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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

JAMES OLIVER MEEHAN, BRENDA DOLORES MEEHAN AND SEAN DEVENNEY

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Before: Morgan LCJ, Higgins LJ and Coghlin LJ

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MORGAN LCJ (delivering the judgment of the court)

[1] The appellants pursue appeals with the leave of the single judge against their convictions for murder by a jury at Coleraine Crown Court on 15 July 2009. This was a long trial in which a range of verdicts were open in respect of the appellants. The learned trial judge provided written directions. We take the opportunity to say something about how juries should be charged in such cases.

[2] James Meehan was arraigned on 30 May 2008 at Belfast Crown Court before Mr Justice Hart and pleaded not guilty to counts 1 and 3 (murder and assault occasioning actual bodily harm respectively). On 21 May 2009 at Coleraine Crown Court before Mr Justice McCloskey, he was re-arraigned and pleaded not guilty to murder but guilty of manslaughter on count 1. The plea was not accepted and the trial continued before Mr Justice McCloskey from 5 May 2009 to 15 July 2009. The jury found James Meehan guilty of the murder of James McFadden and the assault of Jason Graham occasioning him actual bodily harm. On 1 October 2009, Mr Justice McCloskey sentenced him to a minimum term of 14 years imprisonment for murder and 3 months imprisonment to operate concurrently for assault occasioning actual bodily harm.

[3] Brenda Meehan was arraigned on the same Bill of Indictment on 30 May 2008 at Belfast Crown Court before Mr Justice Hart and pleaded not guilty to counts 1 - 3 (murder, assault occasioning actual bodily harm and common assault respectively). The jury found Brenda Meehan guilty of the

murder of James McFadden and common assault of Aisling McFadden and not guilty of assault occasioning actual bodily harm of Jason Graham. On 1 October 2009 Mr Justice McCloskey sentenced Brenda Meehan to a minimum term of 5 years imprisonment for the count of murder and 1 month imprisonment concurrent for the count of common assault. The tariff portion of the sentence has been the subject of a reference by the Attorney General.

[4] Sean Devenney was similarly arraigned on 30 May 2008 at Belfast Crown Court and pleaded not guilty to counts 1 and 2 (murder and assault occasioning actual bodily harm respectively). On 21 May 2009 at Coleraine Crown Court before Mr Justice McCloskey he was re-arraigned and pleaded not guilty to murder but guilty of manslaughter on count 1. The plea was not accepted and the trial proceeded. On 1 June 2009 at Coleraine Crown Court before Mr Justice McCloskey, he was rearraigned, pleaded guilty to count 2 and was found guilty by confession of assault occasioning actual bodily harm of Jason Graham. The jury found Sean Devenney guilty of murder of James McFadden. On 1 October 2009, Mr Justice McCloskey sentenced Sean Devenney to a minimum term of 9 years imprisonment for the count of murder and one year imprisonment (concurrent) for the count of assault occasioning actual bodily harm.

Background

[5] On 4 May 2006 the deceased and his family and the three accused had been guests at a wedding reception in County Donegal. It seems that there was a dispute at the wedding reception involving, inter alia, Sean Devenney, James Meehan, the deceased and Jason Graham (the boyfriend of one of Mr McFadden's daughters). The evidence indicated that James Meehan had been drinking for most of the day. The two groups travelled separately back to Londonderry in the early hours of 5 May 2006. The taxi driver who took the appellants home gave evidence that Brenda Meehan was extremely agitated as a result of what had happened at the wedding reception. There appears to have been some discussion at their home about these events as a result of which Sean Devenney, his mother Brenda Meehan and her husband James Meehan then travelled in a car driven by James Meehan from their home at Galliagh to Shantallow where Mr McFadden and his family lived.

[6] The wedding bus left Mr McFadden and his family close to their home in the early hours of 5 May 2006. As Mr McFadden was approaching his house, at or about his garden gate, he was assaulted by James Meehan who had got out of his car and had run towards him. Sean Devenney, arriving shortly behind his stepfather, assaulted Jason Graham who, at the material time, was trying to pull James Meehan off James McFadden by pulling at his (James Meehan's) tee shirt. It was common case that, at this point, James McFadden was lying on top of the hedge which separated his garden from that of his next door neighbour, Mr Sean Ward. James Meehan and James

McFadden very quickly ended up going through or over the hedge into Mr Ward's garden. Sean Devenney punched Jason Graham and rolled around the ground with him in the McFadden's garden, continuing to punch him. Sean Devenney then got up and left the McFadden's garden through the front gate and returned to the family car.

[7] Brenda Meehan was the last of the appellants to arrive at the McFadden home having come shortly behind the others at which time James Meehan and James McFadden were already in Mr Ward's garden. She had a piece of wood in her hand which she had taken from her husband's car which he used in his work as a joiner. The piece of wood removed by Brenda Meehan had been left on the dashboard. Brenda Meehan denied striking anyone (including Jason Graham) with the piece of wood. She was acquitted of the charge of assault occasioning actual bodily harm but convicted of assaulting Aisling McFadden, the 16 year old daughter of the deceased, by punching her.

The appeal of James Meehan

[8] James Meehan pleaded guilty to manslaughter in the course of the trial. He admitted that he approached the deceased on the evening in question. He said that the deceased threatened him with a crutch and swung it at him in an aggressive manner. The appellant attempted to disarm him in the course of which both men exchanged a number of blows. Eventually they fell through a hedge landing together on the ground but according to the appellant no further blows were exchanged. The appellant's case is that he never had the intention to kill or cause serious bodily injury to the deceased but he accepted that he unlawfully killed the deceased.

[9] The prosecution case is that the deceased died due to lacerations or ruptures of important structures of the heart that were caused by a forceful kick or stamping to the chest by the appellant and that he intended to kill the deceased or cause him serious bodily injury. A number of witnesses described the appellant kicking or stamping upon the deceased. The accounts of the witnesses varied as to the period during which this occurred and whereas some witnesses described these events occurring close to the hedge in the garden of the property adjoining that of the deceased others suggested that the appellant was stamping upon the deceased somewhere close to the deceased's front door. It was pointed out on behalf of the appellant that the only evidence of kicks other than the fatal injury were wounds to the deceased's right ear and the top of the scalp. That called into question the accuracy of those who alleged that there had been a prolonged kicking or stamping. Discrepancies in the accounts of events such as these are inevitable. It was for the jury to make a judgment about the accuracy and reliability of the witnesses and the fact that there were discrepancies does not of itself call into question the safety of the conviction.

Interruptions by Judge

[10] The first ground advanced by Mr McCartney QC for the appellant was based on R v Hulusi and Purvis 58 Cr App R 378. He contended that the judge's interventions during the trial were such as to invite the jury to disbelieve the evidence for the defence in such strong terms that the mischief could not be cured by advising the jury that the facts were for them and they could disregard anything said on the facts by the judge with which they did not agree. He relied upon questions asked by the judge of the appellant. He accepted that the interventions by the judge to seek clarification during the examination in chief and cross examination were appropriate. At the end of the cross-examination the appellant declined the opportunity to re-examine. The judge then proceeded to ask the appellant questions over the next seven pages of the transcript.

[11] The appellant in cross examination had suggested that blood found on his boots matching that of the deceased may have come from his trousers and arisen as a result of the earlier incident at the hotel. At the bottom of the second page of his questions the learned trial judge asked the appellant whether the blood was on his trousers when he left the hotel in which the wedding reception had taken place. The appellant replied that he had no idea. The judge then asked whether he had changed his footwear when he arrived home from the hotel and he agreed that he had. He asked whether he had noticed anything about his footwear or his hands when he did so. The appellant said that he had not. Although the effect of these answers may have been to undermine the possibility that the appellant's trousers had blood on them which was the source of the blood on his boots the questions did not suggest that the appellant's evidence should be disbelieved since he himself had only raised this as a possibility.

[12] The learned trial judge then moved on to ask questions concerning the appellant's state of mind when he left his home in the car to travel in the direction of the deceased's home. In answer to one of those questions the appellant described his state of mind when "we were going to go to Shantallow to sort it out". The appellant objected to the judge's next question asking whether any particular individual was in mind when it was decided to go there to sort it out. In view of the appellant's answer that was a question upon which he was entitled to seek clarification. The next topic covered was the journey to and from the scene of the attack from the appellant's home. The jury had before them maps showing the road system between the appellant's home and the scene of the attack. The judge's questions established that there were five junctions which had to be negotiated in each direction. This general issue had been developed by the prosecution with a view to establishing that the appellant was capable of forming the necessary intent despite the amount of alcohol he had consumed.

[13] The next issue covered was the anticipation by the appellant that punches might be thrown in the event of a confrontation with the deceased. In cross examination the appellant had accepted that punches can lead to further punches. The judge asked the same question and then followed up by asking him to accept that something minor can become something greater. The witness replied "without a doubt". At that stage Mr McCartney intervened and in the absence of the jury submitted that the questioning had gone beyond clarification and was now in effect a cross examination. The learned trial judge clarified one further matter upon the return of the jury upon which nothing turns. No application was made to discharge the jury in light of the judge's questions.

[14] Professor Marie Cassidy was a forensic pathologist who was called by the defence to support the contention that the injuries to the breast bone and heart of the deceased and his back could have been caused in circumstances where the deceased had fallen face downwards onto a solid surface with the appellant falling at the same time on top of him. The appellant complained that the examination in chief of this witness had been taken over by the judge and that he had subsequently asked questions of the witness which tended to convey his disbelief of her evidence.

[15] The first interruption of which complaint was made occurred early in the witness's direct evidence when the judge questioned her to establish which of the injuries to the breast bone and heart might have been caused in such a fall. She indicated that this mechanism would explain the fracture of the breast bone and the lacerations to the upper part of the heart which were the fatal injuries. The next interruption shortly thereafter was a further two pages when the judge asked the witness to clarify the area of the back which might have been injured in such a fall. The third interruption in her direct evidence of which complaint was made related to the issue of whether any of the rib fractures sustained by the deceased might have been as a result of attempts to revive him. In substance the witness indicated that such attempts might have been responsible for a third laceration of the heart but that the third laceration was not fatal. It was not part of the appellant's case that resuscitation was responsible for the death and nothing of substance, therefore, turns on this questioning. All of these interventions were plainly seeking to clarify issues in relation to the hypothesis which the witness was advancing. It was important for the jury to follow the evidence as it was given in order to fully comprehend its import and in those circumstances we see no basis for criticisms of these interventions.

[16] The witness was then cross examined and Mr McCartney indicated that he had no questions on re-examination. The learned trial judge then raised some further questions. In answer to him the witness indicated that the hypothesis considered by her was that the force which caused the fatal injury could have been applied to the back of the body so that the force on impact

with the ground was sufficient to cause the fatal injury to the heart. The judge then explored with her whether her opinion was based on the two bodies landing together exactly at the same moment or the second body landing on top of the first. She explained that the more the force that can be generated the greater the likelihood of severe injuries. She said that the bruising on the back suggested that there had been a heavy impact on the back which could have been caused by a heavy body on top of the deceased. The judge then asked whether there was any other explanation for the bruising on the back and she said that it could be due to punching or being pushed firmly against something. He then explored with her whether the grass surface on which the deceased landed was sufficiently solid to explain the damage. She gave her view that the ground was uneven and not a yielding surface but in answer to the judge said that it was not the same as falling on concrete. At that stage Mr McCartney intervened to submit that the judge's questions went too far and suggested to the jury an element of disbelief of the witness. The judge noted the point but continued with his questions about the comparison with the concrete surface.

[17] The next issue explored by the judge was the opinion given by the prosecution's expert that it was probable that the injury to the deceased was either due to a forceful kick to the chest or as a result of the deceased's chest having been stamped upon by a shod foot. The learned trial judge asked the witness if she had ever taken issue with that opinion and she said that the only issue she took with it was that there was no evidence of it. By this she meant some indication of a footprint or something of that kind. She agreed that the most common cause of this type of damage was a force applied to the front of the chest. After the judge had asked her about the rib fractures he returned to the mechanism of the injury. He asked her whether an injury in the way suggested on behalf of the appellant would be unprecedented in her experience. She stated that it was an unusual mechanism and that she had not encountered it before. In light of the fact that she had not encountered it before the judge again asked whether that made it unprecedented. The witness replied that the issue was the amount of force and later stated that the force required here was a fairly substantial force. The learned trial judge invited the parties to ask any further questions that arose and at that stage Mr McCartney invited the witness to consider that the accused was over 16 stone whereas the deceased was about eight stone. The witness indicated that the heavier the weight landing on the person the greater the force that would be generated.

Discussion

[18] The judge may question any witness at any stage of the trial. The limitations on the exercise of this power are helpfully set out by Lord Justice Lawton in R v Hulusi and Purvis 58 Cr App R 378 at 382.

> "…the interventions which give rise to a quashing of a conviction are really threefold; those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury and you, the members of the jury, must disregard anything that I, the judge, may have said with which you disagree. The second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty in properly presenting the defence, and thirdly, cases where the interventions have had the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way."

It is because of the risk that judicial interventions will offend one of these aspects of a fair trial in an adversarial system that judges have been encouraged to exercise considerable restraint. The need to intervene will clearly vary depending on the nature of the evidence. In Hulusi it was said that it was most undesirable to interrupt the flow of evidence in chief or anticipate cross examination but where technical evidence is being given it may be necessary for the judge to intervene in order to ensure that the jury understand the technical terms and to ensure that they can follow the concepts as the evidence is being given.

[19] The learned trial judge correctly identified the need for restraint when he declined to intervene in the evidence of a prosecution witness at an earlier stage in the trial. Some of his interventions in relation to the mindset of the appellant and the route taken by him to arrive at the scene were within the realm of clarifications. The questions in relation to the blood on the appellant's trousers and something minor leading to something major had more of the flavour of cross examination and show the danger that asking a large number of questions by way of clarification can create.

[20] We have already indicated that the questions asked by the judge of Professor Cassidy in examination in chief were clearly designed to clarify this expert evidence and had no impact on the ability of this expert witness to advance the appellant's case. The same can be said of the judge's questions in relation to the application of force by one body or two and the issue of the circumstances in which the injuries to the back may have been sustained. Although the judge was entitled to ask about the firmness of the lawn surface his subsequent comparison with concrete after the witness's answer may have seemed to undermine somewhat her answer and his persistence in putting to the witness that the mechanism of injury was unprecedented was

unnecessary in light of the acceptance by the witness that the mechanism was unusual.

[21] The application of the appropriate principles has been recently considered in 2 cases in the English Court of Appeal. In R v Mitchell [2010] EWCA Crim 783 the judge had cross examined the accused for 10 minutes on the central issues in the case after he had completed his evidence. The court took the view that the length of the cross examination was unnecessary and gave the impression to the jury that the judge did not accept what the defendant said. Despite this the court concluded that in light of the other evidence in the case the conviction was safe.

[22] Similarly in R v Zarezadeh [2011] EWCA Crim 271 the judge had intervened on a number of occasions during the cross examination of the defendant and in effect took up and developed the cross examination referring the defendant to passages in his interview notes that were apparently inconsistent with the case he was making. Despite this the court concluded that the judge had not crossed the line to render the trial unfair.

[23] The outcomes of other cases cannot determine the application of the principles in this case. We have come to the clear view that the interruptions of which complaint is made did not give rise to any risk that the questions asked were in strong enough terms to prevent the jury freely applying their independent minds to the evidence. The interruptions were clearly less objectionable than those in the cases to which we have referred. The questions were concerned with issues which in any event the jury had to assess on the evidence. None of the interruptions advanced new points beyond those which were in play as a result of the examination and cross examination. Having considered these complaints carefully we are satisfied that they in no way cast doubt on the safety of the conviction.

Intoxication

[24] The intoxication issue advanced on behalf of the appellant related to the treatment by the learned trial judge of the effect of the appellant's intoxication on his ability to form the necessary intent. The appellant's evidence was that he had drunk eight or nine pints of beer and six or eight vodkas before he left Redcastle. He said that he was drunk by that stage and the evidence of the taxi driver was that the appellant had not spoken during the drive home. There was evidence that he consumed further alcohol when they got home and one of the police officers who saw him shortly after the incident stated that he appeared intoxicated and was extremely drunk. It is clear that the learned trial Judge properly directed the jury early on the first day of his charge that an intention to either kill or cause serious bodily injury had to be proved beyond reasonable doubt before the appellant could be

convicted of murder. He further indicated to the jury that they could legitimately consider all the evidence when examining the question of intent.

[25] Later in charge the learned trial Judge returned to the issue of alcohol consumption and advised the jury that as a matter of law intoxication did not amount to a defence for any of the defendants. He then went on to invite the jury to consider the evidence given by the defendants about whether they knew what they were doing at the material time. During the last day of his charge it was submitted to the learned trial judge that his direction on alcohol did not properly meet the standard direction set out in R v Sheehan and Moore 60 Cr App R 308 at 312. On foot of that submission the learned trial judge then went on to advise the jury that in looking at the question of alcohol consumption they must ultimately be sure, having regard of the evidence, including the evidence of the defendants and evidence from any source, of alcohol consumption, that each of the defendants actually had the necessary intent.

[26] In our view there is no criticism that can be made of this latter direction. It was argued that because the direction was given on the third day of the charge rather than the first day that it had somehow lack of force. We do not accept that submission. The fact that this direction was given not long before the jury was due to retire ensured that it was at the forefront of the jury's mind when considering their verdict. We also reject the suggestion that there was any need to engage in a detailed analysis of the amount of alcohol consumed and the effect that it may have had on the mind of the appellant. The evidence on alcohol was adequately placed before the jury in the charge and it was for them to evaluate it in relation to the question of intent. We conclude that the direction on intoxication was entirely appropriate and did not affect the safety of the conviction.

Bad character

[27] The last point made on behalf of this appellant related to the admission in evidence of his two previous convictions for assault occasioning actual bodily harm and common assault. The convictions were made at Londonderry Crown Court on 2 February 2000 and arose out of an incident on 22 July 1998. The appellant and two others were involved in an attack on an adult at a nightclub. The attack consisted of him head-butting the victim and inflicting several punches on him. Both the perpetrators and the victims were ejected from the club. The appellant then perpetrated a common assault against a second victim who was rendered unconscious.

[28] The learned trial judge admitted the convictions under the Criminal Justice (Evidence) (Northern Ireland) Order 2004 on the basis that the convictions were relevant to the question as to whether the appellant had a propensity to commit offences of the kind with which he was charged. In his

ruling on this issue the judge noted that the convictions related to acts of violence perpetrated by the appellant in a social setting among a gathering of adults. He noted that the offences involved a significant degree of violence and concluded that injuries of some severity were inflicted. The conclusion on this issue was justified by reason of his conviction for assault occasioning actual bodily harm. He noted that the appellant was a mature adult when the earlier offences were committed and at the time of the more recent alleged offences. He correctly analysed the decision in R v Hanson [2005] EWCA Crim 824 concluding that the convictions established a propensity to commit offences of the kind charged, that the propensity made it more likely that the appellant committed the offences charged and that it was neither unjust nor unfair to admit the convictions. His conclusions on these issues which are set out in full in his written ruling are in our view unimpeachable. He then properly directed the jury that it was open to them to take those convictions into account as matters showing propensity in determining whether they were satisfied beyond reasonable doubt that the appellant murdered the deceased.

[29] We consider that none of the matters raised on behalf of this appellant give rise to any concern about the safety of the conviction for murder and accordingly we dismiss this appellant's appeal.

The appeal of Brenda Meehan

[30] This appellant was convicted of murder as a secondary party. In the context of this case in order to find her guilty as a secondary party it was necessary for the prosecution to prove that by her conduct she had provided assistance or encouragement to James Meehan, that she intended to assist or encourage what he was doing, that she intended or believed that her conduct would assist him, that she knew or foresaw that he would use forceful kicks or stamps or violence of a similar nature and that she knew or foresaw that when using this violence he would have an intention to kill or cause serious bodily injury. These requirements can all be derived from the decision of the House of Lords in R v Rahman [2008] UKHL 49 which the learned trial Judge carefully considered and analysed in his ruling dismissing the application of this appellant that she had no case to answer.

[31] Mr Gallagher QC submitted that the judge should have withdrawn the murder charge at the end of the prosecution case. We do not agree. The learned trial Judge set out in his ruling the extensive evidence in relation to this appellant. At the wedding reception which was the genesis of this incident this appellant was described as extremely agitated and threatening violence. In the taxi on the way home she allegedly stated several times that she was going to Shantallow to wreck it. She asked the taxi driver if he knew the deceased which suggested that he was a target. After the incident there was evidence that she disposed of the clothing worn by James Meehan and

boasted that she was proud of what happened. There was evidence that all three appellants had jumped out of the car in which they were travelling and ran towards the deceased and his party to launch their attack. The appellant armed herself with a wooden object which was described as being like a baton. After the attack she is alleged to have shouted that no one would hit her son again. The jury clearly accepted the evidence that she had assaulted Aisling McFadden while the attack on the deceased was occurring and thereby prevented the deceased's daughter from rendering any assistance to the deceased. Her extreme agitation, the expressed wish to wreck Shantallow, the fact that she armed herself with a baton and that she was proud of what had happened were in particular all matters which the jury could take into account in determining the level of violence contemplated by her and her foresight of the intention with which that violence would be inflicted.

Secondary parties

[32] The principal issue developed by Mr Gallagher on behalf of the appellant was the manner in which the learned trial judge dealt with the liability of secondary parties. During the first day of his charge on 10 July 2009 the judge gave directions on the legal requirements for conviction as a secondary party which in our view cannot be faulted. That afternoon there was a discussion with counsel about draft written directions which the judge had circulated. In the course of that discussion he indicated to the parties that when he was giving the secondary party direction to the jury "a certain mist descended". This was a clear indication, therefore, that he was concerned about whether the jury had properly understood the oral direction. His decision to provide the jury with written directions was understandable. This was a complex case with multiple defendants which had been at trial for many weeks and where a range of possible verdicts might be given. In such cases the jury will often benefit considerably from written directions explaining the law and assisting them in the process of reaching their verdict.

[33] The learned trial judge properly circulated his proposed written directions to counsel for discussion. It appears, however, that the material was considerably amended and was not finalised until the end of the judge's charge. The giving of written directions is only likely to be appropriate in a limited number of complex cases but where such directions are to be given it seems to us that they should invariably be finalised before the prosecution or defence make their closing speeches to the jury. In that way the parties can then take into account the material which the jury are going to have at their disposal in their final submissions. In a complex case where it is intended to provide written directions this may require some short period of adjournment between the end of the evidence and the beginning of the speeches. Although it may be possible to circulate draft directions prior to the end of the evidence it will always be necessary to allow an appropriate time for discussion

between the trial judge and counsel on the appropriate directions to the jury in a complex case such as this.

[34] The jury in this case were provided with two documents. The first document was entitled "The Prosecution Case -- Murder -- against Each Defendant". That document set out the prosecution case against James Meehan as principal. It then went on to consider the alternative bases on which this appellant and Sean Devenney might be guilty either as principals or secondary parties. It then dealt with the alternative of manslaughter in relation to this appellant and finally the possibility of affray as an alternative in relation to each of the appellants.

[35] The passage dealing with the knowledge or foresight of this appellant was set out in the following terms: --

> "(iii) That she knew the essential elements of what either of them was, or both of them were, doing, either because she knew in advance what either was going to do, or because she knew what either of them was doing as they did it.
>
> (iv) That she knew, or foresaw that either James Meehan or Sean Devenney was, or both were, going to attack Mr McFadden in this way and that when either, or both, did so they either intended to kill Mr McFadden or intended to cause him serious bodily injury. "

[36] We accept that there was a measure of ambiguity in the way this was presented. The jury were clearly directed to examine the knowledge or foresight of the appellant in relation to the acts of James Meehan but the formulation at (iv) did not necessarily require the appellant to know or foresee that James Meehan would intend to kill or cause serious bodily injury when he attacked. On one reading it would be sufficient for the appellant to know or foresee the nature of the attack but not to know or foresee that the attacker intended to kill or cause serious bodily injury.

[37] The second document was entitled "Questions for the Jury". It first dealt with the issue of whether this appellant was guilty of murder as a primary party. The question properly asked if she participated directly and physically in the attack which brought about the death of the deceased and did so either intending to kill him or to inflict serious bodily injury on him. In relation to the second question dealing with murder as a secondary party the question merely asked whether she murdered the deceased in the sense that she encouraged and/or assisted either James Oliver Meehan or Sean Devenny

or both to kill Mr McFadden. Unlike the first question there was no description of the mental element involved before she could be so convicted and this document did not, therefore, remove the ambiguity to which we have referred in the preceding paragraph.

[38] We consider, therefore, that there must be a doubt as to whether this jury asked themselves whether this appellant knew or foresaw that when James Meehan attacked the deceased in the way that he did that he had an intention to kill or cause serious bodily injury. Unless such knowledge or foresight was proved beyond reasonable doubt to the satisfaction of the jury this appellant could not have been convicted of murder. This was clearly a live issue in her case. Although she had armed herself with a piece of wood like a baton the finding of the jury was that she had not used it to cause harm. There was nothing to suggest that the incident at the wedding reception had involved any such intention. We consider, therefore, that her conviction of murder was unsafe.

[39] As is apparent, however, it is clear that the jury were satisfied beyond reasonable doubt that this appellant assisted and encouraged James Meehan, that she intended to assist him in what he did, that she intended or believed that what she did would assist and encourage him and that she knew or foresaw the nature of the acts to be carried out by him. In those circumstances it is clear from the case as a whole that she knew or foresaw that some harm would be caused to the deceased. We are satisfied, therefore, that in her case a conviction for manslaughter should be substituted for the murder conviction.

[40] There were a number of other grounds advanced on behalf of this appellant which in our view do not affect the conclusion which we have reached in paragraph 39 above. All parties before us accepted that the written direction in relation to manslaughter was defective because the first alternative omitted the need for causation between the assault and the death and the second alternative omitted any actus reus. We accept these criticisms but the jury never reached the manslaughter alternative as a result of their decision on the murder count.

[41] On the first day of his charge the trial judge told the jury that primary offenders generally get a stiffer sentence than secondary parties. The learned trial judge accepted correctly that he should not have done so. On the last day of his charge he told the jury to disregard those remarks. Matters relating to sentence should not form part of the judge's charge. We consider that his action on the last day of the charge was sufficient to deal with the error on the first day. We do not accept that this led to any impression that conviction as a secondary party was a lower grade of murder.

The Appeal of Sean Devenney

[42] This appellant was convicted of murder on the basis that by his conduct he had provided assistance or encouragement to James Meehan, that he intended to assist or encourage what he was doing, that he intended or believed that his conduct would assist him, that he knew or foresaw that he would use forceful kicks or stamps or violence of a similar nature and that he knew or foresaw that when using this violence he would have an intention to kill or cause serious bodily injury. In other words the basis of his conviction was precisely the same as that of Brenda Meehan.

[43] The first submission advanced on behalf of the appellant was that the prosecution case was opened to the jury of the basis of a joint enterprise only. We accept that the prosecution left open a joint enterprise case in its opening and indeed this appellant in pleading guilty to manslaughter did so on the basis of a joint enterprise. We also accept, however, that the prosecution kept open the case that the appellant assisted and encouraged James Meehan with the requisite intent and foresight and was guilty on that basis. The only case left to the jury was the secondary party case on murder.

[44] Ms McDermott QC submitted that there was no evidence to sustain the secondary party case against this appellant. The learned trial Judge carefully reviewed the evidence against this appellant in his ruling at the end of the Crown case. He noted that in the earlier confrontation at the wedding reception there was evidence that this appellant threatened the deceased and Jason Graham calling one of them a dead man walking and shouted that he was going to "rip heads". Having changed his clothes when he got home it was contended that he travelled in the white vehicle with the other appellants to the home of the McFaddens and when they arrived jumped out of the car and ran to engage in an attack following James Meehan. He was alleged to have launched an attack on Jason Graham thereby preventing him from assisting the deceased who was being attacked by James Meehan. His clothes had evidence of the deceased's blood showing his proximity to the deceased. After the attack there was evidence that he behaved aggressively shouting and gesturing at the McFadden party. We consider that this was an ample basis upon which the matter had to go to the jury.

[45] In his case the jury were instructed in precisely the same way as in the case of Brenda Meehan about his liability as a secondary party. For the reasons that we have given in relation to the appeal of Brenda Meehan his murder conviction is unsafe and his appeal must also succeed. His knowledge or foresight of the intention of James Meehan in carrying out the attack upon the deceased was very much a live issue. He had already admitted that he was guilty of manslaughter and the essential issue at his trial was whether the jury could be satisfied beyond reasonable doubt that he knew or foresaw that the intention of James Meehan was to kill or cause

serious bodily injury. We, therefore, conclude that a conviction for manslaughter by confession must replace his conviction for murder.

The judge's charge

[46] In the course of this appeal the appellants also raised concerns about the manner in which the learned trial judge directed the jury on the facts. He spent the first morning of the charge setting out the relevant legal principles and then spent the next two days rehearsing a great deal of the evidence. We have carefully considered whether this affected the safety of the convictions in this appeal but having done so it seems to us that the issues were properly before the jury subject to the observations that we have made in the cases of Brenda Meehan and Sean Devenney.

[47] We consider, however, that it is appropriate to remind judges that the judge's task in a summing up is to assist the jury by analysing the evidence and relating it to the issues which the jury have to address. That is particularly important in a long and complex trial such as this where a number of defendants may have to be considered in relation to alternative verdicts. This will generally involve an analysis by the judge setting out for the benefit of the jury the issues in the case. In respect of each issue the judge should identify those material portions of evidence which are not in dispute as well as assisting the jury with the significance of those matters which are in dispute. That does not require a rehearsal of all of the evidence. The position was helpfully summed up by Lord Hailsham LC in R v Lawrence [1982] AC 510 at 519.

> "The purpose of a direction to a jury is not best achieved by a disquisition on jurisprudence or philosophy or a universally applicable circular tour round the area of law affected by the case. The search for universally applicable definitions is often productive of more obscurity than light. A direction is seldom improved and may be considerably damaged by copious recitations from the total content of a judge's note book. A direction to a jury should be custom built to make the jury understand their task in relation to a particular case. Of course it must include references to the burden of proof and the respective roles of jury and judge. But it should also include a *succinct* but accurate summary of the issues of fact as to which a decision is required, a correct but *concise* summary of the evidence and arguments on both sides, and a correct statement of the inferences which the jury are entitled to draw from their particular

> conclusions about the primary facts."(emphasis added)

[48] Where the judge decides to supplement the oral direction with a written direction we have already indicated that this should be discussed with counsel in advance of any speeches to the jury and the content of it determined before counsel address the jury. In the course of the summing up the judge should then refer to the written material so that the jury can appreciate how it may assist them in coming to their decision.