
**IN THE CROWN COURT FOR NORTHERN IRELAND SITTING AT
LONDONDERRY**

**THE QUEEN -v- JAMES OLIVER MEEHAN, BRENDA DOLORES MEEHAN
and SEAN ANTHONY DEVENNEY**

**EDITING OF STATEMENTS/
ADMISSIBILITY OF EVIDENCE
RULING (NO. 2)**

Introduction

McCLOSKEY J

[1] This ruling determines certain further contentious issues relating to the admissibility of evidence. It concerns the evidence which may properly be adduced from certain witnesses mainly in relation to events during what has been termed “phase one”, that is to say the happenings at the Carlton Redcastle Hotel, County Donegal during the evening of 4th May and the early hours of 5th May 2007. This ruling impinges on the evidence to be adduced by the prosecution from (a) Michael Dobbins, (b) Letitia Mary McFadden, (c) Ashling McFadden (the latter being the injured party identified in the third count of the indictment), (d) D (a minor) and (e) Seamus McFadden. This ruling also affects, necessarily, the permissible scope of the cross-examination of these witnesses on behalf of the Defendants.

[2] In making a ruling of this kind, it seems to me that the court must proceed on the basis that the *viva voce* evidence of the witnesses concerned will be in accordance with their written statements. This general rule could, of course, be displaced in appropriate circumstances. However, there is no warrant for its displacement or any modification in the present context.

Earlier Rulings

[3] This ruling will fall within the contours of earlier rulings made by the court. I refer, firstly, to certain passages in the court's ruling relating to the second (unsuccessful) application to discharge the jury:

"[4] In summary, the prosecution will 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. 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 aggression 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 almost immediately after this aggression they determined to prolong these hostilities, in a calculated manner ...

[5] 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. 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 ...

It is claimed on behalf of] the Defendants that they were not the instigators or aggressors vis-à-vis these events".

[4] The court must also take into account the defence statements, as amended, served on behalf of the Defendants. The salient aspects of these are either

summarised or quoted in paragraph [2] of my first ruling on editing, delivered on 4th June 2009. I refer also to paragraph [3] of this earlier ruling:

“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”.

Michael Dobbins

[5] Against the above background, I consider, initially, the witness statement of Michael Dobbins. I take into account, firstly, this witness’s acknowledgement that during the evening in question he had consumed what constituted, on any showing, a very substantial quantity of alcohol. Secondly, I have noted the terms in which this statement is couched. In many places, it is framed in vague, uncertain and ambiguous terms. Subjective perceptions and interpretation also feature in the text. I further take into account the evidence which has already been adduced, through certain witnesses, without objection, on behalf of the prosecution. This includes the following:

- (a) During the first phase of the events, at the Carlton Redcastle Hotel, the Defendant Sean Devenney insulted Ashling McFadden (daughter of the deceased) by calling her *“a Shantallow ho ...”*.
- (b) Later, outside in the car park, the Defendant James Meehan stated that *“... someone is going to get their head danced on tonight”*.

This was followed by a fight. At some stage, the deceased, angry and upset, shouted that *“... he would make sure it would not happen again”*.

[Per Terri McConnell].

- (c) At the hotel, the deceased rejected the Defendant Sean Devenney’s apology and swore at him.
- (d) Sean Devenney was then escorted by the arm out of the hotel, by Michael Dobbins.
- (e) Next, the Defendant James Meehan threatened to “kill” the person who, according to him, had threatened his son.

- (f) Upon getting into a taxi later, Sean Devenney shouted “*We showed them ...*”.

[Per Liam Dobbins].

- (g) During the wedding reception, in the function room, the Defendant Brenda Meehan stated:

“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”.

[Per Joanna Holmes].

- (h) At the time of the fight in the car park, the Defendant Brenda Meehan was “*ranting and raving..... in the middle of the thing ... she was keeping it going on and on*”.

- (i) The Defendant James Meehan apologised, in terms, for the fighting.

[Per Gerard Storey].

- (j) Upon entering the taxi in the hotel car park, the Defendant Sean Devenney shouted that he was going to rip heads and also “*Who’s the boxer now?*”

[Per Rosaleen Gillespie and Caroline Lynch].

- (k) Shortly after arriving in the hotel car park, the bus driver, John Thomas Roddy, was approached by a small female person with blonde hair who demanded, in strong language, that she be allowed to enter.

- (l) During the taxi journey to their home, Brenda Meehan, addressing Sean Devenney, stated several times “*I’m going to Shantallow to wreck it*”. She also enquired whether the taxi driver knew Jim McFadden. Sean Devenney made a phone call to the effect that he wanted his friends “*there*”, because he thought the Shantallow men were coming to his house.

[Per John Coyle].

[6] With regard to this particular contentious editing issue, the focus of attention is a lengthy passage in the witness statement of Michael Dobbins, relating to events “*at the end of the night*” after the band had stopped playing. On behalf of the Defendant James Meehan, Mr. McCartney QC submits that it would be appropriate for the jury to receive evidence from Michael Dobbins of three matters in particular which are, respectively, the conversation described by this witness with the three

Defendants after the band had stopped playing; his description of this Defendant's evident preference to leave for home, rather than remain; and his description of this Defendant stating "... we'll sort this out in the morning, they're not getting away with this". Mr. McCartney's submission is that evidence of these three matters should be adduced, in order to present "a balanced picture" to the jury. He further submits that these are all material evidential matters. Finally, he reminds the court of the general principle that the prosecution should either adduce evidence from, or as a minimum tender, all witnesses whose statements are contained in the committal bundle: see *Blackstone's Criminal Practice 2009*, paragraphs D15.17 - D15.24.

[7] On behalf of the Defendant Brenda Meehan, Mr. Montague QC highlights the evidence of Joanna Holmes, to which I have adverted in paragraph [5] above. He points to a passage in the statement of Michael Dobbins, which is to the effect that outside the hotel Mrs. McFadden, spouse of the deceased, ran to the bus calling for and seeking out the Defendant Sean Devenney and punched the doors of the vehicle, stating either "Get him out" or "Let me in". Mr. Montague submits that this evidence will provide a counterbalance to the evidence of Joanna Holmes in particular. His submission is that the sole purpose of adducing this evidence from Joanna Holmes was to establish the demeanour of Brenda Meehan.

[8] As I stated in open court, my initial inclination was to exclude the whole of the evidence of Michael Dobbins, as intimated his statement, for the following reasons:

- (a) The evidence is replete with ambiguities and subjective interpretation.
- (b) The cogency of the evidence must be open to serious question, having regard to the witness's admitted state of extreme intoxication.
- (c) Certain specific parts of the evidence clearly lie outwith the boundaries of the earlier rulings of the court, as highlighted above. In other words, properly analysed, these aspects of the evidence do not form part of the prosecution case.
- (d) The probative value of Mr. Dobbin's evidence initially seemed to me either nil or, at best, minimal.

However, I have reconsidered paragraph [5] of my earlier ruling on the second (unsuccessful) application to discharge the jury (recited in paragraph [3] above). Following further reflection, I have concluded that it would be wrong to dismiss the *possibility* that if evidence were adduced from Michael Dobbins of the three discrete matters highlighted in paragraph [6] above, the jury *might* consider this relevant to the question of whether James Meehan possessed the requisite intention viz. an intention to kill, or to cause grievous bodily harm to, the deceased during the later phase. It follows that it would be unfair to the Defendant James Meehan to exclude this evidence.

[9] Next I consider Michael Dobbins' description of Mrs. McFadden in the vicinity of the bus. In my view, this evidence is probative of nothing. It simply does not sound on either the *actus reus* of the offences alleged in the indictment or the *mens rea* of the Defendant Brenda Meehan. I consider that this evidence does not make it any more, or less, likely that this Defendant possessed the requisite intent during the later phase. Rather, this evidence, in addition to being demonstrably irrelevant, would create a risk of diverting the jury into a consideration of the quality, propriety and legality of the conduct of Mrs. McFadden. None of these issues has any bearing on the prosecution case or the issues to be properly considered and determined by the jury. I rule, therefore, that this evidence is inadmissible.

Letitia Mary McFadden

[10] Next, I turn to consider the contentious passages in the witness statement of Letitia Mary McFadden. This evidence, on paper, does not suffer from the particular frailties of the witness statement of Michael Dobbins, as noted above. Rather, the issues relating to this evidence are to be determined purely by reference to the court's earlier rulings. Applying those rulings, I conclude that the contentious passages should be excluded. Those passages are highlighted on pp. 4 and 5, initially and will include the entirety of the passage beginning "*Then out of nowhere ...*" and ending with the words "*... the Garda had just arrived*". However, there will be no objection to the prosecution adducing evidence from this witness in general terms of the fact of a fight involving James Meehan and Jason Graham in the hotel car park. The next contentious passage is on p. 6, consisting of the words "*He was the person who had attacked Jason in the car park ...*". The final contentious portion is the sentence on the seventh page "*I was told that he had hit Jason outside the hotel before they left in the taxi but I hadn't seen it and Mickey Dobbins had pulled him off Jim by the leg. I didn't see anyone else apart from the big boy hit Jim not the young fellow hit Jason ...*". In this particular passage, there are valid hearsay and ambiguity objections, in addition to the fundamental shortcoming on which I base this ruling, to the extent that such probative value as this passage carries is clearly outweighed by its prejudicial effect.

Ashling McFadden

[11] I now refer to the witness statement of Ashling McFadden. On the second page, there is a passage of thirteen lines duration, beginning on the fourth line with the words "*It looked like ...*" and ending with "*... as they took him out*". The whole of this passage, in my view, lies outwith the boundaries of the court's earlier rulings. In the next three succeeding lines, there are certain statements attributed to the Defendant Sean Devenney, as follows:

"As he was being taken out he was shouting 'You're dead, you're dead, you're dead' at Daddy and J. Sean also shouted 'You're a

dead man walking'. He said other things and kept on going on about being a boxer."

I rule that this evidence may be adduced, consistent with earlier rulings and also consistent with evidence already adduced without objection, as it sounds on the state of mind of this Defendant a short time later, when the offences specified in the indictment were allegedly committed.

[12] The next contentious passage in the statement of Ashling McFadden begins five lines from the bottom of p. 3 and ends on the fifth line of p. 4, with the words "... *the clothes they had been wearing*". I rule that this evidence is also to be excluded, for the reason already given. On the same page, there is a lengthy passage, consisting of fifteen lines, beginning with "*When they caught us ...*" and ending with "*Liam told me that Sean Devenney had held Dad down*". The entirety of this is also to be excluded, for the same reason. Ditto the passage in the middle of p. 5, consisting of two sentences "*I immediately recognised ... I knew they were coming back to get us*". Finally, I find nothing objectionable in the short passage at the very end of this witness's statement.

Jason Graham

[13] Next, I refer to the witness statement of Jason Graham, the injured party identified in the second count of the indictment. For the avoidance of any doubt, I would highlight that this count relates to events during the second, rather than the first, phase. On the third page of this witness's statement of evidence, there are four contentious passages, each of them highlighted. I conclude that evidence of the matters addressed in all of these passages should be excluded, since it does not fall within the boundaries of the court's earlier rulings.

ABE Interview of D

[14] Given this witness's age, her evidence will be adduced at the trial through the medium of an "ABE" interview, broadcast to the jury on a screen. The editing issues which arise here are essentially twofold, being divided between the two main phases of events on the night in question. Firstly, it is proposed on behalf of the Defendants James Meehan and Sean Devenney that various passages in the interview transcript relating to the first phase of events be excluded. I have studied the highlighted passages and have considered them in particular from the perspective of the court's earlier rulings: see paragraphs [3] and [4] above. I have also noted those portions of the transcript where the words are those of the interviewing officer, rather than the witness. Having done so, I rule that the contentious passages relating to the first phase of events viz. those which unfolded at the Carlton Redcastle Hotel should be excluded from the evidence of this witness.

[15] The other contentious passages in the interview transcript of this witness's evidence relate to events during the second phase, at Shantallow. It is apparently

proposed on behalf of the two Defendants concerned that this witness be precluded from giving evidence of her descriptions of various individuals who were present at the scene or in the vicinity following the attack on Mr McFadden at Shantallow. The basis and nature of this objection are unclear to me. At present, it seems to me that evidence can properly be adduced from this witness of these matters. However, I will permit the facility of further argument if, on behalf of the two Defendants concerned, there is a sustained objection to this course.

S (A minor)

[16] This witness is the brother of the last-mentioned witness. It is proposed to adduce evidence from him in the same way as from D, on account of his age. The objections to the evidence of this witness are also in two parts, with the same division as before. I consider that those parts of this witness's evidence relating to the aggressions at the Carlton Redcastle Hotel should be excluded, for the same reason as other evidence belonging to this phase has been excluded, in this ruling and in earlier rulings. A further, freestanding objection to this part of the evidence is that, in my view, the interviewing police officer failed to lay the ground for much of what he purported to elicit from this witness – in important matters such as where precisely this witness was positioned at various times, lighting conditions, his view of events, what was audible to him, whether anything was simply relayed to him by others and so forth. There are also passages in this witness's interview transcript relating to the bus journey between the hotel and the McFadden home. I consider that evidence of these matters should be excluded, on the ground that it is irrelevant and, in any event, adds nothing to the evidence of this nature which has already been adduced.

[17] Next, from approximately the middle of *p. 27* of this witness's interview transcript, the witness purports to describe events at the Shantallow shops. There is an objection to a short passage, consisting of the whole of *p. 27*. This objection is, in my view, without substance. On *pp. 31-32*, the witness reverts to describing aspects of the events outside the hotel. For the reasons already given, I rule that the evidence commencing with "*Outside as well like ...*" and ending with "*This was Sean's stepdad*" is inadmissible. Finally, I have considered the contentious passages at *pp. 38-39*. In my view, there is no sustainable objection to this witness's evidence relating to the "*Total 90 top*". However, the remaining passages, consisting of eulogies, directed to the witness by the interviewing officer, while entirely understandable in human terms, are inadmissible on the twin grounds of relevance and prejudice.

[18] The parties might also wish to consider whether there are any other short passages in the interview transcripts of both D and S of the same character as that identified in the immediately preceding paragraph.

Conclusion

[19] I trust that the terms and scope of this ruling are clear. I would emphasize that the evidence which may permissibly be adduced from Michael Dobbins will be of a strictly limited nature, in accordance with my conclusion in paragraph [8] above, read in conjunction with paragraph [6]. The ABE interview transcripts should now be edited accordingly. If this ruling stimulates a desire to address the court on any discrete issues, or any application to make further rulings, I shall be pleased to receive further submissions.

Reporting Restrictions

[20] In common with all earlier rulings, I make a reporting restrictions order in respect of this ruling. The restrictions will endure until the conclusion of the trial or further order of the court.