

Neutral Citation No: [2024] NICC 37

Ref: FOW12674

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 06/12/2024

**IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE, BELFAST**

THE KING

v

SOLDIER F

**Mr Louis Mabley KC, Mr Sam Magee KC and Mr David McNeill (instructed by the
Public Prosecution Service) for the Crown
Mr Mark Mulholland KC, Mr Ian Turkington KC and Ms Leila Gaafar (instructed by
MTB Law Solicitors) for Soldier F**

RULING ON APPLICATION FOR ANONYMITY

FOWLER J

Introduction

[1] The defendant before the court is a former member of the Parachute Regiment. He is indicted on two counts of murder (counts 1 and 2) and five counts of attempted murder (counts 3-7). The charges against him arise out of events which occurred on 30 January 1972 in Derry when 13 civilians were killed during what has become known as 'Bloody Sunday.'

Background

[2] This defendant has been protected by anonymity at the Widgery hearings in 1972, the Saville Inquiry 2010, Judicial Review proceedings between 2020-2022 and most recently at Committal proceedings between 2021-2024. He has also been granted interim anonymity in the present proceedings. I am asked by Mr Turkington KC on behalf of the defendant to grant an anonymity order for these present Crown Court proceedings. I have received cogent and helpful written submissions from Mr Turkington and Mr Mably KC for the prosecution in this case for which I am grateful. Mr Mably in this application very properly adopted a

neutral position in keeping with the authorities of *R v Soldier A and Soldier C* [2021] NICC 2 and *Marine A* [2014] 1 WLR 3326. He, however, exercised his right to cross-examine Mr Alan McQuillan who provided updated threat assessment evidence to the court.

[3] Mr Turkington in his application is seeking an anonymity Order to withhold the defendants name and visual identity from the public during the proceedings. This will include a reporting restriction and the screening of the defendant from the public during court attendances.

[4] Anonymity has been afforded to all soldiers who were present with Soldier F in Glenfada Park North at the material time on Bloody Sunday. This includes the Soldiers G (deceased) and H whose hearsay statements from an essential part of the prosecution case.

Legal principles

[5] My attention was drawn by counsel to the helpful ruling delivered on 19 April 2021 by O'Hara J in respect of a similar application in the case of *R v Soldier A and Soldier C*. It is agreed that this ruling provides a comprehensive list of the principles I should apply in my approach to this application and are derived from a series of well-established authorities including *Re L* [2007] 1 WLR 213 and *R v Marine A* [2014] 1 WLR 3326. The principles summarised by O'Hara J are as follows:

- (a) The starting point for the court is that it has a duty to follow to the maximum degree possible the principle of open justice.
- (b) The threshold for departing from that principle is high.
- (c) The court, as a public authority within the meaning of section 6 of the Human Rights Act 1998, has an absolute duty under Article 2 of the European convention on Human Rights to protect life and under Article 3 to prevent anyone being subjected to inhuman or degrading treatment.
- (d) These obligations have both negative and positive aspects so that in the case of Article 2 the negative obligation is not to take life whereas the positive obligation is to take steps to prevent the loss of life.
- (e) The court also has a duty under Article 8 to respect private and family life which is not absolute, but which is qualified so that protection is given subject to proportionate and necessary interference.
- (f) The court has a duty under Article 10 to respect freedom of expression. This includes the right of the media to report court proceedings and impart information. The right is qualified, not absolute, and is to be protected subject only to proportionate and necessary interference.

- (g) Section 12 of the Human Rights Act 1998 requires courts generally to recognise the importance of journalism and the public interest in reporting.
- (h) The absolute Article 2 positive obligation to protect life arises only when it is shown that the risk to life is “real and immediate” – Lord Carswell in *Re Officer L* at para [20].
- (i) In this context a real risk is one that is objectively verified while an immediate risk is one that is present and continuing – Lord Carswell at para [20] approving Weatherup J in *Re W’s Application* [2004] NIJB 67 at para [17].
- (j) If there is a risk which is neither fanciful nor trivial it constitutes a real risk – Girvan LJ in *Re Officers C and others* [2012] NICA 47 at paras [41]-[42].
- (k) The fact that an individual feels himself to be at risk does not mean or approve that he is but if the fear is genuine it is relevant when considering if the risk is real.
- (l) Apart from the court’s obligation under the Human Rights Act 1998 it also has to consider the common law duty of fairness. The principles which apply to the duty of fairness are “distinct and in some respects different from those which govern a decision made in respect of an Article 2 risk. They entail the consideration of concerns other than the risk to life, although ... an allegation of unfairness which involved a risk to the lives of witnesses is pre-eminently one that the court must consider with anxious scrutiny.” – see Lord Carswell at para [22].
- (m) Subjective fears, even if they are not well-founded, can be taken into account. It is unfair and wrong that witnesses should be avoidably subjected to fears arising from giving evidence the more so if that has an adverse impact on their health. It is possible to envisage a range of other matters which could make for unfairness in relation to the witnesses. Whether it is necessary to require witnesses to give evidence without anonymity is to be determined by balancing a number of factors which need to be weighed in order to reach a determination – see Lord Carswell at para [22].

[6] A PSNI threat assessment was carried out in respect of Soldier F in 2019 and reviewed in 2021. Further on 9 May 2024 it was confirmed the threat assessment remains the same. Soldier F is assessed to be at low threat from Northern Ireland Republican terrorists in both Great Britain and Northern Ireland. That assessment is of the threat from dissident Republican terrorist groups. “Low” means an attack is unlikely.

[7] Should F be denied anonymity in criminal proceedings, the threat to him while in Northern Ireland from dissident Republicans could rise above the “low”

threat band. The threat to F in Great Britain also has the potential to rise should anonymity in these proceedings be denied. The current assessment is that it is unlikely to rise.

[8] I also heard evidence from Alan McQuillan, a retired assistant chief constable in the PSNI with considerable experience in dealing with and investigating terrorism and organized crime. I accept Mr McQuillan's qualifications as an expert. He carried out a threat assessment in June 2021 with this report being brought up to date with an addendum of 9 May 2024. He outlined to the court that the defendant would be a prize target for the New IRA who model themselves on the provisional IRA. His view was that given increases in digital information processing, image recognition and the associations between the New IRA and organised crime gangs, if anonymity is not granted to Soldier F the risk of attack would increase in both Northern Ireland and Great Britain. It was also acknowledged that the subjective fears of the defendant and his daughter are impactful on them.

[9] Mr McQuillan highlighted that Soldier F is the only person to stand trial for the events of Bloody Sunday which occurred in Derry and stirs deep emotions within the city. This is where the New IRA's main centre of support is located. If the defendant were acquitted and his identity not protected, he would be a prize target for attack in Great Britain.

Consideration

[10] I have considered all the oral and written evidence/submissions helpfully provided to me. The real issue in the case is whether Soldier F faces a real and immediate risk if his identity is not protected. Threat assessment only captures the present state of affairs and can change from day to day and with great speed. Assessing future predictive risk is difficult. As observed by O'Hara J in *R v Soldiers A and C* 'if anonymity is removed now and the defendant ... ultimately acquitted it would be impossible to restore anonymity.' Accordingly, after a consideration of the materials provided to me and the evidence of Mr Alan McQuillan, I consider there is a real risk to the defendant which is neither fanciful nor trivial and it constitutes a real and immediate risk if anonymity is refused.

[11] In the circumstances, I grant the anonymity order to withhold the defendant's name and visual identity from the public during the proceedings. This will include reporting restrictions of his name and image and the screening of the defendant from the public during court attendances.