate entities and States in a civilised society.

In 2008, the EU broke new ground with the adoption of Directive 2008/99/EC on the protection of the environment through criminal law. It requires each Member State to criminalise certain activities affecting the environment when done unlawfully and with intention or serious negligence. These activities include the discharge of certain polluting material into the air, soil or water where that causes or is likely to cause death or serious injury to any person, or substantial damage to plants or animals or to the quality of air, soil or water. Similar, but separate, provision is made for the management etc of waste, and the storage etc of dangerous substances. Such offences must be punished by criminal penalties that are "effective, proportionate and dissuasive". There is also provision for corporate criminal liability.

The Directive represented a milestone in overcoming stiff political and legal opposition to the injection of criminalisation into the fabric of EU environmental law. The costs, however, were reflected in compromises which diluted the potential impact of the original initiative which was launched in 2001. The effort also seemed to exhaust the policy commitment of the Commission's Directorate-General for the Environment. There was no internal provision for follow up, and the Directive itself did not require subsequent

implementation monitoring or reporting by Member States.[1]

Significantly, it was the Directorate-General for Justice and Home Affairs (rather than the Environment) which eventually took the initiative to embark on mutual evaluations of the national implementation of EU policies on preventing and combating environmental crime. Moreover, the objective was to assess national compliance with undertakings on combating organised crime, rather than environmental protection per se.

The mutual evaluations commenced in 2016. Due to the broad range of offences covered, it was agreed to focus primarily on those offences which Member States felt warranted particular attention; namely illegal trafficking in waste and the illegal production and handling of dangerous materials. Others major areas, such as illicit wildlife trafficking, the illicit timber trade, the illicit fish trade and air pollution were not covered, although most of the broader issues raised are common to them too.

The results were tabled at the recent December meeting of the EU Council of Justice and Home Affairs Ministers (https://data.consilium.europa.eu/doc/document/ST-14852-2019-INIT/en/pdf). The draft final report presents a mixed picture in which there is much room for improvement in the performance of most Member States. It would be a mistake, however, to attribute this solely to a lack of commitment and endeavour at national level. At least part of the explanation can be found in the distinct challenges presented by adopting the criminal law as a tool to protect the environment. These are further complicated by the continued existence of conceptual, substantive and procedural differences across the criminal law regimes of EU Member States.

Challenges in using criminal law to protect the environment

Deploying the criminal law as a tool for environmental protection is not as straightforward as might initially be assumed. It must overcome obstacles that are less problematic in the traditional criminal law categories of offences against the person, property, public order and the State.

The first obstacle concerns the basic need to prescribe the offending behaviour in the form of conventional criminal offences; each of which is expressed as a specified act or omission which occurs in specified circumstances and produces a specified consequence. Given the huge range and diversity of environmental harms, it is not really feasible to express all of them with the clarity and precision traditionally demanded of mainstream criminal offences.

Resorting to loosely defined environmental offences with a very broad sweep is equally problematic, as they will leave the executive and judicial authorities with too much discretion to determine which environmentally harmful acts should or should not be punished. Not only does that conflict with basic 'rule of law' values in a liberal democracy, but it also fails to depict publicly and clearly those particular forms of environmental harm that need to be singled out as worthy of criminal condemnation and punishment.

[1] I am indebted to Dr. Martin Hedemann-Robinson, Kent Law School, for the insights in this paragraph, and for valuable comments more generally on an earlier draft of this note.

The limitations of the traditional criminal law method might be overcome, at least partially, by resort to what are frequently referred to as regulatory criminal offences. This entails the imposition of an administrative licensing regime on the pursuit of defined economic, social or domestic activities carrying a high risk of significant harm to the environment. Failure to comply with the terms and conditions of the applicable licensing regime can then be punished as a criminal offence.

While the licensing approach undoubtedly has immense value and makes a major contribution to environmental protection, it can be criticised as diminishing or masking the criminal character of the most serious incidents of environmental harm. Under it, the criminal offence is seen and treated as a mere breach of an administrative licensing condition, rather than an inherently criminal act. As such, it avoids much of the public condemnation and moral opprobrium generally associated with the latter.

The enforcement of criminal (or administrative) offences against the environment presents challenges that are not normally associated with traditional offences against the person, property etc. Unlike them, environmental crime usually lacks an identifiable victim who will lodge a complaint to trigger the reactive investigation, detection, prosecution and punishment processes. Indeed, this type of crime is rarely self-evident and may even be invisible or intangible. Much of the emphasis in law enforcement, therefore, must be proactive. Typically, this reduces to little more than occasional checks on compliance with applicable environmental standards and licensing conditions; essentially an exercise in administrative oversight.

Where a criminal offence involving serious tangible environmental harm is suspected, effective investigation will usually require the deployment of specialist expertise that will not be available in mainstream policing. Accordingly, it tends to be led by specialist agencies and usually requires a multi-agency approach. The prospects of criminal charges being brought and leading to a successful prosecution can depend heavily on the manner in which they gather evidence and the form which that evidence takes. Even if the evidence satisfies the technical admissibility requirements, it can present the jury with issues of scientific complexity that do not often feature in the trial of mainstream criminal offences.

Further complications can arise from the fact that some types of serious environmental harm do not respect jurisdictional borders. Accordingly, investigating and prosecuting them through the criminal law can be dependant on complex processes of cross-border cooperation among criminal law regimes which differ, sometimes very substantially, from each other.

Clearly, the prevention and punishment of environmental crimes is a complex task which requires a sophisticated legal and policy framework, the adoption of a multi-agency approach guided by defined political and strategic priorities and the allocation of adequate human and financial resources. As will be seen below, the report on the national evaluations finds that most, if not all, Member States have struggled to deliver on all of these fronts. The net effect would appear to be that deploying the familiar criminal process as a mainstream tool in combating serious environmental harms is still a work in progress.

National strategies

The report reveals that the majority of Member States lack a coherent national strategy on tackling environmental crime, and only a few have bodies or entities with a coordinating function for the implementation of such a strategy. This generates a lack of uniformity in tackling environmental crime and undermines the prevention and detection of such crime at national level and across the EU. Accordingly, the report recommends, among other things, the adoption of a national strategy on environmental crime. This should outline the objectives and priorities, together with the roles and responsibilities of the competent authorities and their modes of cooperation.

Criminal or administrative enforcement

All Member States have established a legal framework to tackle environmental crime, including the prescription of offences and penalties. In some, however, the full potential of criminal law enforcement is not being realised, as administrative enforcement is often preferred as an easier and more effective option. This is reflected in a failure to distinguish clearly between the administrative and criminal penalty regimes in the legal definitions of offences. There is also excessive reliance on vague terms such as "substantial damage" which leave too much scope for divergent interpretations in individual cases. The true character of environmental crime tends to get obscured in the process.

Similarly, the report finds that corporate liability for environmental crime is not always treated with the seriousness it deserves. In some States, it is dealt with through administrative sanctions only, while corporate fines imposed are considered generally too light.

Inadequate crime data

Criminal law enforcement strategy in most Member States suffers from poor environmental crime data. The national evaluations criticise them as being insufficient, fragmented, incomplete and based on multiple individual statistical sources. They are collected by each individual responsible authority, with no interlinking or integration among them. Without a comprehensive consolidated database of reported environmental crimes, it is difficult for law enforcement authorities to formulate and implement coherent prevention, detection and prosecution policies. The absence of comprehensive data in many Member States has also meant that the evaluation teams frequently were not able to carry out a thorough examination of the actual extent and seriousness of these forms of crime and assess trends in the States concerned.

The report encourages each Member State to develop a centralised and integrated approach to the collection of systematic, reliable and up-to-date statistics on environmental crime. The data should cover all reported environmental offences, and each stage of the related criminal and administrative proceedings.

Specialist enforcement agencies

Most Member States are considered to have adequate levels of executive enforcement specialisation, at least among their environmental authorities. Not all, however, have dedicated specialist police units for the investigation and detection of environmental crime. In some of those States that do, they are located in the economic and financial sections of the national police. Since environmental crime is chiefly motivated by financial gain, this is

presented as best practice in the report. Nevertheless, the overall number of inspectors and physical inspections are considered insufficient to counteract environmental crime adequately. This is reflected in a detection rate that is too low and a prosecution rate that, in some cases, is statistically irrelevant.

Most Member States lack specialist prosecutors and judges to deal with environmental crime. Some even consider that environmental crime is not of sufficient importance in their jurisdictions to warrant the establishment of specialised structures to tackle it. The evaluation report recommends that Member States should enhance the level of specialisation of prosecutors and judges dealing with environmental crime. This should encompass regular and extensive training, and the establishment of networks and specialist structures or units, for the prosecutors and judges.

Cooperation among agencies

The report emphasises the importance of close cooperation among enforcement (including judicial) authorities within States, in order to create synergies and strengthen the resilience of the overall environmental protection and enforcement system. It finds, however, that the degree of institutional cooperation within Member States is patchy, with some relying on informal ad hoc practices that prove too fragile in certain unexpected circumstances. The report encourages Member States to establish formal structures for strategic and operational cooperation among the players. This could be complemented by a central coordinating body and facilities for systematically exchanging information.

The report considers that the private sector and NGOs can play an important role in environmental law enforcement. It finds that there is room to place cooperation with the private sector on a more formal and structured basis in some Member States, and to enhance the participation rights of NGOs in criminal proceedings. The report also acknowledges that effective prevention is the best way to avoid environmental infringements. With that in mind, it encourages Member States to prioritise prevention, harnessing the resources of both the public and private sectors.

While some Member States have developed forms of international cooperation, the report finds that there is generally a need for greater engagement with the supports offered at EU level through, for example, Europol, Eurojust and the European Judicial Network. Cross-border joint investigation teams (JITs) are also considered a useful tool in this context (for more on JITs see, https://blogs.kent.ac.uk/criminaljusticenotes/2019/11/24/garda-psni-joint-investigation-team/).

Criminal investigation methods

In some Member States, the report finds that investigative techniques, such as observation, infiltration and telephone tapping, which are generally available for serious crime, cannot be used for environmental crime unless there is a link with economic and financial offences. Once again, this has the effect of diluting the seriousness and classification of environmental crime as 'real' crime.

Problems can also arise from the manner in which evidence of environmental offences is gathered. Evidence acquired by administrative authorities may not be admissible in criminal judicial proceedings if the manner of its acquisition does not

satisfy the prescribed requirements of criminal process. This can result in the enforcement authorities opting to proceed through the administrative process, thereby concealing the true criminal character of the offence.

Selected sectors

The evaluations focused specifically on the illegal trafficking of waste and the production and handling of dangerous substances, as these are two major sources of serious environmental crime. With respect to the former, the report is of the view that there is significant room for improvement in enforcement. It encourages all Member States to see this form of environmental crime as part of economic crime frequently committed by organised crime groups. Accordingly, they should take into consideration its economic aspects and its financial implications for the natural environment and society when formulating and implementing their enforcement policies.

On the production and handling of dangerous substances, the report emphasises the importance of adequate controls and the use of intelligence and risk assessment, as well as structured forms of cooperation. These are considered essential to strengthen Member States' detection and enforcement systems in the field.

Overall

More than ten years after the adoption of the EU Directive on the subject, there is still considerable room for improvement in protecting the environment through the criminal law across the Member States. The capacity to accomplish this complex and multi-agency task varies considerably among Member States. While there are examples of best practice, overall there is a need for it to be given a higher level of prioritisation at a political and strategic level. The evaluation report concludes that States need to make a greater effort in using the potential of their own law enforcement and criminal law systems to their full extent in combating environmental crime. They must also strive to involve all their stakeholders, use all available tools efficiently, and foster international cooperation, to achieve better management of environmental protection within their own jurisdictions and across borders.

It remains to be seen whether the Commission's Directorate-General for the Environment will use this Justice and Home Affairs report to re-invigorate its policy actions and leadership in the field. As noted by Dr. Hedemann-Robinson, the new Commission President, Ursula von der Leyen, appears to have pushed environmental issues much higher up the political agenda than her predecessor. We will have to wait, however, for the adoption of the new Environmental Action Programme to get a clearer picture of possible future developments.

Plea-Bargaining in Ireland

Introduction

Plea-bargaining broadly refers to a process which results in an accused agreeing to plead guilty to an offence in return for a lighter sentence. Insofar as it involves private negotiations and agreement among the prosecution, defence and the judge, it is entirely improper and unlawful. Where it arises at all, it is likely to take the form of the judge giving an

indication of the sentence he or she considers might be appropriate on the basis of his or her understanding of the facts at that stage in the proceedings. This might occur in open court or in private discussion with counsel in the judge's chambers. In the latter, defence counsel could use any such indication as a basis for advising the accused on the respective merits of pleading guilty or not guilty, so long as he or she does not reveal the judge as the source. Either way, since there is no bargaining element involved, it is arguably a misnomer to refer to it as plea-bargaining.

Plea-bargaining offers obvious resource and bureaucratic advantages in the management of criminal prosecutions. Even in its diluted version, however, these may have a serious adverse effect on justice and the integrity of the criminal trial (see below). The appellate courts in Ireland and Britain have struggled to strike an appropriate balance between these tensions. In a decision handed down less than two weeks ago in *E.R. v DPP* [2019] IESC 86, the Irish Supreme Court shed further light on the Irish approach. That case concerned the effects of the trial judge intervening during the course of the trial to indicate that a suspended, or other lenient, sentence might be imposed should the accused plead guilty to certain counts on the indictment.

Facts of the case

The two accused, a mother and her partner, were re-tried before a judge and jury with serious assaults on the mother's four-year old child. Their previous trial had ended in the failure of the jury to agree a verdict. In the course of the re-trial, a video of what the child victim told the investigating authorities about what had happened to him was shown to the jury. It was expected that this would be followed by the child being made available for cross-examination by counsel for each of the two accused.

Before the cross-examinations commenced, the trial judge (in the absence of the jury) intimated that if the two accused were to change their plea to guilty to at least one of the counts, it could result in the imposition of a non-custodial sentence. The judge also intimated that, in the absence of a guilty plea, it would be difficult to see how they could avoid a custodial sentence if they were convicted by the jury. The intervention was made by the trial judge on his own initiative.

Presumably, the judge's motivation was to save the child from the further trauma of cross-examination on behalf of his mother and her partner, if that could reasonably be avoided without injustice. Nevertheless, it could be interpreted as introducing an element of plea-bargaining (at least in its diluted form). It should also be noted, however, that prosecution counsel made it clear that an application to increase the length of any sentence imposed would remain an option for the prosecution.

Having considered the matter overnight, both accused changed their pleas to guilty. The mother's partner was subsequently sentenced to imprisonment for ten years, with seven years suspended. Before she was sentenced, the mother sought leave from the trial judge to vacate her guilty plea (change her plea back to not guilty). The only reason given for her earlier guilty plea was that she did not want to go to prison, and she felt at the time that she was "stuck between a rock and a hard place" because of the indication given by the judge on the sentence. The judge refused to allow her to change her plea, and she was subsequently sentenced to imprisonment for

eight years, with the whole term suspended.

The mother sought a judicial review of the legality of the judge's refusal to allow her to change her plea to not guilty. That, in itself, was an unusual step to take (or permit) during the currency of a criminal trial. The normal course would be to allow the trial to take its course and then proceed by way appeal against the verdict (assuming that it was a guilty verdict). She succeeded initially in the High Court which held that the judge's intervention, however well-intentioned, had the unlawful effect of applying pressure on her to plead guilty.

The High Court's decision was overturned by the Court of Appeal on the entirely separate ground that the accused should not have been allowed to seek a judicial review during the currency of the criminal trial. That decision was upheld by the Supreme Court. The net effect was that the 'plea-bargaining' issue lost its substantive effect. Nevertheless, in his judgment in the Supreme Court, Charleton J. made it clear that 'plea-bargaining', even in the form that it took in this case, has no place in the Irish criminal trial.

Plea-bargaining issues

Plea-bargaining has some obvious bureaucratic and resource advantages. Persuading a guilty person to plead guilty avoids the uncertainty attaching to the outcome of a contested criminal trial. It also makes substantial cost savings and speeds up the processing of other criminal trials to the benefit of victims, witnesses, the criminal justice agencies and society as a whole. In cases such as *E.R.*, it also has the immeasurable benefit of sparing vulnerable victims and witnesses the ordeal of having to give evidence and to submit to cross-examination on that evidence. There is always the risk that they will otherwise not be able to cope with the stress involved, with the result that the trial may collapse and a guilty person walk free.

The drawbacks to plea-bargaining are surely weightier. One of the basic principles of justice in a liberal democracy based on the rule of law is that criminal trials must be conducted in public. The integrity of the criminal process, and public confidence in it, depends heavily on that. Accordingly, when an accused pleads not guilty, the evidence against him should be presented and tested in open court, and (where applicable) the sentencing process should be conducted in open court. The accused must not be exposed to pressures aimed at extorting an involuntary guilty plea. Equally, there should be no room for secret deals which harbour suspicions of promoting professional, bureaucratic and/or privileged interests to the detriment of the individual victim and society. In this context, appearance and substance are virtually indistinguishable.

In an article in *The Bar Review* (2000), Charleton[2] and McDermott[3] identified further objections closely linked to the private environment in which the sentence discussion occurs. These include: the risk of inadequate information being given to the judge, inhibition on the judge imposing a more severe sentence, the "incorrect"

[2] He is the same Charleton J. who handed down the leading judgment in the Supreme Court in the *E.R.* case.

[3] Paul Anthony McDermott was a former academic colleague, a leading Irish criminal practitioner and joint author (with Peter Charleton and Marguerite Bolger) of the seminal Irish text *Criminal Law* (1999). Tragically, he died a few weeks ago after a short illness at the age of 47 years. His passing is an inconsolable sadness for his young family and an immense loss to the Irish legal profession.

atmosphere of chambers in contrast to that in open court, misunderstanding among the parties and possible pressure on the accused.

The risks associated with plea-bargaining have long been recognised. In *Turner* (1970), one of the most frequently cited English cases on the subject, Lord Parker C.J. made it abundantly clear that a trial judge should never indicate that he or she would impose one sentence on a plea of guilty and a more severe sentence on a plea of not guilty. The most that the judge can do in this context is tell counsel the particular type of sentence he or she would impose, having read the case materials. This must not be related to a plea of guilty or not guilty.

Significantly, the Court in *Turner* also provided guidelines on when it might be appropriate for counsel to talk to the judge privately in chambers to get an indication as to the likely sentence (the *Turner* Guidelines). These were further developed and clarified by the Court of Appeal for England and Wales in *Goodyear* (2005). They are also the subject of guidance issued by the Attorney General's Office.

Irish perspectives

In *Heeney* (2001), the Irish Supreme Court made it clear that plea-bargaining, in the sense of a private arrangement whereby a particular level of sentence will be imposed in return for a plea of guilty, has no place in Irish law. Indeed, it would be contrary to Article 34.1 of the Irish Constitution which states that justice, in general, should be administered in public. The Court also said, however, that a trial judge could give a provisional indication as to the difference in level of sentence that might be secured in return for a plea of guilty. This would be permissible so long as there was no element of bargain involved, and it was understood that the sentence might change depending on the evidence heard in open court. It is also worth noting that the DPP issued an instruction to prosecution counsel in 1998 to desist from the practice of accompanying defence counsel to the judge's chambers for the purpose of expressing a view, if asked by the judge, on a sentence that might be imposed.

Even where the accused is given an indication that changing his plea will secure a lighter sentence, he must take account of the possibility that the DPP will make an application to the Court of Appeal challenging the leniency of the sentence imposed. There have been cases in which the DPP has taken such applications successfully even though the sentence was handed down on a guilty plea entered consequent on private discussion involving prosecution and defence counsel and the judge. In *Heeney*, the Supreme Court said that the Court of Appeal should take cognisance of any such discussion when considering whether the sentence was too lenient, although it was not precluded from increasing the sentence.

In *E.R.* Charleton J., in the Supreme Court, seemed to take a more absolutist stand against anything that hinted of plea-bargaining. The case is unusual in that it does not involve an attempt by defence counsel to seek an indication of the sentence that might be imposed in the event of a change of plea. Nor does it involve any discussion around sentence and plea in the judge's chambers. Instead it was the judge himself who raised the matter and he did so in open court (in the absence of the jury).

Charleton J. acknowledged that the trial judge was likely motivated by considerations of humanity for the child

victim. Nevertheless, he made it clear that the judge's intervention was inappropriate. There was no room for the judge to discuss the issue of sentence with the parties "[w]hether in open court or, worse still, in the secrecy of chambers". In Ireland, such discussions have "no place in the constitutional order of a trial in due course of law." Charleton J.'s reasoning on this is largely reflected in the drawbacks to plea-bargaining outlined above. Moreover, he was influenced by the fact that the trial judge in this case could, and should, have taken steps to protect the child by exercising control over the tone and length of cross-examination, while at the same time ensuring the accused's right to test the child's evidence.

Effect on the guilty plea

In light of what the Supreme Court had to say in *E.R.* about the trial judge's error in raising the issue of sentence, it might seem reasonable to expect that the Court would go on to quash the accused's guilty plea. Nevertheless, the Court did not do that. It upheld the trial judge's refusal to allow the accused to change her plea to not guilty.

The Supreme Court acknowledged that the trial judge has a discretion to allow the accused change her plea from guilty to not guilty in the course of the trial. It also emphasised, however, that he or she should not intervene to do so unless quite exceptional circumstances have arisen in the case.

Permitting a change of plea from guilty to not guilty in the course of the trial would have significant ramifications. The Supreme Court pointed out that the unitary nature of the trial, which is a core feature of the common law trial process, would be disrupted. Witnesses may already have been sent away, and the victim's sense of closure following the guilty plea would be dashed. Scarce court time would be wasted, with knock on implications for the scheduling of pending trials.

More fundamentally, the change of plea calls into question whether the initial guilty plea was an informed and voluntary decision. A guilty plea is a statement that the accused committed the offence and accepts responsibility for it. Subsequently changing the plea to not guilty would require the accused to show that an impermissible degree of pressure had been exerted on her falsely to plead guilty in the first instance. On the facts of this case, that appeared to be lacking.

The Supreme Court considered the trial judge's intervention on the sentencing issue as the provision of information, rather than an inducement to plead guilty. In any event, it was made clear in the presence of the accused that the prosecution reserved the right to apply to the Court of Appeal to increase the sentence if it was considered too lenient. Accordingly, she knew that the trial judge did not have the last say on sentence, as it could be changed by the Court of Appeal.

The accused did not present any other evidence that could have persuaded the trial judge to exercise his discretion in her favour. Strictly, her legal team should have withdrawn from the case when she changed her plea. That would have allowed her to waive legal professional privilege, thereby making evidence of her solicitor and counsel on the matter available to her. There was no indication, however, that that would have added anything to her case.

Taking all of these matters into account, the Supreme Court concluded that there was insufficient evidence to warrant exercise of

the trial judge's discretion in favour of allowing the accused to change her plea from guilty to not guilty. Accordingly, there was no basis for disturbing the judge's decision on the matter.

Conclusion

Charleton J.'s observations in the Supreme Court on the 'plea-bargaining' aspects of E.R. are, strictly speaking, not legally binding (as the case was disposed of on the basis that judicial review was not a remedy lawfully available to an accused during the currency of a criminal trial). Nevertheless, it can be expected that they will be relied on as authority for the proposition that 'plea-bargaining', even in the diluted form that it took in this case, has no place in Irish criminal law. Given the damage that plea-bargaining can inflict on justice and the integrity of the criminal process, the decision is welcome. The refusal to allow the accused to change her plea from guilty to not guilty is more questionable.

While it is easy to appreciate the need for limits on such change of plea in the course of a trial, it is at least arguable that the bar was set too high on the facts of this case. For the outside observer, there is surely a sense that the accused would not have pleaded guilty had it not been for the trial judge's intervention holding out the prospect of a non-custodial sentence in the event of a change of plea to guilty. The mere fact that there was no guarantee of a non-custodial sentence, or that it might not survive possible challenge, does not detract from the appearance that it was sufficient to extract the guilty plea. Accordingly, it is respectfully submitted, the integrity of the trial process would have been better served, in the particular circumstances of this case, if the accused had been allowed to change her plea again from guilty to not guilty.