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08/44421

IN THE CROWN COURT SITTING AT LONDONDERRY

THE QUEEN

–v-

JAMES OLIVER MEEHAN,
BRENDA DOLORES MEEHAN and
SEAN ANTHONY DEVENNEY

RULING

McCLOSKEY J

[1] The subject matter of this ruling is an application on behalf of the third-named Defendant, Sean Anthony Devenney, that the jury sworn to try this matter should be discharged and, in effect, substituted by a newly sworn jury drawn from a panel of jurors emanating from a Division or county other than County Londonderry, the source of the presently sworn jury and reserve jurors. At this juncture, the Defendants have not been placed in charge of the jury.

[2] The indictment has three counts. The first alleges that the Defendants murdered James McFadden on 5th May 2007, in the County Court Division of Londonderry. The second alleges that, on the same date, the Defendants assaulted one Jason Graham, thereby occasioning him actual bodily harm. The third count asserts a freestanding charge of common assault, to the effect that the second-named Defendant, Brenda Dolores Meehan, assaulted Ashling McFadden on the same date. The Defendants deny all the charges.

[3] The Defendants are all members of the same family. They formerly resided at 25 Dundreen Park, a Northern Ireland Housing Executive residence in the Galliagh area of Londonderry. Each of the Defendants was granted bail at an earlier stage and, in compliance with their bail conditions, they have been residing at other locations. As a result, their former residence assumed the character of an abandoned house and, apparently, has been unoccupied, albeit still containing many of their possessions. The murder victim and the victims of the other alleged offences reside at Moyola Drive in the Shantallow area of the city. It is evident from the maps

available to the court that these are adjacent districts, separated by the Glengalliagh Road.

[4] At a pre-trial review, the court enquired whether there would be any application on behalf of the Defendants relating to trial venue. Following due consideration, the Defendants' legal representatives subsequently notified the court that no such application would be pursued. The trial duly commenced, as scheduled, on 5th May 2009, when the jury was empanelled, drawn from a County Londonderry jury panel. On 6th May 2009, the court was required to deal with certain jury selection issues and these were duly addressed. On the same date, an application was made on behalf of the second-named Defendant, Brenda Dolores Meehan, to defer the commencement of the trial to facilitate a psychiatric examination. The court was satisfied that it would be in the interests of justice to accede to this application, having regard to the information supplied. In particular, I considered it important that that all Defendants be able to make informed decisions and choices and to provide considered and informed instructions to their legal representatives throughout the course of the trial. This application, and the court's ruling thereon, received some publicity. In particular, on 7th May 2009, a national newspaper reported:

> "*A wedding day murder trial was halted yesterday over worries about the mental state of one of the accused …*
>
> *All three Defendants live at Dundreen Park in Derry …*".

This report further outlined that the court had been informed about concerns regarding the mental wellbeing of the Defendant concerned and the desirability of an examination by a consultant psychiatrist. The report concluded:

> "*The three Defendants were released on continuing bail. The trial is now expected to start next Monday* [viz. 11th May 2009]".

On 8th May 2009, a similar report was published in a local newspaper, "*The Derry Journal*".

[5] The event precipitating the present application is reported as having occurred on 10th May 2009 (last Sunday). The BBC news website carries the following report:

> "*The home of a woman facing trial for murder has been damaged by arsonists …*
>
> *The house at Dundrean Park in Galliagh was deliberately set on fire on Sunday morning …*
>
> *The owner, Brenda Meehan, is one of three people awaiting trial for the murder of Jim McFadden in the Shantallow area of Derry*

> *in 2006. The police have not said if there is any connection between the fire and the trial*".

The incident has also been reported in the Derry Journal in its edition of 12th May 2009. This report documents, inter alia, the name of the Defendant concerned (Brenda Meehan), the murder charge and the number of Defendants against whom this is preferred.

[6] As a result, on 12th May 2009, an application was made to the court on behalf of Sean Anthony Devenney for the discharge of the present jury and its substitution by a jury sworn from a panel drawn from a different Division. The essence of the application is that by virtue of the events which have occurred and the associated publicity, there is a risk that a juror or jurors could be prejudiced against the Defendant/s. Miss McDermott QC submitted in particular that, by reason of concern for their personal safety (and, it appears to me, by extension, that of family member) jurors might feel pressurised to return a guilty verdict. Accordingly, there is a risk that the Defendants will not receive a fair trial. Miss McDermott agreed that the court would also have to weigh certain related risks viz. the possibility of a perception by jurors that only guilty, rather than innocent, Defendants would be exposed to this kind of attack, coupled with the risk of a juror or jurors forming the impression that this represents some kind of community verdict against the Defendants from which the jury should be slow to dissent and which they would reject at their peril.

[7] It is important to be clear about the precise nature of the application which the court is to determine. In its embryonic state, it took the form of a change of venue motion. However, it has evolved into an application to discharge the jury on the grounds summarised above. Having said that, the governing principles applicable to these distinct types of application are closely comparable. The court's sense of fairness is the barometer by which, ultimately, applications of this kind are resolved. In ***Regina –v- Morgan and Another*** [1998] NIJB 52, a change of venue motion brought by the prosecution, the issue was whether, in the words of the Lord Chief Justice, the jury "*… might be predisposed in the Defendants' favour and* [whether] *there was a material risk that they would not view the case impartially*" [at p. 53d]. As appears from a later passage in the judgment, the overarching criterion is the familiar one of a fair trial (cf. p. 54g). Notably, the Lord Chief Justice referred to "*possible injustice either to the defence* ***or the prosecution***" [emphasis added]. This chimes with the modern concept of fairness in a criminal trial, as explained by Lord Steyn in a celebrated passage which bears repetition:

> "*The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests.*

> *It involves taking into account the position of the accused, the victim and his or her family and the public*".

(See ***Attorney General's Reference No. 3 of 1999*** [2001] 1 All ER 577, at p. 584).

[8] While the importance of a jury being entirely impartial is a longstanding feature of the common law, it has been reinforced by Article 6 of the Convention in an era of sophisticated technology and mass communication. In the contemporary setting, the modern jury is in some ways the antithesis of its predecessor of several centuries ago, as emphasized by Campbell LJ in ***Regina –v- Fegan and Others*** [unreported]. See also ***Regina –v- McParland*** [2007] NICC 40, paragraph [20] especially. I consider that the modern differs in no material respect from the pronouncement of Maloney CJ almost a century ago, in ***Regina –v- Maher*** [1920] IR 440:

> "*The rule of law does not require it to be alleged that either A or B or any number of jurors are so affected, or will be so affected; but if they are placed under circumstances which make it reasonable to presume or apprehend that they may be actuated by prejudice or partiality, the court will not, either on behalf of the prosecutor or traverser, allow the trial to take place in that county …* ***It is a wise and jealous rule of law to guard the purity of justice that it should be above all suspicion***".

[Emphasis added].

Thus *perceptions* are all important: the terms of the immutable rule that justice should not only be done but should manifestly and undoubtedly be seen to be done are familiar to all practitioners.

[9] In considering whether the composition of a jury poses any threat to the fairness of a given trial, the test to be applied is that of apparent bias, as articulated by the House of Lords in ***Porter –v- Magill*** [2002] 2 AC 357: would a fair-minded and informed observer conclude that, having regard to the particular factual matrix, there was a real possibility of bias? In ***Regina –v- Mirza*** [2004] 1 AC 1118, the question formulated by Lord Hope was whether the juror had "*knowledge or characteristics which made it inappropriate for that person to serve on the jury*": see paragraph [107].Bias , in my view, connotes an unfair predisposition or prejudice on the part of the individual , an inclination to be swayed by something other than evidence and merits .

[10] Practitioners in this field will also be familiar with the exposition of the correct doctrinal approach contained in the judgment of Hart J in ***Regina –v- Grew and Others*** [2008] NICC 6, paragraphs [45] – [50] especially. Other decisions belonging to this sphere include ***Regina –v- Maccle and Others*** [2007] NIQB 107 and ***Regina –v- Lewis and Others*** [2008] NICC 16.

[11] It is trite that where an application of this kind is made, an asserted risk to the fairness of the trial which is flimsy or fanciful will not suffice. However, the converse proposition applies with equal force. The court is required to make an evaluative judgment based on all the information available. This requires, in the words of Lord Mustill, the formation of "*what is essentially an intuitive judgment*" (***Doody –v- Secretary of State for the Home Department*** [1993] 3 All ER 92, p. 106e). In making this judgment, the court will apply good sense and practical wisdom. Ultimately, the court's sense of fairness, as this concept has been explained above, and its grasp of realities and perceptions will be determinative.

[12] In the present case, I have determined to accede to the application. It is apparent that the death giving rise to this prosecution has generated much antipathy, revulsion and emotion. It has also attracted considerable publicity. At a later stage, the grant of bail to one of the Defendants generated controversy and resulting disturbances which were duly publicised. Of themselves, indeed even in combination, these factors would probably be insufficient to warrant the discharge of the jury sworn to try the Defendants. However, in my view, the most recent event viz. the arson attack on the Defendants' known and recently publicised place of residence and its attendant publicity tip the balance in favour of acceding to the application. While the court has been informed of the current police assessment, which does not, at this stage, suggest any clearly proven nexus between the arson attack and the prosecution of the Defendants, this is not, in my view, determinative of the issue. I consider that this event has generated two risks in particular which cannot be dismissed as merely theoretical. The first is a risk that one or more jurors will feel pressurised to return a verdict of guilty against the Defendants based on considerations other than the merits of the prosecution case. Such considerations would revolve mainly around personal fear and anxiety. The second is a risk that one or more jurors may associate the attack on the Defendants' home with guilt on their part. These emotions, or sensations, may be experienced either consciously or subconsciously. It follows that there is a risk, more than fanciful, that the Defendants will not receive a fair trial in the circumstances now prevailing.

[13] Moreover, I have concluded that this risk cannot be satisfactorily addressed by the mechanism of a suitable warning to the jury. In the particular circumstances of this case, the warning would have to be quite emphatic and detailed. It would bring the relevant event to the attention of any jurors who were unaware of it. In addition, it would give the matter an emphasis and exposure which, in my view, would be more likely to exacerbate than eliminate the risk of a prejudiced verdict. To summarise, I consider the appearance of bias test to be satisfied in the particular circumstances.

Conclusion

[14] Accordingly, I accede to the application. The practical consequences are the following:

(a) The existing sworn jurors and reserve jurors are hereby discharged.

(b) A jury panel drawn from a Division/county other than Londonderry will be available to be sworn to try this case tomorrow viz. on 14th May 2009, arrangements having been made.

(c) I have reflected on the submissions of the parties relating to the estimated duration of the trial and how this interacts with the end of the legal term, the advent of the summer vacation and associated matters. I have balanced the various considerations in play. These include the Defendants' right to be tried within a reasonable time, the vintage of this case (the death having occurred over two years ago), the interests and expectations of victims and witnesses and the public interest in the expeditious completion of a trial of this nature. The court must also bear in mind that the Defendants' right to a fair trial within a reasonable time guaranteed by Article 6 of the Convention cannot be waived. As a public authority, the court is obliged by Section 6 of the Human Rights Act 1998 to vindicate this right. In addition, I have been obliged to consider the future programming of other Crown Court cases and the pressures on the court lists, which entails taking into account the rights and interests of other accused persons. While I have also considered the factor of personal convenience, this must, of necessity, be accorded substantially less weight than the considerations just mentioned. Having balanced all of these factors, I have concluded that the fairest and most appropriate course is to proceed with this trial forthwith.

(d) Accordingly, a new jury will be sworn tomorrow.

(e) I have considered the report prepared by Dr. Harbinson in relation to the Defendant Brenda Meehan: see paragraph [4] above. I am satisfied that the issues raised in this report can be adequately and fairly addressed by deferring the formal commencement of the trial until next Monday (18th May 2009). This will occasion a delay of one day only. Accordingly, following the swearing of the jury tomorrow, there will be an adjournment for one day. The court will ensure that this trial is conducted with the maximum expedition thereafter and the parties will doubtless contribute fully in securing this important objective.