

## R v McGARRY [1998] EWCA Crim 2364

In this assault case the defendant was arrested and interviewed and made a no comment interview, he was bailed then later rearrested at which time he produced a prepared statement which stated;

‘I agree that I was present at the Squash Club on the date in question. I had an altercation inside the club with the complainant. I agree that I left the club at about ten past one. As I was walking up the path towards the pavement the complainant was at my left hand side. He said something to me and lunged forward with his right hand at which point I punched him in self-defence. I have nothing further to say’.

Thereafter, though questioned, he simply answered ‘No comment’. At the trial each of the witnesses described the appellant’s punching the victim. None saw anything done by the victim to provoke or justify the punch. PC Clarke also gave evidence about his investigations and the state of intoxication of those at the scene on his arrival there.

The judge in the original trial ruled as follows;

‘I shall not in the circumstances be inviting the jury to consider drawing any adverse inferences but I will not be directing them not to if that is what they do of their own accord’.

The Appeal Court considered the following; The question is evidence having been introduced of both no comment interviews, what if any direction should the judge have given the jury as to how they should regard the appellant’s refusal to answer questions on the matters of detail put to him by the police?

‘.. in those cases where the judge has ruled that there is no evidence on which a jury could properly conclude that the defendant had failed to mention any fact relied on in his defence, and that therefore no question arises of leaving the possibility of drawing inferences to the jury, he should specifically direct them that they should not draw any adverse inference from the defendant’s silence. If this is not done, the jury will be left without any guidance as to how they should regard the defendant’s refusal to answer: and that may be seriously prejudicial to the defendant...’

The appeal was upheld.

*The interpretation and comments made within this document are not to be considered as legal advice.  
Reference should always be made to the original case.*