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Judgment: approved by the Court for handing down | *Delivered:* **04/06/09**
*(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: EDITING

McCLOSKEY J

[1] See in particular paragraph [14] of my ruling promulgated on 27th May 2009, when I refused the application on behalf of the Defendant Sean Devenney to have the jury discharged. I refer particularly to the words "… *subject to further argument and the outcome of any further editing …* ".

[2] For a variety of reasons, a ruling of the aforementioned kind must frequently have an element of flexibility. This approach undoubtedly applies to the present case. I would highlight that, in particular, there are three Defendants, all charged with murder, who would appear to have different defences to advance and different cases to make. It is evident from the cross-examination of various prosecution witnesses thus far that the Defendants are making the case that each of them had a distinct and different role in the crucial events during the final phase, giving rise to the three counts in the indictment. In this context, it is also appropriate to refer to the defence statements:

(a) On behalf of James Meehan , it is asserted that he approached the deceased, who threatened the Defendant with an aluminium crutch, swinging it in an aggressive manner, giving rise to an attempt at disarmament by this Defendant. Continuing, it is asserted that both men "… *subsequently exchanged a number of blows and eventually they fell through an adjacent hedge landing*

together upon the ground. No further blows were exchanged … The actions of the accused failed to make any significant or substantial contribution to the … death … the Defendant by reason of his condition and physical involvement with the deceased could not have inflicted the injuries which were the cause of death … The Defendant accepts that by engaging the deceased in the manner admitted to by him, he had inadvertently or indirectly contributed to or caused the [death] *… To this extent and upon this basis the Defendant enters a plea of manslaughter … death was in all likelihood occasioned by the intervention of a third person … entirely independent of the actions of the Defendant.*"

(b) In the defence statement of the Defendant Brenda Meehan, it is asserted that the occupants of the Meehan family vehicle "*spotted*" the deceased and members of his family thereupon determining "*… to attempt to amicably resolve the earlier incident … The accused will make the case that she was attacked by Ashling McFadden and she sought only to defend herself before going back to the car. The accused will deny having been involved in attacks on either Jason Graham or James McFadden. The accused will not accept that there was any plan to attack the deceased or his family and will make the case that she and her family were attacked when they emerged from their vehicle. The accused will deny the use of any weapon. The accused will state that at all times she was acting only in self defence … the deceased and his family were the aggressors both at the hotel and when the car was stopped.*"

(c) In the amended defence statement of the Defendant Sean Devenney, nothing is said about how any of the Defendants came to be present at Moyola Drive or the premises of the McFadden family. It is asserted:

> "*James Meehan got out of the car. James Meehan and James McFadden were fighting. The Defendant got out of the car and was then engaged in fighting with Jason Graham. They fell to the ground …*
>
> *[4] The Defendant pleads guilty to manslaughter on the basis that he went to Moyola Drive as part of a joint enterprise, intending to cause some harm to those with whom he had been in dispute earlier, but not having an intention to kill or to cause grievous bodily harm. While at Moyola Drive he assaulted Jason Graham but did not assault James McFadden …*
>
> *[5] The Defendant denies that he assaulted the deceased at Moyola Drive.*"

It is evident, therefore, that the three Defendants make quite separate and different cases.

[3] Given the differences highlighted above, it may be observed that evidence which might be unfairly admitted vis-à-vis one Defendant would not necessarily have the same impact if admitted with reference to another Defendant or Defendants. Hence the emphasis in my earlier ruling and in *ad hoc* rulings during the course of the trial on the absence of any bright luminous lines. In these circumstances, it is inevitable that there will be some borderline issues regarding the admissibility of evidence, in the context of debates about probative value versus prejudicial impact.

[4] Arising out of the ruling of 27th May 2009, certain editing proposals have been made on behalf of one Defendant only viz. Sean Devenney. These have given rise to a substantial measure of agreement between prosecution and Defence. The only enduring contentious matter is a passage on p. 3 of the witness statement of Ashling McFadden, who is the injured party identified in the third count of the indictment (one of assault). Furthermore, on paper, Miss McFadden is a potentially important prosecution witness attesting to events during the various phases of the evening/night in question. In the controversial passage in her deposition, Miss McFadden, in the course of describing what she says occurred during the earlier stages at the Carlton Redcastle Hotel, County Donegal recounts that the Defendant Sean Devenney was shouting at her father, in threatening terms and, while being physically escorted from the premises and struggling, he continued:

> "*You're dead, you're dead, you're dead …*
>
> *You're a dead man walking*".

[5] As appears from paragraph [4] of my earlier ruling, the prosecution case is that events during this first phase establish that the Defendants were ill disposed towards the victims and harboured significant ill feelings against them, to the extent that they had the requisite state of mind, that is to say an intention to kill the deceased or to cause him grievous bodily harm. In determining this contentious editing issue, I would observe, firstly, that the jury have already heard evidence about certain aspects of the conduct of this Defendant and statements allegedly made by him during the initial phase. I take this duly into account. Secondly, I am satisfied that the contentious passage in Miss McFadden's deposition falls within the parameters of the prosecution case. Thirdly, I consider that the statements attributed to this Defendant in the controversial passage are possessed of a probative value outweighing their prejudicial effect. The jurors will be perfectly capable of evaluating these alleged statements and attributing appropriate weight to them, in the context of all the other surrounding evidence, already adduced

and to be adduced. If it is disputed that this Defendant made any of these utterances, or if the case is made that they are to be evaluated or interpreted in a certain way, taking into account their context and any other asserted material factors, there will be no inhibition on the cross-examination of Miss McFadden to this effect.

[6] Finally, I have had regard to Article 76 of the Police and Criminal Evidence (Northern Ireland) Order 1989, which provides:

> "*(1) In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it*".

For the reasons elaborated in paragraph [5] above, I am satisfied that the admission of the contentious evidence will not have this effect. Accordingly, I rule that the prosecution are at liberty to adduce the disputed evidence.