

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **29/06/09**

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. 7: APPLICATION [NO. 4] TO DISCHARGE JURY

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.

The Application

[2] The subject matter of this ruling is an application (the fourth) to discharge the jury in this trial. I acceded to the first of these applications: see my ruling delivered on 13th May 2009. I refused the second application: see my ruling delivered on 27th May 2009. I also refused the third such application, in an *ex tempore* ruling, given at a later stage of the trial. This further, freestanding application for an order discharging the jury is entirely unrelated to the earlier applications and falls to be considered on its particular merits.

[3] The present application arises in the following way. At the outset of the trial, Mr. Orr QC, addressing the jury, made the case that the deceased

was the victim of a brutal, savage and unprovoked attack. Continuing, he submitted that the cause of death was a laceration of the heart, involving a rupture. This, he said, was almost certainly caused by blows to the chest of the deceased. The impact of these blows compressed the chambers of the heart, causing rupture. Specifically, the blows took the form of a forceful kick to the chest or stamping on the chest.

[4] At a late stage of the prosecution case, evidence has been given by two experts in particular. The first of these is Professor Crane, State Pathologist for Northern Ireland. His evidence was based on a post mortem examination of the body of the deceased carried out by him on 6th May 2007. In his evidence to the jury, Professor Crane detailed a broad spectrum of injuries, both internal and external. With regard to his examination of the heart, he described the following three injuries:

- (a) A ragged laceration dividing the circumflex branch of the left coronary artery.
- (b) A ragged lacerated hole, 2 cms in diameter, through the wall of the left atrium.
- (c) A ragged laceration of the left ventricle, 12 mms thick.

Professor Crane's post mortem findings also included bruising within the muscles of the back of the chest and further bruising within the lining of the left chest cavity. He testified that the three aforementioned injuries had caused bleeding into the cardiacal sac, leading to collapse and rapid death. His conclusion was that death was due to laceration of the heart.

[5] Professor Crane also attested to other aspects of the "Commentary" of his main report (a copy of which was distributed to the jury), including the following passage:

"The injury to the heart was somewhat unusual but similar injuries have been described in the literature due to blows to the chest. 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".

At this juncture, it may be observed that Mr. Orr's opening summary to the jury was faithful to this passage. Professor Crane's report (and his evidence to the jury) also focussed on the post mortem findings that there were certain fractures in the area of the deceased's chest. These consisted of, firstly, a

fracture of the sternum, with bruising of the overlying muscles, located between the second and third costal cartilages. Secondly, there were fractures of the second to fourth right ribs, close to their junction with the sternum and fractures of the second to fourth left ribs. In his commentary, Professor Crane identified two possible causes of these particular injuries. The first was that they “... could have been sustained in the assault”. The second was that “... they occurred as a result of vigorous attempts at cardiac massage”. The professor then commented:

“In view of this uncertainty it would seem appropriate to exclude these particular injuries as contributing to, or playing any part in, the fatal outcome”.

With specific reference to the latter comment, it seems appropriate to me to make the following observation. Read fairly and objectively, there is no ambiguity in this statement. The unexpressed question posed by its author is whether any of the fractures made any contribution to the death. The answer provided by the author is “no”: he specifically *excludes* them.

[6] Professor Crane also gave evidence of the contents of his “Supplementary Autopsy Report”, which, too, was circulated to the jury. In this report, the author considered further the question of whether the rupture of the heart could have been caused by cardiac massage. He rejected this possibility, in the following terms:

“Whilst injuries, including rupture of the heart, can occur as a result of cardiac massage, this is usually because (a) the resuscitation is not carried out correctly by trained personnel or (b) because the heart muscle is already damaged as a result of myocardial infarction (heart attack). In this case cardiac massage was only carried out by trained personnel both at the scene, en route to hospital and on arrival at hospital. Furthermore, there was no underlying disease of the heart wall which would have predisposed to its rupture. In thirty years of autopsy practice I have never seen cardiac rupture as a complication of cardio-pulmonary resuscitation”.

The report then considers the issue of blunt trauma to the chest, in these terms:

“Blunt trauma to the chest is a well recognised cause of injury to the heart and may or may not be associated with fractures of the ribs and/or sternum. Rupture (or perforation) of the left atrium is a recognised but uncommon complication of blunt cardiac trauma”.

This Supplementary Report concludes:

*“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. I cannot completely exclude the possibility, however, that the sternum (breast bone) and ribs fractured could have been as a result of vigorous external cardiac massage”.*

[The emphasis is the author’s].

I consider the first conclusion expressed in this passage to be unambiguous: the injuries to the heart of the deceased (which were the cause of his death) were not sustained by resuscitation attempts (specifically, external cardiac massage). Rather, the heart injuries were brought about by blunt chest trauma.

[7] It may be appropriate to interpose at this stage that, during the trial, it has been put to some witnesses that untrained, incompetent individuals attempted cardiac massage on the deceased, prior to his death. This has been consistently resisted by the individuals concerned, who include Emmett McClelland, Sean Ward, Eamon Doherty, Christopher Kerr, Martina Nangle, Ashling McFadden (daughter of the deceased) and Mrs. McFadden (spouse of the deceased). Furthermore, the two members of ambulance personnel concerned testified that (a) the deceased was clinically dead, upon their arrival (thereby confirming the assessment also made by Mr. Ward, a trained first aider) and (b) the cardiac massage chest compressions undertaken subsequently were performed in a professional manner, in accordance with their training and experience and without excessive force.

[8] I would further record that, at this stage of the trial, there has been no evidence from any witness that anyone other than the two members of ambulance personnel performed cardiac massage upon the deceased. Moreover, all witnesses to whom it has been put that some other unqualified person (in particular Emmett McClelland) did likewise have firmly rejected this suggestion. The jury have also heard evidence from Mrs. McFadden, explaining that the sentence in her statement “*A wee boy Emmett McClelland was doing CPR on Jim*” was at all times intended to convey “*mouth to mouth*” resuscitation, rather than external chest compressions. In addition, the jury have received the evidence of one particular aspect of the written statement of Constable Hughes:

“I then called to a male that was standing over the ambulance staff who were still working on Jim McFadden. He came over and I noted his details as Emmett McClelland, d.o.b. 29/06/90 of 20 Moyola Park. He stated

he was trying to resuscitate Mr. McFadden prior to the arrival of the emergency services."

This would appear to chime with a policeman's notebook entry, which also forms part of the evidence heard by the jury, recording "*a wee boy Emmett McClement doing CPR*".

In his evidence to the jury, the only mouth to mouth resuscitation described by Mr. McClelland was that carried out by Mr. Ward (in whose garden the deceased was present and who is a trained first aider). Mr. McClelland testified that his only contact with the deceased was, under instruction, to place his hands under the head and to use a towel to stem the flow of blood from a head wound. All of the factual issues bearing on contact and interventions with the deceased between the time of the attack (which seems to have been 2.30am approximately) until the time of death (3.56am, according to Dr. Totten's note in the Altnagelvin Hospital records) are, of course, matters of which the jury will be the ultimate arbiter.

[9] Following Professor Crane, the next witness for the prosecution was Professor Jennifer Adgey, whose qualifications and appointments are MD, FRCP, FACC, FESC, Honorary Professor of Cardiology at Queen's University of Belfast and Consultant Cardiologist at the Royal Victoria Hospital, Belfast. In common with the sworn testimony of Professor Crane, that of Professor Adgey was based on a report prepared by her, dated 23rd July 2008. While this report was supplied to me for convenience, it was not furnished, in any form, to the jury. As rehearsed in the body of the report, the materials considered by Professor Adgey in its preparation included the Northern Ireland Ambulance Service Records; the hospital notes; the records of the deceased's general practitioner, the witness statements of the two members of ambulance personnel concerned; the witness statements of various prosecution witnesses - including Eamon Doherty, Emmett McClelland, Sean Ward, Martina Nangle and Ashling McFadden; the written statements of each of the three Defendants; and Professor Crane's Autopsy Report.

[10] In preparing her report, Professor Adgey was able to inspect the heart of the deceased, which had been preserved. She noted the three injuries already described by Professor Crane viz. the ragged tear dividing the origin of the circumflex branch of the left coronary artery; the ragged lacerated hole through the wall of the left atrium, 2 cms in diameter; and the ragged laceration of the left ventricle. Under the heading "Cause of Death", Professor Adgey states in her report:

"Firstly I would like to comment on the time of death. This took place approximately between 2.30am and the call for assistance at 3.04am on 5/5/07. Death was therefore caused by the assault. When the paramedic arrived and

with no preceding chest compressions, this patient was dead as indicated by no pulse, no breathing and pupils dilated and fixed. Therefore in a previously healthy male, death was caused by the assault ...

This gentleman undoubtedly suffered from severe blunt trauma to the chest wall considering the extent and severity of the cardiac injuries”.

[Emphasis added].

[11] In the next section of her report, Professor Adgey examines the phenomenon of the association of blunt chest trauma and cardiac rupture (and like insults). This part of her report begins with the words “*Looking at the literature ...*”. In the paragraphs which follow, the professor summarises what can be found in and what may be deduced from the literature consulted by her. This literature is detailed, non-exhaustively, in an appendix to her report.

[12] At this stage of Professor Adgey’s evidence, it appeared that a question put to her by Mr. Orr QC was designed to elicit from the witness evidence of the contents of the following paragraph in her report [p. 12, penultimate page]:

*“I understand that Mr. Jimmy Meehan has indicated in his statement dated 8/5/07 that Mr. McFadden and Mr. Meehan at one stage fell through a hedge landing very heavily in a garden. He indicated that Mr. McFadden was underneath Mr. Meehan facing away from him so that he landed face down and Mr. Meehan landed on top of him with his front facing Mr. McFadden’s back. He described the fall as a heavy one for both of them. **The totality however of the injuries suffered by Mr. McFadden could not be described as only associated with somebody falling on Mr. McFadden’s back as the severity and extent of those injuries would suggest that this gentleman was the victim of major blunt trauma as I have already indicated”.***

[Emphasis added].

Mr. Orr’s question stimulated an objection by counsel for the Defendants, who highlighted that Professor Adgey had already stated clearly, twice, in her evidence that she is not an expert in trauma. Based on this acknowledgement, it was submitted that it would be inappropriate to elicit from her evidence of what is contained in the paragraph quoted above.

[13] The aforementioned arguments were addressed to the court at a late stage on 24th June 2009 and I duly gave a written ruling the following morning. The language of the impugned paragraph, particularly the words “*the totality ... of the injuries*”, suggested to me that the professor, if invited to do so, might be proposing to express some view on injuries to the deceased other than those already specifically considered in her report and outlined in her evidence to the jury, that is to say the rupture of the left atrium; the rupture of the left coronary artery; the laceration of the left ventricle; the bruising of the anterior wall of the pericardial sac; the presence of 165 mls of blood in the latter; the quantities of blood in the left and right pleural cavities; the bruising on the left side of the pleural cavity; the extensive bruising in the muscles overlying the right scapula, the left scapula and the upper thoracic spine; the fractured sternum; and the fractured ribs, on both sides. It seemed to me, based on the phraseology of the offending paragraph, that Professor Adgey might possibly be induced, or be otherwise minded, to express an opinion on the aetiology of injuries other than these: Professor Crane’s report, to which she had access, documents an extensive number of injuries to other parts of the body of the deceased. I ruled that Professor Adgey could not permissibly do so.

[14] Having made this ruling, Professor Adgey then completed her evidence-in-chief. In this part of her evidence, she considered the hypothesis of the deceased falling through/over a hedge onto the ground, face down, followed by the Defendant James Meehan landing on the back of the deceased. In this context, it is appropriate to refer to the following passage in the amended Defence Statement of James Meehan:

“The Defendant admits approaching the deceased ...

The deceased swung the crutch in an aggressive manner and the Defendant attempted to disarm him. Both men subsequently exchanged a number of blows and eventually they fell through an adjacent hedge landing together on the ground (self defence). No further blows were exchanged.”

Professor Adgey referred once again to the three ruptures of the heart structures – the left atrium, the left ventricle and the left coronary artery. She testified that it would be “*very difficult to conceive*” these injuries being sustained in the manner asserted on Mr. Meehan’s behalf. She suggested that a fall face down to the ground would give rise to what she described as recoil and a dissipation of energy – which she contrasted with a major solid blow to the chest. She further testified that she had never previously experienced this combination of injuries to a normal heart. She then, by analogy, referred to the case of a small, lightweight, rugby player (for example, a scrum half) on top of whom larger, heavier forwards fall, suggesting that this phenomenon is not known to give rise to the heart injuries suffered by the deceased.

[15] In cross-examination, Professor Adgey described her research of the literature as “*extensive*”. She testified that her research was carried out in conjunction with Professor Crane. It was computerised research. The most important sources thus uncovered by her are detailed in the appendix to her report. She also consulted other sources, which did not warrant inclusion in this way. She acknowledged her unfamiliarity with one specific piece of research that was put to her (Braithwaite, “Blunt Traumatic Cardiac Rupture: A Five Year Experience”). Having read this study, she reiterated, in terms, that it did not support the thesis contained in Mr. Meehan’s statement. She highlighted that in the Braithwaite study, only one patient, out of thirty-two, had suffered blunt traumatic cardiac rupture as a result of a fall – and this entailed a male falling over a distance of three metres to the ground. She repeated her opinion that the specific heart injuries identified in the post-mortem were attributable to blunt trauma to the chest. This, she suggested, would usually take the form of a blow to the front of the chest, with the back of the chest resting against a firm surface – for example, in a typical road traffic accident scenario. She suggested that it is extremely rare for the left side of the heart to be damaged and she described cardiac rupture as a rare and uncommon phenomenon. Each of the three ruptures (or lacerations) is individually rare, while the coincidence of all three is extremely rare.

[16] Professor Adgey was cross-examined extensively by Mr. McCartney QC and Mr. Montague QC. Miss McDermott QC did not have any questions for this witness. Certain further evidence was then given by her, in response to questions from the court. Upon completion of the professor’s evidence, the present application was intimated and it materialised a little later (on the same day – the programming being influenced by the convenience of two other witnesses, Dr. Totten and Noel McIntyre, a “special measures” witness). The thrust of the application is that while evidence about the cause of Mr. McFadden’s death falls within the realm of Professor Adgey’s expertise, evidence about the cause of the injuries giving rise to his death does not. It is submitted that Professor Adgey’s expertise belongs to the field of cardiology and her ready acknowledgement that she is not an expert in trauma is highlighted.

[17] In support of these arguments, reliance was placed on Blackstone’s Criminal Practice 2009, paragraphs F10.6 [p. 2508] and F10.19 [p. 2515] and in particular the following excerpt from *The Queen -v- Turner* [1975] QB 834, at p. 840:

“Before a court can assess the value of an opinion it must know the facts upon which it is based. If the expert has been misinformed about the facts or has taken irrelevant facts into consideration or has omitted to consider relevant ones, the opinion is likely to be valueless. In our judgment,

counsel calling an expert should in examination-in-chief ask his witness to state the facts upon which his opinion is based. It is wrong to leave the other side to elicit the facts by cross-examination."

In Blackstone, the authors dilate on this passage in the following way:

"In some cases, some of the relevant facts upon which the opinion is based can be proved by the expert himself ...

Whether or not the expert has personal knowledge of the facts upon which his opinion is based, those facts must be proved."

[Paragraph F10.19].

It seems to me that the emphasis placed on this passage, in the application which I am determining, puts the focus on the quality and adequacy of Professor Adgey's research, as described in her report and in her evidence to the jury. In this respect, it is acknowledged in the same work, unsurprisingly, that computerised research can properly form the basis of expert evidence: see paragraph F10.20.

Conclusions

[18] In my view, the unspoken premise in the arguments supporting the application to discharge the jury is that only an "expert in trauma" could properly give the evidence which Professor Adgey has purported to give in the final paragraph of p. 12 of her report (as relayed to the jury). In medical terms, the word "trauma" means, quite simply, physical injury. I consider that the determination of this present application throws up the following questions: what is an "expert in trauma"? What are the credentials and qualifications of this notional expert? There is no material before the court permitting a clear and confident answer to these questions and I am not prepared to make any assumptions about this matter. Nor do I consider resort to the doctrine of judicial notice appropriate.

[19] The proposition that expertise in any professional field is not possessed inherently by any person seems to me unexceptional. Expertise is, rather, something acquired, usually from a combination of learning, study and experience. In the present context, I consider it appropriate to juxtapose the qualifications and credentials of Professor Adgey, her many years experience in the field of cardiology and her acknowledged eminence with the research carried out by her for the purposes of this trial, as detailed in her evidence. Furthermore, the framework within which the issue of the competence of Professor Adgey to give the controversial piece of evidence falls to be considered is constituted by these factors, coupled with the matters

put to her in cross-examination. There are no other ingredients – such as, for example, a defence expert’s evidence or some recognised BMA guideline or standard – in this equation.

[20] In my view, this issue is to be considered essentially from the twin perspectives of Professor Adgey’s expertise, qualifications and experience (on the one hand) and the research carried out by her, as detailed in her report (on the other). I take into account that, in this context, one is dealing with injuries to the heart of the deceased. Professor Adgey’s competence to express an opinion about the nexus between these injuries and the death of the deceased is not in issue. In determining this issue, I further take into account the firm, confident and unqualified terms in which the professor expressed herself in evidence about this matter; the unchallenged evidence that her research was carried out in conjunction with Professor Crane, whose expertise in the sphere of traumatic injuries is readily acknowledged on behalf of the Defendants; and Professor Adgey’s demonstrably strong conviction that, bolstered by this joint research, she is sufficiently qualified and competent to give the offending evidence.

[21] Furthermore, I take judicial notice that it is commonplace for medical experts in various fields (including orthopaedics, dermatology, obstetrics, neo-natology, ophthalmology, oral surgery, maxillo-facial surgery and general surgery) to give evidence about the cause of injuries, including physical injuries, and medical conditions belonging to those particular fields. In principle, *on the present state of the evidence*, I consider the present case no different in this respect. In my view, there is no bright luminous line separating evidence concerning (a) the nexus between the cardiac injuries suffered by the deceased and his death and (b) how those injuries were inflicted, in the narrow and specific context of the case made by one of the Defendants (James Meehan) in his written statement. I consider, further, that there is an evident incongruity between the absence of any challenge to Professor Adgey’s competence, as an expert witness, to give extensive evidence about the aetiology of the rib and sternum fractures (on the one hand) and her credentials as an expert witness in relation to how the deceased’s heart injuries were caused, from the limited perspective highlighted immediately above (on the other). Finally, I draw attention to the absence of any expert medical opinion or any recognised standard or benchmark supporting the Defendants’ challenge to Professor Adgey’s competence to give the contentious evidence.

[22] The challenge mounted was constituted exclusively by the cross-examination of Mr. Montague QC. Skilful though this cross-examination undoubtedly was, duly supplemented by an attractive submission I consider it insufficient, for the reasons elaborated in paragraphs [18] – [21] above. In short, I do not have sufficient grounds for doubting, or rejecting, Professor Adgey’s competence in this respect. The cornerstone of the argument

advanced to the court is that the contentious evidence was *inadmissible*. I agree with this characterisation: I consider the issue to be one of admissibility, rather than fairness. For the reasons given, I reject the challenge advanced. In my view, this challenge sounds on *the weight* which the jury should properly attribute to the contentious evidence (a matter which can be developed fully in closing speeches), rather than the professor's *competence* to give it. It follows that the principles outlined in paragraphs [10] - [11] of my ruling dated 27th May 2009 [McCL7521] do not fall to be considered.

[23] Finally, from the perspective of the fairness of the Defendant's trial, I would highlight the following considerations:

- (a) The Defendants have, through their counsel, availed of their entitlement to cross-examine Professor Adgey.
- (b) This cross-examination has ranged over the professor's competence, as an expert witness, to give the impugned evidence and the adequacy of her research.
- (c) The Defendants are at liberty to seek to counter and rebut Professor Adgey's evidence, by adducing evidence on their own behalf through such witnesses as they may choose to call.
- (d) The impugned evidence did not take the Defendants by surprise in any way: it has been in the possession of their legal representatives since the service of the Notice of Additional Evidence, dated 4th August 2008.
- (e) The jury will be the ultimate arbiters of the weight to be attached to Professor Adgey's evidence. In this respect, the Defendants will have every opportunity, through their counsel, to make appropriate representations to the jury.

Disposal

[24] For the reasons elaborated above, the application to discharge the jury is refused.