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*(subject to editorial corrections)**

08/44421

IN THE CROWN COURT FOR NORTHERN IRELAND SITTING AT LONDONDERRY

THE QUEEN

–v-

JAMES OLIVER MEEHAN, BRENDA DOLORES MEEHAN and SEAN ANTHONY DEVENNEY

RULING NO. 8: NO CASE TO ANSWER

McCLOSKEY J

Reporting Restrictions

[1] Pursuant to Section 4 of the Contempt of Court Act 1981, and in common with all other interlocutory rulings made in the course of this trial, I order that (a) any report of this ruling and (b) any report of these proceedings relating to this ruling be postponed until the conclusion of this trial.

Introduction

[2] The subject matter of this ruling is an application on behalf of the Defendants for a direction of no case to answer. The specific particulars of the application in relation to each of the Defendants individually are set out in paragraph [9], *infra*.

The Indictment

[3] The indictment comprises three counts. The first alleges that all three Defendants murdered James McFadden ("*the deceased*") on 5th May 2007, in the County Court Division of Londonderry. The second alleges that, on the same date, all Defendants assaulted one Jason Graham, thereby occasioning

him actual bodily harm, contrary to Section 47 of the Offences Against the Person Act 1861. 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. Accordingly, the only Defendant concerned in this application, James Oliver Meehan, faces one charge of murder and one of assault occasioning actual bodily harm. The Defendants, who are, in sequence, stepfather, mother and stepson and who all resided together at the material time, initially denied all the charges until the third day of trial, when, following rearraignment, the following revised pleas were made:

(a) James Meehan pleaded not guilty to murder but guilty to manslaughter.

(b) Sean Devenney similarly pleaded not guilty to murder but guilty to manslaughter – and, a little later, he entered a revised plea of guilty in respect of the second count on the indictment viz. assaulting Jason Graham, thereby occasioning him actual bodily harm.

The not guilty pleas of the third Defendant, Brenda Meehan, to all three counts on the indictment have remained unaltered throughout the trial.

The Prosecution Case

[4] I begin by referring to the prosecution case, as this has been outlined to the jury. The résumé provided by Mr. Orr QC at the outset of the trial identified two separate, though inter-related, phases of events. During the first phase, certain events unfolded at the Carlton Redcastle Hotel in County Donegal, a short distance from Londonderry. The second phase concerns the events which occurred at and in proximity to the address of the deceased in Moyola Drive in the Shantallow Estate of the city, both immediately prior to and at the time of his death. Evidence has also been adduced relating to what might be described as an intermediate phase, concerning (a) the taxi journey undertaken by all three Defendants from the hotel to their home in the Galliagh Estate in the city, (b) what transpired at this address (mainly by inference) and (c) the transit of the Defendants between this address and Moyola Drive.

[5] In summary, the prosecution seek to establish that all three Defendants instigated the critical events during the final phase of the sequence which culminated in the death of the deceased and the commission of the other two alleged offences. While joint enterprise on the part of the three Defendants in concert featured in the opening outline of the prosecution case to the jury, this was not further particularised in respect of the Defendants individually. Based on my understanding and interpretation of Mr. Orr's opening address,

the jury will be invited to infer that there were elements of motive, incentive, planning, revenge and the determined prolongation of hostilities in the Defendants' actions, in a context of very recent inter-partes aggressions in a social setting. The prosecution case is that there were very recent hostilities, at the Redcastle Hotel, between the two groups in question viz. the Defendants (on the one hand) and the injured parties and McFadden Family members (on the other). The thrust of the case against the Defendants is that following this they determined to prolong these hostilities, in a deliberate, planned and calculated manner.

[6] It is further alleged by the prosecution that, upon returning home from the wedding reception, the Defendants changed their clothing and, effectively, hatched a plan to attack the deceased and others, which they duly implemented. This entailed, firstly, driving from their home to the vicinity of the home of the deceased. The prosecution contends that such explanation as has been proffered by the Defendants for their intentions, movements, direction of travel and, ultimately, presence at the scene of the offences is utterly implausible. It is alleged that the Defendants were waiting for their victims at a location adjacent to the victims' home, where they instigated a violent confrontation when the McFaddens and others returned home from the wedding. It is contended that the cause of death was a laceration of the heart, giving rise to a rupture. This, the prosecution say, was almost certainly caused by blows to the chest of the deceased – a forceful kick to the chest or stamping. In summary, it is contended that the deceased was the victim of a brutal, savage and unprovoked attack.

[7] As will be apparent from the above summary, the outline of the prosecution case to the jury at the beginning of the trial did not delve into the details of the *inter-partes* hostilities at the Redcastle Hotel. Consistent with this, nothing was said about matters such as perpetrators, ringleaders or aggressors in respect of this phase. The prosecution do not make the case that any of the Defendants had the role of culpable aggressor at the hotel. The prosecution case does not entail any dimension of allocation of blame or responsibility for those hostilities or any resulting injuries. Rather, the prosecution relies on events during this (the first) phase in order to establish the background to the second – crucial - phase and with a view to inviting the jury to infer that the Defendants were ill disposed towards the victims and harboured significant ill feelings, to the extent that they had the requisite state of mind, that is to say an intention to kill, or to cause grievous bodily harm to, the deceased. The prosecution case does not invite the jury to adjudicate on events during the first phase. Rather, it presents those events in a relatively neutral, anodyne fashion. The court was informed that this presentation of the prosecution case followed discussions between prosecuting and defence counsel, in which the latter highlighted certain concerns about exposure of the details of the aggressions at the hotel, based not least on the consideration that much of the evidence contained in the depositions bearing on this topic is

contentious. Reduced to its essential core, this entails a claim by the Defendants that they were not the instigators or aggressors vis-à-vis these initial events. This approach by the prosecution to events during the first phase was both acknowledged and reinforced in the earlier ruling of the court, rejecting an application to discharge the jury, delivered on 27th May 2009.

[8] The Crown have also adduced evidence of statements made by two of the Defendants (Brenda Meehan and Sean Devenney) immediately before and during a taxi transit from the wedding reception to their home, which are said to be indicative of a planned and determined attack. Evidence of the movements of the Defendants' vehicle immediately before and in the aftermath of the commission of the alleged offences has also been adduced. The evidence adduced has included forensic evidence linking both the trousers and the boots worn by the Defendant James Meehan to the deceased. Evidence has also been led in an attempt to establish a deliberate scheme by the Defendants to dispose of contaminated clothing worn by them, in the aftermath of the alleged murder.

The Present Application

[9] The particulars of the present application are:

(a) On behalf of the Defendant James Meehan, it is argued that he has no case to answer in relation to both counts concerning him viz. counts 1 and 2.

(b) On behalf of the Defendant Brenda Meehan, it is argued that she has no case to answer in relation to count 1 (murder).

(c) On behalf of the Defendant Sean Devenney, it is argued that he has no case to answer in relation to the only remaining count concerning him viz. count 1 (murder).

Thus the factor common to these applications is that all three Defendants seek a direction of no case to answer in respect of the count of murder.

Governing Principles

[10] The principles which govern the determination of this application are well established and uncontroversial. In ***The Queen –v- Galbraith*** [1981] 73 Cr. App. R 124 and [1981] 2 All ER 1060, Lord Lane CJ stated (at 1602e/g):

> *"How then should the judge approach a submission of 'no case'? -*

> *(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*
>
> *(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.–*
>
> *(a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case;*
>
> *(b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."*

Significantly, the Lord Chief Justice added:

> "*There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.*"

The ***Galbraith*** approach has been adopted and applied consistently in Northern Ireland: see, for example, ***Chief Constable of PSNI –v- Lo*** [2006] NI 261 and [2005] NICA 3, paragraphs [10] – [16] especially and ***The Queen –v- Courtney*** [2007] NICA 6, paragraphs [18] and [19].

[11] A notable contribution to this subject was provided by Lord Lowry LCJ in ***The Queen –v- Hassan and Others*** [1981] 9 NIJB where, after considering ***Galbraith***, the Lord Chief Justice stated [pp. 2-3]:

> "*I entirely accept the principles as stated by Lord Lane, always remembering that 'no evidence' does not mean literally* ***no evidence*** *but rather no evidence on which a reasonable jury properly directed* ***could*** *(I emphasize that word) return a verdict of guilty. This test does not depend on the unacceptable practice of assessing the credibility of a* ***witness*** *…*

> *But it is still open to the trial judge to say that the evidence reveals inconsistencies and absurdities so gross that, as a rational person, he could not* ***allow*** *a jury to say that it satisfied them of the prisoner's guilt beyond reasonable doubt. If that is his clear view, he should direct a verdict of not guilty.*"

It is noteworthy that, in formulating the test in this way, Lord Lowry CJ cited with approval the statement of Lord Widgery CJ in ***The Queen –v- Barker*** [1977] 65 Cr. App. R 287, at p. 288:

> "*… even if the judge had taken the view that the evidence could not support a conviction because of the inconsistencies, he should nevertheless have left the matter to the jury. It cannot be too clearly stated that the judge's obligation to stop the case is an obligation which is concerned* ***primarily*** *with those cases where the necessary minimum evidence to establish the facts of the crime has not been called.* ***It is not the judge's job to weigh the evidence, decide who is telling the truth, and to stop the case merely because he thinks the witness is lying. To do that is to usurp the function of the jury ...***".

[My emphasis].

Notably, Lord Lowry CJ observed that in ***Galbraith***, Lord Lane CJ had, by citing the same passage, "*redressed the balance*", stating:

> "*Delivering the judgment of the court, Lord Lane CJ, having noted the practice, which had arisen since the amendment introduced by the Criminal Appeal Act 1966, of asking the judge to withdraw the case from the jury if he thought that it would be unsafe or unsatisfactory to convict on the evidence offered by the Crown, redressed the balance (quite rightly, in my respectful opinion) by citing what Lord Widgery CJ had said in* ***The Queen –v- Barker*** *…*".

It might be said that there is some tension between the respective formulations of Lord Lowry CJ and Lord Widgery CJ with regard to the issue of assessing the credibility and veracity of prosecution witnesses. Subject to that observation, it seems to me that where an application of this kind is brought, two of the main principles in play are as follows. Firstly, it is the function of the jury, rather than the presiding judge, to evaluate the veracity and reliability of the evidence of individual witnesses. Secondly, *pace* the first-mentioned principle, the judge is not relieved of his obligation to make an assessment of the overall credibility and reliability of the prosecution

witnesses and retains a discretion to withdraw the case from the jury at the halfway stage, in circumstances where, by definition, the frailties and deficiencies in the prosecution case are extreme and fundamental. The defects in question are also, of course, properly characterised incurable, or irredeemable, since the prosecution case has closed and there is no onus of proof on the defence.

Secondary Parties and Joint Enterprise

[12] The collection of principles belonging to the framework of the doctrine of joint enterprise fall to be considered, having regard to the portrayal of the prosecution case against the Defendants Brenda Meehan (in particular) and Sean Devenney (in the alternative to the suggestion that he is liable as a principal party). I have already adverted to this briefly in paragraph [5] above. I begin with the exposition contained in the opinion of Lord Bingham in ***The Queen –v- Rahman*** [2008] UKHL 49:

> *"THE CRIMINAL LIABILITY OF ACCESSORIES*
>
> ***[7]*** *In the ordinary way a Defendant is criminally liable for offences which he personally is shown to have committed. But, even leaving aside crimes such as riot, violent disorder or conspiracy where the involvement of multiple actors is an ingredient of the offence, it is notorious that many, perhaps most, crimes are not committed single-handed. Others may be involved, directly or indirectly, in the commission of a crime although they are not the primary offenders. Any coherent criminal law must develop a theory of accessory liability which will embrace those whose responsibility merits conviction and punishment even though they are not the primary offenders.*
>
> ***[8]*** *English law has developed a small number of rules to address this problem, usually grouped under the general heading of "joint enterprise". These rules, as Lord Steyn pointed out in R v Powell (Anthony), R v English [1999] 1 AC 1, 12, [1997] 4 All ER 545, 162 JP 1, are not applicable only to cases of murder but apply to most criminal offences. Their application does, however, give rise to special difficulties in cases of murder. This is because, as established in R v Cunningham [1982] AC 566, [1981] 2 All ER 863, 145 JP 411, the mens rea of murder may consist of either an intention to kill or an intention to cause really serious injury. Thus if P (the primary offender) unlawfully assaults V (the victim) with the intention of causing really serious injury, but not death, and death is thereby caused, P is guilty of murder. Authoritative*

commentators suggest that most of those convicted of murder in this country have not intended to kill.

[9] *As the Privy Council (per Lord Hoffmann) said in Brown and Isaac v The State [2003] UKPC 10, para 8:*

> *"The simplest form of joint enterprise, in the context of murder, is when two or more people plan to murder someone and do so. If both participated in carrying out the plan, both are liable. It does not matter who actually inflicted the fatal injury. This might be called the paradigm case of joint enterprise liability."*

It is (para 13) "the plain vanilla version of joint enterprise". Sir Robin Cooke had this same simple model in mind when, giving the judgment of the Privy Council in Chan Wing-Siu v R [1985] AC 168, 175, [1984] 3 All ER 877, [1984] 3 WLR 677, he said:

> *". . . a person acting in concert with the primary offender may become a party to the crime, whether or not present at the time of its commission, by activities variously described as aiding, abetting, counselling, inciting or procuring it. In the typical case in that class, the same or the same type of offence is actually intended by all the parties acting in concert."*

Countless juries have over the years been directed along these lines, the example of a bank robbery in which the masked robbers, the look-out man and the get-away driver play different parts but are all liable being often used as an illustration. In this situation the touchstone of liability is the intention of those who participate.

[10] *But there is what Sir Robin Cooke in Chan Wing-Siu v R, p 175, called a "wider principle". In R v Powell (Anthony), R v English, above, as Lord Hutton made plain in the opening sentence of his leading opinion (p 16), the House had to consider a more difficult question: the liability of a participant in a joint criminal enterprise when another participant in that enterprise is guilty of a crime, the commission of which was not the purpose of the enterprise. In the first appeal, that of Powell and Daniels, three men (including the two Appellants) had gone to the house of a drug dealer in order to buy drugs, but when he had come to the door one of the three men (it was not clear which) had shot him dead. Since neither Powell nor Daniels*

> *could be identified as the gunman, they could be convicted only as accessories, but it was submitted on their behalf that they could not be convicted as accessories unless it was proved against them, to the criminal standard, that they had had the mens rea necessary for murder, namely an intention to kill or to cause really serious injury. An accessory could not, it was argued, be convicted on a basis which would not suffice to convict the primary killer.*
>
> ***[11]** While acknowledging an element of anomaly in its decision (Lord Steyn, p 14; Lord Hutton, p 25), the House rejected that submission. Drawing on a strong line of authority which included R v Smith (Wesley) [1963] 3 All ER 597, 128 JP 13, [1963] 1 WLR 1200; R v Anderson; R v Morris [1966] 2 QB 110, [1966] 2 All ER 644, 130 JP 318; Chan Wing-Siu v R, above; Hui-Chi-ming v R [1992] 1 AC 34, [1991] 3 All ER 897, [1991] 3 WLR 495; and McAuliffe v R (1995) 69 ALJR 621 the House held (p 21) that "participation in a joint criminal enterprise with foresight or contemplation of an act as a possible incident of that enterprise is sufficient to impose criminal liability for that act carried out by another participant in the enterprise". Thus the House answered the certified question in the appeal of Powell and Daniels and the first certified question in the appeal of English by stating that (subject to the ruling on the second certified question in English) "it is sufficient to found a conviction for murder for a secondary party to have realised that in the course of the joint enterprise the primary party might kill with intent to do so or with intent to cause grievous bodily harm". Thus in this context the touchstone is one of foresight."*

Lord Bingham also noted that in ***The Queen –v- Smith (Wesley),*** *at pp. 1206/1207 –*

> *"... it had been recognised that a radical departure by the primary killer from the foreseen purpose of an enterprise might relieve a secondary party of liability".*

[13] In ***Rahman***, one of the reported decisions considered by the House was ***The Queen –v- Gamble and Others*** [1989] NI 268, where a central issue was whether the actions of two of the Defendants, in cutting their victim's throat, went beyond the contemplation of the other two Defendants, exceeding the authority implicitly given by them. Under the spotlight, therefore, were (a) the nature of the conduct contemplated by the "secondary" Defendants and (b) the conduct of the "primary" Defendants which in fact ensued. Carswell J rejected the Crown argument that since there was an intention to inflict

grievous bodily harm (which satisfies the *mens rea* requirement of murder), the deliberate killing of the victim did not differ significantly from what the third and fourth Defendants had contemplated. He stated:

> *"The principle has regularly been applied to hold an accessory liable where the death of the victim is an unintended consequence of the acts which are part of the common design and so are within the contemplation of the accessory. It appears clearly enough in the passage of the judgment of Lord Parker CJ in Anderson and Morris to which I have referred, and it is unnecessary to multiply examples. This is not, of course, such a case, as far as Gamble and Boyd are concerned, for their intention was to kill Patton, and his death was not an unintended consequence of their acts. The issue here is whether the actions of Gamble and Boyd went beyond what was expressly or tacitly agreed as part of the common enterprise, with the consequence that their acts go beyond the contemplation of the accessories and the authority given by them.*
>
> *In considering this issue one has to have regard to the nature of the act contemplated and that which was in fact committed. There is a discernible current of thought in the authorities that the use by one conspirator of a deadly weapon such as a gun, without the knowledge or consent of the other, takes the case into a different category and absolves the latter from responsibility for the consequences: see such cases as R v Caton (1874) 12 Cox CC 624, per Lush J, and R v Srnfth [1963] 3 All ER 597, 602, per Slade J and the discussion in Williams, Criminal Law, The General Part, (2nd ed 1961) at 398. That approach does not, however, assist Douglas and McKee, for, as I have found, both contemplated the possible use of a weapon for the infliction of an injury such as kneecapping…*
>
> [Rejecting the Crown argument]
>
> *To accept this type of reasoning would be to fix an accessory with consequences of his acts which he did not foresee and did not desire or intend. The modern development of the criminal law has been away from such an approach and towards a greater emphasis on subjective tests of criminal guilt, as Sir Robin Cooke pointed out in Chan Wing-Siu. Although the rule remains well entrenched that an intention to inflict grievous bodily harm qualifies as the mens rea of murder, it is not in my opinion necessary to apply it in such a way as to fix an accessory*

> *with liability for a consequence which he did not intend and which stems from an act which he did not have within his contemplation. I do not think that the state of the law compels me to reach such a conclusion, and it would not in my judgment accord with the public sense of what is just and fitting.*"

As Lord Bingham noted in ***Rahman***, the House had previously decided in ***The Queen –v- English*** [1999] 1 AC 1 (at p. 29) that this decision was correct. Continuing, Lord Bingham observed:

> *"The decision of the House in R v English did not lay down a new rule of accessory liability or exoneration. Its significance lies in the emphasis it laid (a) on the overriding importance in this context of what the particular Defendant subjectively foresaw, and (b) on the nature of the acts or behaviour said to be a radical departure from what was intended or foreseen. The greater the difference between the acts or behaviour in question and the purpose of the enterprise, the more ready a jury may be to infer that the particular Defendant did not foresee what the other participant would do.*"

[14] In ***Rahman***, Lord Scott suggested that the main question arising in the appeal was "*… whether an intention by the primary party to kill must be either known to or foreseen by a secondary party if the secondary party is to be held criminally liable for the killing*". He continued:

> *"[31] The premise to this question is that the two parties have joined in an enterprise to inflict serious bodily harm to the victim … I wish simply to say that that if parties join together in an enterprise to inflict serious bodily harm on some victim, bodily harm of a degree that makes the death of the victim a foreseeably possible consequence, and if the victim is killed in the carrying out of this joint enterprise, there is no doubt but that he, or she, who struck the killing blow is guilty of murder regardless of whether there was an intent to kill (R v Cunningham [1982] AC 566) and it seems to me just that the secondary party too should be held guilty. It seems to me beside the point that the secondary party may not have known the killer to have been carrying the weapon actually used to effect the killing and I do not understand how his criminality can be held to depend on whether the killing stroke was effected by the club the killer was known to have carried or by the knife that he was not known to have carried. It would, of course, be necessary that the killing stroke should have been an act*

> *within the scope of the joint enterprise on which the parties had embarked but if parties embark on a punishment exercise that carries with it the foreseeable possibility of death of the victim, the instruments used for that purpose seem to me of much less importance than the purpose itself."*

Also of note is Lord Rodger's analysis of the decision in ***Gamble***, which was to the effect that –

> *"…there had indeed been a break in causation between the assault on the victim, with the intention of inflicting grievous bodily harm, and his murder by cutting his throat. In effect, for Carswell J, it was as if the two Defendants whom he acquitted of murder had been about to kneecap the victim when two other men suddenly emerged from the undergrowth and cut his throat. The decision must be regarded as turning on the judge's assessment of the very special facts."*

[At paragraph [40]].

For Lord Rodger, the question is whether the killing perpetrated by the primary party can be regarded as "*a complete departure from what the* [secondary party] *contemplated as being involved in the common design*": see paragraph [48].

[15] The opinion of Lord Brown in ***Rahman*** opens with the following paragraph:

> *"**[51]** There are many more murderers under our law than there are people who have killed intentionally. The actus reus of murder is, of course, the killing of the victim; the mens rea (established in R v Cunningham [1982] AC 566) is the intention either to kill the victim or at least to cause him some really serious bodily injury – grievous bodily harm as it used to be called, gbh for short. As this appeal illustrates, moreover, there is a further group of murderers too, those who did not intend even gbh but who foresaw that others might kill and yet nonetheless participated in the venture."*

His Lordship continues:

> ***[52]** If more than one person participates, in whatever capacity, in attacking a victim, each intending that he be killed, then, if he dies, all are guilty of murder. That is what*

> *Lord Hoffmann in Brown & Isaac v The State [2003] UKPC 10 (para 13) called "the plain vanilla version of joint enterprise". But what if one or more of the participants intends merely a beating – injury less than death, perhaps gbh, perhaps actual bodily harm, perhaps not even that – yet the attack results in the victim's death? Clearly, whichever assailant(s) inflicted the violence which actually caused the death, provided always he (they) intended at least gbh, will be guilty of murder. But what of the others, the secondary parties or accessories?"*

His Lordship then noted that the rule governing the liability of accessories to murder is correctly stated by Lord Lane CJ in ***The Queen –v- Hyde*** [1991] 1 QB 134, at p. 139, subject to the qualification introduced by the decision in ***English***, to the effect that the secondary party must subjectively foresee the kind of acts which, in the event, were actually performed by the primary party. Lord Lane CJ stated:

> *"If B realises (without agreeing to such conduct being used) that A may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture. As Professor Smith points out, B has in those circumstances lent himself to the enterprise and by so doing he has given assistance and encouragement to A in carrying out an enterprise which B realises may involve murder."*

Lord Brown suggests that the question of common purpose can become superfluous, in a particular factual matrix:

> *"… Criminal liability is imposed on anyone assisting or encouraging the principal in his wrongdoing who realises that the principal may commit a more serious crime than the secondary party himself ever intended or wanted or agreed to …".*

This particular species of liability for murder was considered by Carswell LCJ in ***The Queen –v- Henry and Others*** [unreported, CARE 2732, 21st December 1998]. There, the Lord Chief Justice (at p. 17) quoted a passage from ***Smith and Hogan, Criminal Law*** (8th Edition), pp. 134-135:

> *"The abettor must either (i) be present in pursuance of an agreement that the crime be committed or (ii) give assistance in or encouragement in its commission. Both assistance or encouragement in fact and an intention to assist or encourage must be proved. When this is proved, it*

> *is immaterial that D joined in the offence without any prior arrangement …*
>
> *If some positive act of assistance or encouragement is voluntarily done, with knowledge of the circumstances constituting the offence, it is irrelevant that it is not done with the motive or purpose of encouraging the crime*".

Finally, reverting to the doctrine of joint enterprise, Lord Brown explains:

> "*[65] I turn, therefore, to the second limb of the question certified for your Lordships' opinion which focuses on the all-important foresight test. I am of the clear view that the answer to it must be "no". The qualification to the Hyde direction established by English concerns simply the secondary party's foresight of possible acts by the principal constituting more serious offences than the secondary party himself was intending, acts to which he never agreed and which from his standpoint were entirely unwanted and unintended.*"

As his Lordship further observed, following ***English***, the question is whether the possibility of killing in the manner in question was foreseen by the secondary party.

[16] The principle governing the liability of an accessory, or secondary party, in cases of murder was formulated by Lord Neuberger in ***Rahman*** in the following terms:

> "***[74]*** *The second aspect of criminal law relevant for present purposes is the law relating to accessories, that is, those who are liable for crimes primarily perpetrated by others. Accessory liability extends to render a person, B, criminally liable for an act primarily committed by another party, A, when B "participat[es] in a joint criminal enterprise [with A] with foresight or contemplation of [that] act as a possible incident of that enterprise" – per Lord Hutton in R v Powell (Anthony); R v English [1999] 1 AC 1, 21.*
>
> ***[75]*** *Accordingly, when A and B embark on a joint enterprise which B intends or foresees could involve killing (or to causing serious injury to) a victim, V, and A actually kills V as A intended (or, as the case may be, as a result of A intending to cause him serious injury) then B, as well as A, is guilty of V's murder, because B intended or foresaw that A would kill V (or, as the case may be, that A would cause V serious injury).*"

[17] In its extensive review of the relevant decided cases in ***Rahman***, the House cited with approval the decision of the English Court of Criminal Appeal in ***The Queen –v- Anderson and Morris*** [1966] 2 All ER 644, where the following formulation of the governing principle was approved:

> *"Counsel for the applicant Morris submits that that was a clear misdirection. He would put the principle of law to be invoked in this form: that where two persons embark on a joint enterprise, each is liable for the acts done in pursuance of that joint enterprise, that that includes liability for unusual consequences if they arise from the execution of the agreed joint enterprise but (and this is the crux of the matter) that if one of the adventurers goes beyond what has been tacitly agreed as part of the common enterprise, his co-adventurer is not liable for the consequences of that unauthorised act. Finally, he says it is for the jury in every case to decide whether what was done was part of the joint enterprise, or went beyond it and was in fact an act unauthorised by that joint enterprise. In support of that, he refers to a number of authorities to which this court finds it unnecessary to refer in detail, but which in the opinion of this court shows that at any rate for the last 130 or 140 years that has been the true position."*

In a later passage, The Lord Chief Justice makes clear that a secondary party is not guilty of murder in circumstances where one of the "*adventurers*" has "*… departed completely from the concerted action of the common design and has suddenly formed an intent to kill and has used a weapon and acted in a way which no party to that common design could suspect …*" [at p. 648].

<u>The Evidence Against James Meehan</u>

[18] The salient aspects of the evidence against James Meehan may be summarised thus:

(a) At the Carlton Redcastle Hotel, this Defendant was wearing suitable wedding reception attire (per Ms McConnell and other witnesses).

(b) In the car park, this Defendant stated that "*… someone was going to get their head danced on tonight*".

(c) This Defendant threatened that he would "*kill*" the person who had, according to him, threatened his son (per Liam Dobbins, the groom). Further, this Defendant was angry, rather than drunk.

(d) (Per Shane McCallion). Some time after 2.30am on 5th May 2007, he was present in the Meehans' home. The Defendant Brenda Meehan was holding a plastic bag, full of "*stuff*". James Meehan instructed her to burn the bag, following which Brenda Meehan said later that the bag was in the adjoining rear garden. James Meehan and she consumed alcohol and were talking about "*the fight*". James Meehan said that he had a sore hand, which he had injured at work, so that he had had to use his elbows. He stated to Sean Devenney "*I can't believe you let that wee boy get up again and walk into the house … I'm ashamed of you …*".

(e) (Per Mrs. Hazlett). The white vehicle was travelling very slowly along the Racecourse Road and into Drumleck Drive. When it stopped, the three occupants jumped out. The female occupant equipped herself with something appearing like a stick. The bigger of the two males ran to the scene of the aggressions first. He was involved in a "*one on one*" assault there. In the aggressions which followed, the bigger of the two males seemed to be hitting down on someone. The movements of someone "*getting hit*" could be seen. This continued from around the gateway of the house towards its front door. It was as if someone was lying on the ground. The three occupants ran back and jumped into their car again. Its engine was running throughout. Its registration number was duly noted.

(f) (Per Daniel Hazlett). The white estate car drove very slowly into and then along Drumleck Drive. When stationary, its doors were flung open and the occupants emerged, leaving the engine running. The female equipped herself with something like a baton. The larger male "*made a beeline for*" the male victim. In the walkway, the attack on the victim was perpetrated by the two males. The larger male "*got there first …* [and] *… just started pounding and beating on the victim*", whereupon the younger male joined in the attack. Then the incident spilled into the garden in question. The victim appeared to be on the ground. The torsos of the two male attackers were visible: they continued to beat the victim. Then the three attackers returned to their vehicle, jumping back in and speeding off. This witness then went to certain lengths to secure its registration number.

(g) (Per Terence McBride). The three doors of the white estate vehicle flew open simultaneously, its three occupants emerged and they ran towards Moyola Drive. The tallest of these three persons was in a bent motion, stating "*… Do you want to … fight now big boy? You are not so … big now*". He was in a hunched motion, bending over as if he was moving his legs. The witness could not see the precise actions/motions of this person, but asserted that he was not standing upright.

(h) (Per Emily Bradley). Coming from the direction of the Shantallow shops, she looked towards the McFaddens' house and saw two people in the garden "*… sort of rummaging about … not standing still … moving about …I thought there was something wrong*". When she neared the garden, she encountered SD outside and described JM as being positioned at the bottom of the public walkway.

(i) (Per Sean Ward – nearby resident). From his bedroom window, he saw "*a heavy set big guy, stocky*", holding back a woman and a younger male. He was stocky, aged in his forties, with dark hair, wearing a white coloured shirt and looked like a bouncer.

(j) (Per Marlene Nangle). From her bedroom window, this witness saw three individuals (two males and a female) on the public walkway and there was shouting. They were outside the Wards' house. The older male was tall, well built and had dark hair, going grey. He was holding the other two persons, with his arms around them. He "escorted" them away from the scene. The lighting was good and her view was unobstructed. She went out, then came back in to acquire a coat and shoes, then returned outside to where the victim was, where she held his frozen hand. Her husband administered mouth to mouth resuscitation. The victim was not breathing. She remained with the victim until the ambulance personnel arrived some fifteen minutes later. She saw no one else administer any aid to the victim.

(k) (Per Martina Robinson). She described the conduct of a female person, equipped with a wooden implement, who resisted an attempt at disarmament and walked into the gateway at No. 33. Then "*a big man* " removed her from the scene. Inside the garden of No. 31, none of the young males had their hands on the victim, though Emmett had

his finger inside the victim's nose. She left the garden when the ambulance personnel arrived.

(l) (Per Grainne Robinson). The two males and the female were outside the Robinsons' house, in the public walkway. The taller male person was positioned at the uppermost part of the walkway. He was shoving the lady away.

(m) (Per Barry Hegarty). The white estate car remained stopped at the pedestrian crossing lights, even when these displayed green. It drove up and around to the Shantallow shops after the arrival of the bus and the disembarkation of its passengers. Then it stopped at the bottom of Moyola Drive. This witness heard someone shout "*You are not a big man now*".

(n) (Per Paula Taylor – nearby resident). Outside the doorway of the McFaddens' house, a stocky, well built man had his hands against the wall and his leg was "stomping", just going up and down constantly. Due to the hedge, she could not see any actual contact between the aggressor's feet/footwear and the victim.

(o) (Per Martin Taylor – spouse of Paula Taylor). A man was standing outside the front door of the McFaddens' house, raising his leg up and down, about six times, in a kind of stamping action. These were consecutive and immediate movements. He did not observe any other kind of physical attack. This lasted for a minute or so.

(p) (Per Carla McBride). There were three people at the doorway of the McFaddens' house, lifting their legs and kicking at something on the "floor". They were not kicking at thin air. These attackers were an older man, a younger male and a woman. She witnessed this from the bedroom of her home nearby.

(q) (Per Messrs. Donaghy and Bradley – ambulance personnel). Upon arrival, the standard check for signs of life, a normal and quick procedure, was negative. The chest compressions carried out thereafter, both at the scene and en route to the hospital, were performed in a proper and professional manner, in accordance with their training. The compressions were normal, not aggressive.

(r) (Per Constable Tosh). This Defendant was arrested at 04.45 hours on 5th May 2007 inside his home at 26 Dundreen Park. Then he was permitted to go upstairs to secure socks and shoes. At this point, he stated to the Defendant Sean Devenney "*Don't say anything more …you have told them enough*".

(s) (Per Constable Corrigan). When cautioned at the time of arrest, this Defendant replied "*No*". Having then gone upstairs, he said to the Defendant Sean Devenney, who was at the bottom of the stairs, "*They know your name, they don't need to know anything else*" – a couple of times.

(t) (Per Inspector McFedridge). Inside the house, this Defendant shouted to Sean Devenney more than once "*Tell them nothing Sean, not even your name …*".

(u) (Per Mrs. McFadden). At the wedding reception, all of the Defendants were dressed in attire suitable for such an occasion. Subsequently, after the McFaddens had alighted from the bus near their home, she noticed a white estate car driving around very slowly and then coming to a halt. When she got into the pathway of their home, she was a distance of some four feet from her husband, who was following behind. Her husband tried to defend himself against his large assailant, whom she identified as this Defendant, who ran at her husband. This Defendant was wearing black boots. He started pounding on her husband, punching him, he just kept battering and battering him. He would not let him go. He was attacking him with both fists, banging him and thumping him. Then he knocked her husband over the hedge into the Wards' premises. Up to this point, this witness had been positioned on the McFadden garden pathway throughout. She did not describe anything further, regarding the attack, having fled to the Robinsons' house (opposite), terrified, seeking help. Afterwards, Emmett McClelland was "*doing mouth to mouth*" vis-à-vis her husband. She was unaware of the technical connotation of the acronym "*CPR*". Sean Ward also performed "*mouth to mouth*". No one carried out chest compressions. At the hospital, the witness noted on her husband's body a footprint mark extending from one of his ears to the neck, a blackened eye and an injury to the upper rear of his head, causing bleeding. Some

seven weeks later, this witness identified this Defendant as her husband's attacker.

(v) (Per Ashling McFadden). At the wedding reception, all of the Defendants were dressed in a manner appropriate to such an occasion. After alighting from the bus at the Shantallow shops, there was a white car driving slowly. It braked very hard, sounding as if it skidded. The three occupants – two males and one female – jumped out and ran towards the McFadden house. Her younger brother and father were bringing up the rear. This Defendant led the charge. She described him as a big, stocky man. He grabbed her father by the shoulders and threw him over the hedge into the Wards' premises. There he was booting him in the head, while her father lay flat. This Defendant and Sean Devenney were stamping on her father, booting him all round his body. This Defendant was also beating her father with the handle of a crutch. The "stomping" included stomping on her father's head. This Defendant was really angry, like a dog attacking a bone. At this stage, all of the Defendants were dressed very differently. She saw Emmett McClelland giving her father "*mouth to mouth*".

(w) (Per Jason Graham). After alighting from the bus and reaching the McFaddens' home, this witness heard a car screaming to a halt. He saw a man running towards Mr. McFadden. He struck Mr. McFadden with a strong punch, in a face to face context, just outside the garden gate. Then he punched Mr. McFadden again. Next, he was on top of Mr. McFadden at the hedge, inside the garden and this witness attempted to intervene, pulling at the attacker, who had his back to the witness. At this point the witness was struck from the rear – by implication, by some person other than this Defendant. Until then, this Defendant had been the witness's sole focus of attention.

(x) (Per various police witnesses). The items removed from the garden at the rear of 26 Dundreen Park on 5th May 2007 were a yellow plastic bag and a piece of wood. In detail, there were various items of gents clothing, ladies clothing, a pair of trainers and a pair of gents boots. These were removed for forensic examination. The fingerprints of this Defendant were found on the yellow

plastic bag: they were taken from the front door of the McFaddens' home.

(y) (Per Dr. Thomasius). When examined approximately eight hours after the estimated time of the attack, this Defendant was found to have recent abrasions on his right knee and both forearms. This Defendant asserted that these injuries had been sustained either at work or when falling on a dance floor. The doctor opined that the knee injuries in particular were more likely to be attributable to contact with a rough surface, for example upon falling.

(z) This Defendant was interviewed by police twenty-four times, between 5th and 8th May 2007. At the beginning of each interview, when cautioned, he asserted, in terms, that he had not murdered anyone. With this exception, his stance throughout was one of silence or replies to the effect "*No comment*". Just before the end of the twenty-third interview, a written statement from this Defendant was produced [**Exhibit 12**]. This describes how the three Defendants arrived home and contains assertions that thereafter they drove from their home, with the intention of purchasing cigarettes; this Defendant was the driver; when driving past the Shantallow shops they chanced upon the wedding bus and the McFaddens; they stopped because this Defendant "*wanted to make the peace*"; then "*a man*" allegedly swung a crutch at this Defendant; the latter grabbed the man and they scuffled, falling through a hedge and landing heavily in the adjoining garden, with the victim face down; following this the Defendant was "*groggy and dazed*".

(aa) (Per D, a minor). This witness described the assailants as "*them boys*" and "*they*". She described how one of them took a crutch from Mr McFadden and "*… was battering him with it over his head and all …and I was pulling him off him trying to get off him and they were jumping on his head and saying don't mess with the Devenneys and [Mr McFadden] was screaming for help …*". She further asserted that "*… the man came diving at [Mr McFadden] and punched him and the crutch fell out of [Mr McFadden's] hand and then the man lifted the crutch and was battering [Mr McFadden] with it and they booted him over the hedge and were jumping on his head and all …*". This Defendant and Sean Devenney "*… were dancing on his head and booting him and*

all … hitting him with my crutch". This Defendant was the first of the assailants to attack Mr McFadden and she thought that he delivered a head butt and then a punch. She was "positive" that Mr McFadden had adopted a defensive posture with the crutch. When she tried to help Mr McFadden in the adjoining premises, this Defendant was hitting Mr McFadden, punching him in the side of the face and kicking him in his back and side, booting him on the head. This Defendant and Sean Devenney were kicking Mr McFadden together.

(bb) Noel McIntyre testified that from a position around the bottom of Moyola Drive, he saw "*the Devenneys*" (i.e. Sean, whom he knew and his parents) in a garden on the right hand side. He testified that it appeared as if they were jumping on someone's head. There was kicking and screaming and they were looking towards the ground. It was "*… as if they were jumping on somebody's head*". He accepted that his view was obstructed by a fence and hedge. He suggested that what he claimed to have observed was the "*tail end*" of the incident. He appeared to describe an attack inside the McFaddens' premises, rather than the Wards' adjoining premises. He was unable to describe the attire of the assailants, save that the female's attire included a hood. He could not see the victim at any time. He could see the movements of the heads, shoulders and arms of the assailants. Then he saw them coming out of the gate. He could not recall either seeing or encountering Emily Bradley or the Robinsons.

(cc) Professor Crane, who carried out a post-mortem examination of the body of the deceased, identified three major injuries to the heart (see paragraph [4] of my Ruling No. 7, delivered on 29th June 2009). His opinion was that "*It seems likely that the mechanism of injury is a combination of direct impact and compression of the heart chambers leading to rupture. In this case it would seem probable that the injury was either due to a forceful kick to the chest or as a result of his chest having been stamped upon by a shod foot …Blunt trauma to the chest is a well recognised cause of injury to the heart … Rupture (or perforation) of the left atrium is a recognised but uncommon complication of blunt cardiac trauma … I am satisfied that the injuries to the heart were sustained as a result of blunt chest trauma and* ***were not*** *as a consequence of resuscitation*".

(dd) Professor Adgey expressed the opinion that it would be "very difficult to conceive" the heart injuries inflicted on the deceased being sustained in the manner asserted by this Defendant. She opined that the heart injuries were attributable to blunt trauma to the chest which, typically, takes the form of a blow to the front of the chest. Chest compressions could not have caused these injuries to the heart. None of the rib/sternum fractures could be related to the heart injuries.

(ee) (Per Mr. Bennett, FSNI). There were numerous spots and smears of blood on the clothing attributed to the deceased, particularly in the upper body area. A drop of blood and a smear of blood on the trousers attributed to this Defendant gave DNA profiles matching his DNA profile. Spots and smears of blood on the boots attributed to this Defendant gave DNA profiles matching that of this Defendant. The ends of the lace of the left boot gave a mixed profile, with the major profile matching that of this Defendant. Similarly, the major profile from a spot of blood on a white tee shirt matched that of this Defendant.

(ff) Finally, pursuant to an earlier ruling of the court, the prosecution adduced bad character evidence in relation to this Defendant. In a statement read to the jury by agreement, Detective Constable Collier described two offences committed by this Defendant, in quick succession and on the same occasion, at a nightclub on 22nd July 1998. The first consisted of common assault, perpetrated against another patron of the establishment. The second was an assault occasioning actual bodily harm, perpetrated by this Defendant against a different person outside the premises. On 2nd February 2000, this Defendant pleaded guilty to both charges.

The Evidence Against Brenda Meehan

[19] The salient aspects of the evidence against this Defendant implicating her in the offences of which she is accused can be summarised in the following way:

(a) (Per Ms McConnell). This is one of several witnesses whose evidence contrasts the attire of all of the Defendants at the wedding reception with their later

attire at the scene of and in the aftermath of the alleged attack at Moyola Drive.

(b) (Per Joanna Holmes). This Defendant was extremely agitated at the wedding reception. She was saying "*I'll have her … I'll have her … Michelle's wee sister or niece … she will not slap my son and get away with it*". The witnesses interpreted these remarks as referring to Ashling McFadden. Her evidence was essentially corroborated by a passage in her witness statement which was put in evidence.

(c) (Per Gerard Storey). At the scene of the hostilities at the Redcastle Hotel, this Defendant was "*ranting and raving … giving off … in the middle of the thing … keeping it going on and on*".

(d) (Per John Coyle, taxi driver). En route from the Redcastle Hotel to the Defendants' home, this Defendant stated several times "*I'm going to Shantallow, to wreck it*". She enquired whether the witness knew Jim McFadden.

(e) (Per Shane McCallion). When this witness entered the Defendants' home, some time after 2.30am on 5th May 2007, he encountered this Defendant, who was holding a plastic bag full of "*stuff*". James Meehan instructed this Defendant to burn the bag and, afterwards, this Defendant stated "*The bag's in next door's back garden*". Next, consuming alcohol with James Meehan, they were talking about "*the fight*". She stated "*James are you proud of me?*" and repeated this.

(f) All of the evidence about the movements of the white vehicle, in the areas of Racecourse Road and Drumleck Drive, coupled with the initial movements of all three Defendants thereafter, applies fully to this Defendant: see paragraph [18](e), (f), (g) and (m) above.

(g) (Per Isobel Hazlett). The female occupant of the white vehicle was wearing a "hoodie", with her hair in a pony tail. She reached into the rear seat of the vehicle and equipped herself with something that appeared to be a stick. At the beginning of the incident, the three occupants "*jumped out*" of their vehicle, leaving the engine still running and "*jumped*" into it again at its conclusion.

(h) (Per Daniel Hazlett). After the occupants alighted from the white vehicle, the female reached inside and took hold of an object like a baton. The female was the third person to make her way up the public walkway.

(i) (Per Terence McBride). As she got back into the white estate car, the female stated "*No one … hits my son and gets away with it*".

(j) (Per Eamon Doherty). In the aftermath of the attack, the female shouted towards the McFaddens' house "*You'll not touch my son again*" or something to this effect.

(k) (Per Sean Ward). In the public walkway, the bigger male was holding back the female, who was attempting to get back up the walkway. The female shouted towards the McFaddens' home "*You will not hit my son again – no one hits my son*". In the aftermath, no one performed chest compressions on the victim until the arrival of the ambulance personnel.

(l) (Per Marlene Nangle). In the public walkway, the older man was holding the female and the younger man back. The female was trying to take the younger male back to No. 33, with her hand on him. She was pushing against the older male and was shouting.

(m) (Per Martina Robinson). The female was banging the Robinsons' garden wall with a plank of wood in both hands, while shouting "*No one will touch my son*". She resisted the disarmament overtures of this witness. The bigger man put his arms around this witness, trying to take her away from the gateway of No. 33, into which she had then walked. Then, the bigger man (by implication) removed her from the scene.

(n) (Per Grainne Robinson). There were two men and a woman outside the Robinsons' garden wall. The woman was wearing a "hoodie" and was roaring and shouting "*Nobody will ever touch my son*", while banging a stick off the garden wall.

(o) (Per Paula Taylor). [After describing the kicking/stomping of the victim by the stocky, well built male]. This male and a female went towards the car. The

female said "*There will be nobody will hit my … son*". She was wearing three-quarter length trousers and a jacket with a hood. She flicked her head and the hood came up.

(p) (Per Martin Taylor). This witness's evidence essentially corroborated that of Paula Taylor.

(q) (Per Carla McBride). There were three people at the doorway of the McFaddens' house, all kicking at something at the same time, not kicking at thin air. The attackers were an older male, a younger male and a woman. They then proceeded into the walkway and the female stated "*You will not touch my son again*". She had a pony tail and dark hair above shoulder length.

(r) See the summary of the evidence of Messrs. Donaghy and Bradley, at paragraph [18](q) above

(s) (Per Inspector McFetridge). At the Defendants' home, during the early hours of 5th May 2007, this Defendant confirmed that the white car outside was the family car and denied that it had been moved that night, even when confronted by a suggestion that the engine was hot to touch.

(t) (Per Detective Constable Keaton). Inside the Defendants' home, this Defendant asserted that the police had got the wrong house because the Defendants had been at a wedding all day, replying when cautioned in similar terms and adding "*… you are at the wrong house … you are mad*". At Strand Road Police Station, this Defendant stated "*… I don't even know that man*".

(u) (Per Mrs. McFadden). When the three Defendants came out of the white estate car, this Defendant was second in line. She was the last to reach the McFaddens' garden. Inside the garden, this Defendant knocked the witness to the ground, by a pushing or elbowing action. This was deliberate. This Defendant stated "*Get out of the … road*". This Defendant was armed with a piece of wood, like a bat. She did not observe this Defendant attack her husband. Emmett McClelland administered "*mouth to mouth*", not chest compressions, to her husband.

(v) (Per Ashling McFadden). This Defendant was the last of the three Defendants to reach the McFaddens' garden.

She was extremely angry. She attacked Jason Graham, together with Sean Devenney. This Defendant was armed with a stick, in both hands, which she used. She beat Jason Graham on the legs with her wooden weapon, several times. She pushed this witness to the ground, dragging her on the grass and ripping her dress. Having left the scene, this Defendant was shouting "*You will not touch my son again … you will not mess with the Devenneys*". This Defendant identified each of the three Defendants in a formal police identification procedure.

(w) (Per D) The "mummy" (plainly this Defendant) was armed with a piece of wood. She struck this witness in the area of her back. As the Defendants departed the scene, this Defendant stated "*No one messes with the Devenneys*" and was banging on a wall. This occurred in the vicinity of the Robinsons' garden wall.

(x) See the evidence of Professor Crane and Professor Adgey: paragraph [19](aa) and (bb) above.

(y) When interviewed by the police, this Defendant denied involvement in the murder. She denied having a stick. In a substantial number of police interviews, her stance was that of "*No comment*". On some occasions, she briefly decried the quality or strength of the evidence put to her. She claimed to know nothing about the yellow plastic bag. She made a written statement to her solicitor, which was presented to the interviewing police officers at a late stage [**Exhibit 15**]. This contains claims that in the aftermath of the wedding reception, all of the Defendants decided to drive from their home to purchase cigarettes; that they were intending to go to "Desmonds" petrol station; that they chanced upon the "wedding bus" and decided to "*… try and settle things without any further bad blood developing*"; that the deceased attacked her husband (James Meehan) with a crutch; that this Defendant tried to break up the fighting and was then attacked by Ashling McFadden, with a scuffle ensuing; that she and Ashling McFadden "*… tripped over something and both tumbled over a hedge landing on top of other people*"; and that she made no specific observations of the conduct of either of the other two Defendants. Her statement concedes that she was "fighting" with Ashling McFadden, while it denies any attack on the deceased. It

further denies any assault on Jason Graham. Finally, it denies that she had any weapon.

The Evidence Against Sean Devenney

[20] (a) The evidence of various witnesses contrasted the attire of this Defendant during the wedding reception with his attire at Moyola Drive.

(b) (Per Liam Dobbins). This Defendant had to be escorted out of the Redcastle Hotel. (Per Ashling McFadden) As this Defendant was being removed from the premises he directed to Mr. McFadden and Jason Graham the words "*You are a dead man walking*" and stated that he had been a boxer for twelve years. (Per Liam Dobbins). When getting into the taxi, this Defendant shouted "*We showed them …*".

(c) (Per Rosaleen Gillespie). As the Defendants got into their taxi at the Redcastle Hotel, the younger male "*… shook his head and shouted he was going to rip … heads …* ". Inside the taxi he opened the window and shouted "*Who is the boxer now*".

(d) (Per Caroline Lynch). This evidence essentially corroborated that of Rosaleen Gillespie.

(e) (Per John Coyle). En route to the Defendants' home at Dundreen Park, this Defendant made a call from the taxi driver's mobile home, the gist being that he "*… wanted his friends there, because he thought the Shantallow men were going to come to the house*".

(f) (Per Shane McCallion). At around 2.15/2.30am on 5th May 2007, this Defendant phoned Mr. McCallion, a friend, inviting him to the Defendants' house and mentioning a fight at the wedding reception. Later, at the Defendants' house, this Defendant was "*panicking*", stating "*I think your man was dead*". This witness emphasized that this Defendant was his friend, someone whom he had known all his life.

(g) (Per Isobel Hazlett). The other two occupants of the white vehicle ran up behind the older male, to the scene of the alleged assault.

(h) (Per Daniel Hazlett). The smaller male assailant was a couple of steps behind the larger male. In the public walkway, these two males attacked their male victim. The younger male "*… just joined in the attack with the bigger fellow*".

(i) (Per Emmett McClelland, describing the aftermath). Two males and a female were getting into a white estate car. The older one shouted "*Hurry up, come on*" to the younger one, who in turn shouted "*You never seen me here*".

(j) (Per Emily Bradley). There were two people in the McFaddens' house, "*Sort of rummaging about … not standing still … moving about …*". When she moved up to the house, she saw this Defendant, whom she had known for five or six years. At this stage, he was outside the McFaddens' garden. She placed her arm on this Defendant's arm, in a motion of restraint, and in response he told her to get off him, in colourful language.

(k) (Per Sean Ward). The older male was holding back the female and the younger male, who were trying to get past him, to go back up the walkway. He was pushing them towards the car. The younger male broke away and ran to the McFaddens' hedge, where he uttered some "*verbals*", gesturing at them as if to say "*I'll get you*" in a definitely aggressive way. He remembered this Defendant very clearly. This evidence was corroborated in certain respects by that of Marlene Nangle, this witness's partner.

(l) See Mr. Hegarty's evidence: paragraph [18](m) above.

(m) (Per Carla McBride). There were three people at the doorway of the McFaddens' house, lifting their legs and kicking, not kicking at thin air. These three attackers were an older man, a woman and a younger male. They were positioned outside the porch of the McFaddens' house.

(n) See the evidence of the ambulance personnel, summarised at paragraph [18](q) above.

(o) (Per Inspector McFetridge). At the Defendants' home, in the early hours of 5th May 2007, this Defendant was

observed to have a scrape mark to one of his sides and other minor wounds elsewhere. When asked how he had sustained these injuries, he did not say anything. Then this Defendant said he had been at a wedding in Redcastle and he showed this witness his wedding attire. He purported to account for a scuff mark on one of the trouser knees by asserting that this had been present when the outfit had been hired.

(p) (Per Dr. Burns). This Defendant had various fresh abrasions – on the left ear, the right scalp, the left neck, the left shoulder, the right chest, both forearms, the palmar surface of the right hand, the left hand and the right knee and lower leg. These could be consistent with having been involved in a fight, rolling on the ground: this was one possible explanation.

(q) (Per Mrs. McFadden). This Defendant was attacking Jason Graham in the McFaddens' garden. She did not see this Defendant attack her husband.

(r) (Per Ashling McFadden). This Defendant was "second in the queue" at the Moyola Drive scene. After James Meehan had attacked her father, throwing him over the hedge and booting him in the head, he was joined by this Defendant, who "came and intervened". They were stamping on her father and booting him all around his body. (By implication) this Defendant's initial attack was directed to Jason Graham. This Defendant was not on the ground at any time. Then (by implication) he joined James Meehan in beating her father next door. The witness was adamant about this. This Defendant was pounding on her father with his feet and hands, kicking and punching.

(s) At the beginning of each of the twenty-two interviews by the police, this Defendant stated, in terms, that he had not murdered anyone. During the twenty-first interview, this Defendant's written statement to his solicitor was produced. This statement repeats the "cigarettes" claim, coupled with the chance encounter with the wedding bus and the claimed intention of settling the earlier dispute in a peaceful manner. It further asserts that a man tried to attack James Meehan with a crutch; that this Defendant and his mother then left the vehicle; that this Defendant tried to "break up" the aforementioned scuffle; that

blows were then exchanged; that this Defendant then stumbled to the ground; that he then "*found himself*" fighting with Jason Graham, entailing a heavy joint fall to the ground; and that he did not assault the deceased in any way. Throughout the entirety of the interviews, this Defendant, otherwise, remained entirely silent, declining to answer any of the thousands of questions put to him.

(t) (Per D). Both this Defendant and James Meehan were "*… battering [Mr McFadden]*". This Defendant "*… stopped hitting Jason and they were both dancing on [Mr McFadden's] head … booting him and all … hitting him with my crutch*". This Defendant was "*kicking [Mr McFadden] as well*". He and James Meehan were "*kicking [Mr McFadden] together*", on the other side of the hedge. This Defendant acknowledged that her recollection of James Meehan's conduct was clearer than her recall of that of this Defendant.

(u) See the evidence of Professor Crane and Professor Adgey, summarised at paragraph [18](cc) and (dd) above.

(v) As regards the forensic evidence, Mr. Bennett testified that the major profile extracted from the smear of blood on the white tee shirt matched that of this Defendant, while the minor profile matched that of the deceased. The reverse analysis applied to a spot of blood on the same garment. Ditto the smear of blood on the left shoulder of the grey sweat top. A second smear of blood on the same garment gave a full profile matching that of this Defendant.

The Defendants' Arguments

[21] In view of the quality of counsel's written and oral submissions underpinning these applications, it is possible to summarise concisely the arguments presented to the court. Firstly, on behalf of the Defendant James Meehan, Mr. McCartney QC sought to argue that counts 1 and 2 on the indictment are framed on a joint enterprise basis; that there is no evidential basis for the opening suggestion on behalf of the Crown that this Defendant adopted an unconventional and circuitous route from the Meehans' home to Moyola Drive, taking into account the avowed intention of going to purchase cigarettes at "Desmonds" garage; that the evidence pointed to a chance encounter, unplanned; that the prosecution must show that this Defendant had knowledge or contemplation of all the circumstances surrounding the

two offences allegedly committed at Moyola Drive; and that this Defendant could not have had Jason Graham within his knowledge or contemplation. Mr. McCartney highlighted further that this Defendant did not avail of the opportunity to equip himself with any of the work tools and implements inside his vehicle, each of them potentially a weapon of substance. Mr. McCartney was disposed to accept that, on the Crown case, his client could be convicted of murder on a different basis, that is to say as the perpetrator of the blow or blows which brought about the death of Mr. McFadden. However, in response to this, he pointed to the evidence of Professor Crane which, he argued, is not consistent with the allegations of various witnesses of a particularly violent and sustained attack on the deceased.

[22] On behalf of the Defendant Brenda Meehan, Mr. Montague QC addressed the murder charge against his client on two bases. The first is that there is no evidence that this Defendant actually attacked the deceased. The first of Mr. Montague's submissions had to confront the reality of the evidence of Carla McBride and Noel McIntyre each of whom, from a position of some distance, has alleged that all of the three aggressors were, together, attacking their target. See paragraph [18](p) and (bb). Mr. Montague attacks the evidence of these two witnesses on the ground that it is intrinsically unbelievable and, further, irreconcilable with the preponderance of the evidence given by other witnesses. The evidence of these two witnesses, he submits, is so flawed that it is unfit to be left to the jury.

[23] The second submission on behalf of this Defendant is that there is no evidence, or insufficient evidence, that she shared a common intention with either of the other Defendants that serious bodily injury should be inflicted on the deceased. In this respect, it is highlighted that while witnesses have testified that this Defendant was armed with a stick, she did not strike either Mrs. McFadden or Ashling McFadden with this, while the evidence that she struck D is particularly tenuous. It is further highlighted that when James Meehan (the primary principal party, on the Crown case) left the family vehicle, he was not merely unarmed but had not equipped himself with any of the joiners' tools (screwdrivers, a hammer and other implements) located inside. It is further argued that the act alleged by the prosecution to have brought about Mr. McFadden's death, namely a forceful stamp or kick, is fundamentally different from anything which would have been foreseen by this Defendant. Succinctly, it is submitted that the kind of attack alleged to have given rise to the injuries precipitating the death of Mr. McFadden was outwith the contemplation of this Defendant. Finally, it is submitted that there is a dearth of evidence that this Defendant either intended to assist or encourage the principal party or parties *or* actually did so. Rather, this Defendant's conduct throughout the events at Moyola Drive was, it is argued, of a very different character, with emphasis being placed on the separation in time and location between this Defendant and the other two Defendants.

[24] The argument on behalf of the Defendant Sean Devenney points out that the basis of his plea of guilty to the manslaughter of the deceased and his plea of guilty to the Section 47 assault on Jason Graham is that he intended to cause some harm to the deceased, while specifically intending to cause actual bodily harm to Mr. Graham. It is submitted by Ms McDermott QC (appearing with Mr. Reel) that, as regards this Defendant, there is no evidence either that this Defendant (a) intended to kill, or cause grievous bodily harm to, the deceased or (b) realised "*… that James Meehan may kill, with the requisite intention*". It is highlighted that neither this Defendant nor Mr. Meehan had any weapon. The utterances attributed to him during the first phase of these events are, it is argued, insufficient to establish the necessary *mens rea*. The physical separation between this Defendant and James Meehan during part of the events at Moyola Drive is also emphasized. It is further submitted that there is no evidence from which the jury could properly infer that a forceful kick or stamp (the act alleged to have killed the deceased) was foreseen by this Defendant. It is submitted, rather, that such an act was fundamentally different from anything foreseen by him.

[25] As appears from the above, the main focus of the argument on behalf of Sean Devenney relates to his potential liability for murder as a secondary party. Miss McDermott was disposed to accept that she must confront the evidence that Sean Devenney was a principal party, in that he participated directly in the attack on the deceased. In this respect, I refer particularly to the evidence of Ashling McFadden and D. There is also the evidence of Carla McBride and Noel McIntyre. The thrust of Miss McDermott's riposte to this is that having regard to the medical and forensic evidence, it will be open to the jury to conclude that this Defendant was, during his admitted attack on Jason Graham, rolling on the ground and, further, that this episode was of such duration that this Defendant had extremely limited opportunity to make any meaningful contribution to the attack allegedly perpetrated by James Meehan against the deceased. Secondly, it is argued that having regard to Professor Adgey's evidence about the speed of death, Mr. McFadden was already dead before this Defendant reached the point (in the Wards' garden, according to the bulk of the evidence) where, as alleged by certain witnesses, he joined in the attack.

Conclusions

James Meehan

[26] In his submissions on behalf of the Crown, Mr. Orr QC confirmed that the prosecution case is that this Defendant committed the murder of Mr. McFadden *as a principal party*. I would observe that this is harmonious with the evidence which has been adduced by the prosecution. Mr. Orr highlighted the totality of this Defendant's conduct – before, during and after the events at Moyola Drive. He submitted that there is evidence from which

the jury could plausibly conclude that this was a planned revenge attack on the victims, which was duly executed. I refer to the recitation of the evidence against this Defendant, in paragraph [18] above. Applying the principles set out in paragraphs [10] and [11], I conclude without hesitation that the prosecution case against this Defendant, as a principal party, in respect of the count of murder, is plainly of a quality and standard sufficient to resist this application. There is clear evidence that this Defendant engaged in the act or acts which brought about the death of the deceased and such evidence cannot, in my view, be characterised slender or tenuous or incredulous. It will clearly be open to the jury to infer from this evidence that this Defendant possessed the requisite *mens rea* that is to say an intention to kill the deceased or to inflict serious bodily injury on him. Accordingly, the case against this Defendant, as regards the count of murder, comfortably falls within the first limb of the ***Galbraith*** test. Insofar as this Defendant contends that the second limb is engaged, I am satisfied that all questions relating to the credibility, reliability and accuracy of the witnesses who have testified against this Defendant can properly and safely be left to the jury to determine.

[27] As regards the second count on the indictment viz. assaulting Jason Graham thereby occasioning him actual bodily harm, different considerations arise. There is *no* evidence that this Defendant actually attacked Jason Graham at Moyola Drive. Accordingly, there is no basis for convicting him of the second count on the indictment as a principal party. The Crown do not make the case that this Defendant was an accessory to this discrete offence, in the sense of encouraging or assisting its commission. Accordingly, the only question is whether it is appropriate to leave to the jury the question of whether this Defendant was part of a joint enterprise as regards this offence. It is clear that the victim, Jason Graham, featured prominently in the background events at the Redcastle Hotel. Furthermore, the evidence establishes that he was a part of the McFadden party throughout those events. On the prosecution case, Jason Graham's anterior conduct was one of the reasons for the subsequent planned attack, or ambush. I consider that there is sufficient evidence from which the jury could properly conclude that this Defendant and Sean Devenney were acting in concert at all material times, both before and during the final phase at Moyola Drive, as regards this count. Any separation in time or place between these two Defendants during the final phase could properly be regarded by the jury as minimal. Furthermore, there is evidence upon which the jury could find that Sean Devenney's conduct, in attacking and injuring Jason Graham, was within the foresight and contemplation of this Defendant. Thus I rule that there is sufficient evidence to leave to the jury the final determination as regards this count. For the purposes of this ruling , I am not influenced unduly by the evidence of Ms. McConnell or Mr. McCallion or the contents of this Defendant`s statement ; the jury will be the arbiters of the weight , if any, to be attributed to this evidence.

Brenda Meehan

[28] The application on behalf of this Defendant is confined to the first count on the indictment viz. murder. In applying the principles set out in paragraphs [10] and [11] above, I consider it important to reflect on the totality of the evidence against this Defendant, as summarised in paragraph [19]. The significance of much of this evidence is that it sounds on the question of whether this Defendant possessed the necessary *mens rea*. However, in her capacity of principal party, there is limited evidence against this Defendant only, confined to the testimony of Carla McBride and Noel McIntyre. In this respect, the question is whether, per Lord Lane CJ in ***Galbraith***, the asserted frailties and flaws in this evidence are "*… so gross that, as a rational person,* [the trial judge] *could not allow a jury to say that it satisfied them of the prisoner's guilt beyond reasonable doubt*".

[29] It is appropriate to take into account that Mrs. McFadden *could not* implicate this Defendant on the attack on her husband, as the evidence is that she had left the scene at a certain point in time, when this Defendant was still in the McFadden garden. Nor could Jason Graham do so, given his engagement with the Defendant Sean Devenney and the nature of the injuries sustained by him, which plainly impaired his consciousness. Ashling McFadden described this Defendant as extremely angry, involved in a violent joint attack with Sean Devenney on Jason Graham ,in which she used a weapon and then pushing this witness to the ground, dragging her on the grass and ripping her dress. This witness also testified that she went to get help. Given the nature of the events at Moyola Drive and the atmosphere of shock, fear, distress and confusion which they plainly generated, this witness's failure to describe any attack by this Defendant on her father is not inconsistent with such attack having taken place. Furthermore, while the evidence of D did not implicate this Defendant in the attack on Mr McFadden, D testified that she too left the garden seeking help and that when she returned, the assailants were leaving.

[30] On the basis of the evidence summarised immediately above, it would be open to the jury to infer that if this Defendant attacked the deceased, she did so during the interval when the three McFadden ladies were absent from their premises. Accordingly, I do not consider the evidence of these three witnesses inconsistent with the description provided by Carla McBride and Noel McIntyre that all three assailants were conducting themselves in the manner alleged. Having regard to all the evidence, if the jury accepts the evidence of Miss McBride and Mr. McIntyre, it will also be entitled to conclude that the subject of this "three party" attack was the deceased, there

being no other obvious candidate. Finally , I do not consider the evidence of these two witnesses so flawed that the jury could not properly convict upon it.

[31] I conclude, therefore, that it is appropriate to allow the jury to determine whether this Defendant is guilty of the murder of Mr. McFadden as a principal party.

[32] There are two further possible bases of liability for murder to be considered, as regards this Defendant. The first is that she aided and abetted the murder, in the sense that she provided assistance and/or encouragement. The second is that the murder was the culmination of a joint enterprise, to which this Defendant was a party. The question is whether there is sufficient evidence at this stage of the trial to leave the final determination of these issues to the jury also.

[33] I shall consider, firstly, the issue of assistance and/or encouragement. Here, the spotlight is mainly, though not exclusively, on the conduct of this Defendant at the scene of the offences – since her anterior conduct, as alleged, could also inform the jury's consideration and determination of these issues. The evidence of Ashling McFadden that this Defendant (a) attacked Jason Graham with her wooden weapon and (b) pushed the witness to the ground falls to be considered. It is also appropriate to consider the evidence of numerous witnesses about this Defendant's aggressive, threatening utterances at the scene and her aggressive conduct in other respects: see paragraph [19](i), (j), (k), (l), (m), (n), (o), (p) and (q). This includes evidence that this Defendant had to be restrained from re-entering the gateway of the McFaddens' home. Having regard to all this evidence, I consider that it will be open to the jury to conclude that this Defendant was an active, armed aggressor throughout the events at Moyola Drive, from the moment when she "*jumped*" [a term employed by several witnesses] out of the family vehicle until her return to it.

[34] Furthermore, there is evidence that all of the three female McFaddens felt compelled to go and seek help and that two of them (and possibly all three, (depending on the jury's final view) did so before the incident terminated. The jury *could*, on all of this evidence, find that this Defendant actively assisted James Meehan, by (a) participating in disabling Jason Graham (whose evidence was that he was trying to help Mr. McFadden), (b) attacking Ashling McFadden, and (c) deterring and discouraging any possible defensive interventions by the three McFadden ladies, to the extent that they were driven to run to fetch help. According to the evidence, she was the only armed person at the scene. Taking all of these factors into account, the jury could conceivably conclude that her conduct either assisted or encouraged - or both assisted and encouraged - James Meehan in his commission of the alleged murder. Furthermore, as a matter of law, conduct of this kind is

potentially sufficient to constitute this Defendant guilty of murder as a secondary party: see Smith and Hogan, Criminal Law [12th Edition], pp 191-193].

[35] The relevant *mens rea,* in this respect, is a twofold intention:

> "*It must be proved that D intended to do the acts which he knew to be capable of assisting or encouraging the commission of the crime. There are two elements – an intention to perform the act capable of encouraging or assisting and an intention, or a belief, that that act will be of assistance* [in facilitating the principal offender's conduct]".

[Smith and Hogan, ***Criminal Law***, 12th Edition, p. 194].

There is a third mental element involved. Taking into account the specific nature and features of the present case, this constitutes a requirement of proof that the secondary party was aware of the essential aspects of the conduct of the alleged principal party: see the exposition of this discrete requirement in Smith and Hogan (op. cit.) at pp. 201-202 especially:

> "*In summary, D must know:*
>
> *(i) The conduct element of P's offence, although not all of the details of when, where etc. the commission of the* ***actus reus*** *will occur;*
>
> *(ii) As to consequences, D cannot know of them before they arise, but he must foresee the possibility (not merely a probability) of the offences occurring;* [and]
>
> *(iii) The fact of P's* ***mens rea****. Thus, if D foresees/knows that P might beat V up, but does not foresee/know that P will perform that action with the intention of killing or causing V grievous bodily harm, D will not have knowledge of the 'essential matters' comprising the principal offence of murder.*"

As the authors further observe, there is no requirement that the secondary party (D) be possessed of the same *mens rea* as the principal party (P).

Clearly, proof of these matters to the requisite degree will require the jury to make appropriate inferences, based on the evidence of this Defendant's conduct both before and during the events at Moyola Drive. In this discrete context, I discount the evidence of her conduct following departure from Moyola Drive. In my view, there is sufficient evidence to leave all of these

matters to the jury. The evidence is sufficient, in my view, to enable the jury to properly conclude that both the *actus reus* and the *mens rea* are satisfied, in the portrayal of this Defendant as guilty of murder from this particular perspective.

[36] Finally, I turn to consider the state of the evidence against this Defendant from the perspective of joint enterprise. As stated by Lord Bingham in ***Rahman***, the touchstone in this context is that of *foresight*. In this respect, the submissions on behalf of this Defendant and the Defendant Sean Devenney coincide. It is argued that while some degree of physical force on the part of James Meehan was foreseeable, and could be found by the jury to have been actually foreseen by them, the nature and severity of the physical force which, on the Crown case, brought about the death of Mr. McFadden lay outwith this ambit. In my view, having regard to all the evidence, it will be open to the jury to find otherwise. There is sufficient evidence to support findings that this was a determined revenge mission, a planned ambush, a calculated venture designed to inflict serious bodily injury on the deceased, in circumstances where the Defendants' passions were inflamed, they were enraged, their judgment was impaired by consumption of alcohol and their honour had been insulted.

[37] The jury will also be entitled to take into account the membership of the two groups. As regards the McFaddens, this will include the predominantly female gender of the older members, the youthful age of Ashling and the children who were in the group. Furthermore, the main male member of the McFadden group, Mr. McFadden, has been described in the evidence as a person of light bodyweight and slight physique. On the other hand, the membership of the Defendant's group consisted of a large burly male, formerly employed as a "bouncer" (James Meehan), a younger male who had earlier boasted that he had been involved in boxing for twelve years (Sean Devenney) and an armed female (Brenda Meehan), all duly clad for the occasion. I consider that the evidence of these matters sounds properly on the questions of common purpose and venture and the foresight of the alleged secondary parties. Furthermore, while Mr. Montague draws particular attention to the absence of any evidence of when or where the joint enterprise was hatched or what its precise terms were, I consider that it will be open to the jury to make appropriate inferences in this respect. I would further observe also that it is not submitted that evidence of the aforementioned kind is an essential ingredient in a murder of this character and I concur with the absence of any submission to this effect. Accordingly, I am satisfied that there is sufficient evidence to allow the jury to determine whether this Defendant should be convicted of murder on the basis of joint enterprise.

Sean Devenney

[38] I refer to the summary of the evidence implicating this Defendant in the charge of murder enshrined in the first count in the indictment: see paragraph [20] above. The case against this Defendant is to be considered on two possible bases. The first is that he was part and parcel of the acts which killed the deceased at Moyola Drive. In this respect, I refer to the evidence of Shane McCallion, Daniel Hazlett, Emmett McClelland, Emily Bradley, Carla McBride, Ashling McFadden and D. I conclude, without reservation, that this evidence engages the first limb of the ***Galbraith*** test. In other words, there is a sizable body of evidence implicating this Defendant in the fatal attack on the deceased. I consider next whether, within the second limb of the ***Galbraith*** test, the evidence to this effect, at its zenith, is such that a properly directed jury could not convict this Defendant of murder. In my view, a properly directed jury could indeed reach this conclusion. In particular, I consider that there is clear scope for a finding by the jury that the death of Mr. McFadden occurred some time after this Defendant's alleged attack on him. Accordingly, viewing the potential liability of this Defendant for murder on this basis, that is to say as a principal party, I refuse his application.

[39] I am equally satisfied that there is sufficient evidence upon which the jury, properly directed, could find this Defendant guilty of murder on the alternative basis that he was party to a joint enterprise, giving effect to the principles outlined in paragraphs [12] – [17] above. In this respect, I find no basis for making any material distinction between this Defendant and the Defendant Brenda Meehan and I refer to my reasoning and conclusions in paragraphs [36] and [37] above. I refer particularly to the evidence of this Defendant's conduct throughout the events in question, beginning with his alleged utterances and demeanour at the Redcastle Hotel and ending with Shane McCallion's description of his conduct back at the family home: See paragraph [20](f). All of this evidence, in my view, can properly inform the jury's assessment of whether this Defendant was party to a joint enterprise, the essence of any joint enterprise and whether the fatal attack on the deceased was something within the contemplation or foresight of this Defendant. These will all be matters of inference for the jury to consider and I am satisfied that the threshold which must be overcome to leave these questions to the jury has been clearly surpassed.

Disposal

[40] For the reasons elaborated above, I refuse all of the applications.