Neutral Citation No. [2011] NICC 1 | *Ref:* **HAR8057**

Judgment: approved by the Court for handing down | *Delivered:* **7/1/2011**
*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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CRAIGAVON CROWN COURT

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THE QUEEN

-v-

KAREN WALSH

_____

HART J

[1] The defendant is charged with the murder of Marie Rankin on a date unknown between 23 and 26 December 2008 in Newry. She was first remanded on this charge on 31 October 2008 and committed for trial on 12 May 2010. Her case was fixed for trial on 1 November 2008, but for reasons which are set out later in this judgment the trial was adjourned on that occasion. A further standby trial date has been fixed of 21 February 2011, with a trial date of 7 March 2011. Since the defendant was committed for trial she has been represented by Higgins, Hollywood and Deazley, solicitors, but on 21 December 2010 an application was made on her behalf for the grant of a further defence certificate in favour of Kevin R. Winters and Co. Having heard the defendant's explanation as to why she wished to have a fresh set of legal advisors assigned to her at public expense, I refused her application and said that I would give my reasons later which I now do.

[2] It is appropriate at this stage to describe the various steps that have been taken to prepare this case for trial on behalf of the defence. On 18 June 2010 the defendant was produced for arraignment and a no bill application was made on her behalf. This was refused. The then senior counsel on behalf of the defendant, Mr John McCrudden QC, indicated in her presence that the defence were considering a large quantity of material disclosed by the prosecution. He stated that a number of expert reports may be required on DNA, mobile phone traffic, toxicology and pathology. It was also indicated that there may be an application to transfer the venue of the trial from Newry to another location. The court fixed a standby date of 6 October 2010 and a trial date of 1 November 2010, and gave various directions as to steps that required to be taken, and fixed the case for review on 10 September.

[3] On 10 September an application was made by Mr Gavan Duffy, junior counsel on behalf of the defendant, to transfer the trial to Belfast. The court directed that the case be transferred to the Division of Craigavon, from which the jury panel would be selected and indicated that the trial on 1 November would be at Armagh but before a Craigavon jury. The court was informed on that occasion that a number of defence experts had been instructed. A report from Dr Gilsenan was to be obtained with regard to histology. This was allegedly served on 8 October 2010, although that does not appear on the court record. A report was also being obtained from Dr Cooper in relation to footwear impressions. A report was to be obtained from a Dr Schudel in relation to an analysis of the scenes of crime. Finally, a report was being obtained from Professor Dan Crane in relation to the DNA aspect of the case.

[4] At the review of 8 October 2010 the reports from Dr Schudel and Dr Crane were outstanding, and the court directed they were to be lodged by 15 October 2010. The court was also informed that a case conference was to be held on the following Wednesday and that there was no reason why the trial could not commence on 1 November 2010 so far as the defence were concerned.

[5] However, on 1 November 2010 the trial was adjourned by the trial judge, Mr Justice McLaughlin, following a defence application on two grounds. The first was that Professor Crane had indicated in the week before the trial that he did not have enough information to draft his report. The second reason was explained to the trial judge on that occasion and at subsequent reviews on 19 November and 3 December to me, on each occasion in chambers.

[6] In R v Samuel Francis Morrison [2010] NICC 36 I considered the position of defendants who receive legal aid for their defence seeking to change their legal advisors, and then to obtain a fresh set of defence representatives at public expense by the grant of a new defence certificate. Within the last two years alone there have been four instances where defendants charged with murder have sought to change their legal advisors at an extremely late stage, namely (1) Harvey, (2) Gorski, (3) Morrison, and (4) Sadowska. In addition in two other cases where pleas of guilty had been entered an application was then made for a change of legal representation (Fox and Others), or the case was adjourned in part because the defendant was considering whether to seek a change of representation (Gerard Small). Each of these cases was tried by a High Court judge, and in each instance the applications resulted in considerable delay, with all of the impact that such changes and delays have in terms of expense, witnesses and upon the hearing of other cases to which I referred in Morrison.

[7] In Morrison I extracted from the authorities the following principles.

" (i) When a defendant who has been granted legal aid representation at public expense wishes to change that representation the court has a discretion whether fresh representation at public expense should be granted.

(ii) When a solicitor has been assigned under a defence certificate and has instructed counsel, then solicitor or counsel (as the circumstances require) has a duty to explain to the court why they are unable to carry out their assigned duties of representation so that the court will have the information necessary to properly exercise its discretion whether to grant a new defence certificate, or to allow the case to proceed in the absence of legal representation.

(iii) When a defendant and/or his advisors inform the court that a change of representation is being sought, whilst the detail of discussions between the defendant and his legal advisors is a privileged matter, or the disclosure of it might be harmful to the defendant's defence, a general statement of the defendant's reasons for the withdrawal of instructions would not breach that privilege nor prejudice his trial and ought to be given to the court in as much detail as possible.

(iv) If the court concludes that the defendant has capriciously or unreasonably discharged his legal advisors then the court will be slow to grant a further defence certificate, and is not obliged to do so.

(v) A change of representation which is not proposed a reasonable time before the trial, and is not proposed before substantial costs have already been expended in the preparation of the defence case, is unlikely to be favourably regarded.

(vi) The ultimate decision for the court depends upon the circumstances of each case, and it does not follow that an assertion of "loss of confidence" will result in an application being granted.

(vii) If, as a result of a capricious or unreasonable decision on the part of the defendant to discharge his

> legal advisors, the defendant is deprived of legal representation at his trial, then the defendant must face the self-inflicted consequences of his own actions."

[8] The defendant is fully aware of the court's view as set out in Morrison because Mr Duffy informed the court that a copy of the judgment had been made available to the defendant. I applied those principles when dealing with the present application. On 3 December 2010 the court was informed by Mr Gallagher QC (who appeared for the defendant) that it had come to the defendant's solicitors' notice that the defendant had approached another solicitor to act for her. However, there was no appearance on that occasion by any other solicitor seeking a change of representation, and the matter was then adjourned to 17 December in order to establish what the position was. On 17 December Mr McVeigh of Kevin Winters and Co. appeared, but it was apparent that the position was still unclear and the matter was further adjourned to 21 December when the defendant also appeared in person.

[9] On 21 December I heard from Mr Duffy who was junior counsel for the defendant instructed by Higgins, Hollywood and Deazley. Carriage of the defendant's case was in the hands of Mr Higgins of that firm. Having heard from Mr Duffy the defendant was called and gave evidence in person. She explained her desire to have Kevin Winters and Co. represent her by saying that when they had represented her in the past Mr Corrigan of that firm, and Mr Kieran Vaughan of counsel who was the junior counsel at that stage, were individuals with whom she got on exceptionally well, and who, she asserted, understood her case very fully. When pressed by the court as to why she did not wish Mr Higgins to continue to represent her, with considerable reluctance the defendant eventually stated that she did not believe that Mr Higgins had put the same effort into the case. Having considered the defendant's application, in the course of which she said that she was not looking for any extra time to prepare her defence and the expert witnesses would be just the same, I concluded that her request for new representation was both capricious and unreasonable.

[10] The defendant explained her change to Higgins, Hollywood and Deazley from Kevin Winters and Co. at the time of her committal on the basis that Mr Corrigan of that firm had suffered serious injuries in a car accident and was unable to attend to her case. However, it is noteworthy that she never expressed any concerns about the way in which Higgins, Hollywood and Deazley were conducting her case until several weeks after the trial had been adjourned on 1 November 2010.

[11] I do not consider that her assertion that she believes Mr Corrigan knows more about her case and would put greater effort into it has been

shown to be justified, and I consider her decision to discharge Messrs Higgins, Hollywood and Deazley is capricious.

[12] Her decision is unreasonable because she now seeks to have a fourth set of legal representatives provided for her at public expense, thereby wasting the considerable sums of public money that have already been incurred in fees for her various legal representatives since she was charged. Between 31 December 2008 and 17 February 2009 she was represented by Mr McNamee, solicitor who at that time was with the firm of Tiernans. Between 18 February 2009 and 7 July 2009 she was represented by Mr McNamee who by now was a partner in the firm of McNamee, McDonald, Duffy. Although there were two separate firms of solicitors involved so far I shall regard her as represented by Mr McNamee between 31 December 2008 and 7 July 2009. On 8 July 2009 the defendant was granted a change of representation to the firm of Kevin R. Winters and Co. who then represented her for some ten months from 8 July 2009 until she was committed for trial on 11 May 2010. From 12 May 2010 until the present she has been represented by Higgins, Hollywood and Deazley. Were the defendant's application to be granted she would therefore be provided with a fourth set of legal advisors at public expense.

[13] I also consider it to be unreasonable because she has not identified any act or omission on the part of Higgins, Hollywood and Deazley, or her counsel, which has led to any failure to obtain evidence or prepare her case. Indeed, it is clear from what has been stated at the various pre-trial reviews that her defence team in the form of Mr Higgins, junior counsel Mr Duffy and senior counsel Mr Gallagher QC, have been working tirelessly on her behalf and exploring a great many possible lines of defence that might be advanced. I am entirely satisfied that they have been preparing her case with the utmost care and diligence.

[14] I earlier said that there were two reasons why the trial was adjourned on 1 November 2010 at the defence request. The first was that Professor Crane had not yet completed his report on the DNA aspects of the case. The court has since been informed at the review of 3 December 2010 that he has received all of the material he requires. The second reason for the adjournment has been explained to the court in some detail in chambers. All I propose to say about that is I am satisfied that the line of enquiry carried out by Mr Higgins and counsel was a proper one.

[15] I am satisfied that the real reason why the defendant has sought to change her lawyers is because she is unhappy with that line of enquiry. However, I am satisfied that her legal representatives were duty bound to explore this matter and the defendant cannot legitimately complain about that line of enquiry.

[16] In the course of his admirably careful and thorough submissions Mr Duffy identified a number of matters in respect of which Higgins, Hollywood and Deazley feel that their relationship with the defendant may have been compromised. I have carefully considered these and am satisfied that the defendant's actions in those respects illustrate the unreasonable nature of her decision to seek fresh legal representation. I am not satisfied that there are any rational grounds upon which the defendant can assert that she has lost confidence in Higgins, Hollywood and Deazley or her counsel, and, in view of the several changes of legal representation which have already occurred, the late stage at which this application was brought, and the lack of justification for it I refused the defendant's application for a further assignment of solicitor and counsel to represent her.

[17] As I explained to her at the conclusion of the hearing on 21 December, this means there are three options open to her. The first is that she represents herself by conducting her own defence. The trial dates, whether the standby or the full trial date, are some time in the future and that gives her sufficient time to prepare to represent herself. The second option is that she approach a firm of solicitors who would be prepared to act her without remuneration as I presume from the earlier grants of legal aid that she does not have the means to pay solicitors, counsel and the various experts her defence may require. The third is that she compose her purported differences with Mr Higgins and her counsel and give them her full co-operation. Should that be the case her grant of legal representation will continue. If she does not the defence certificate in their favour will be discharged by the court and she will have to defend herself. Should that be the position it will be as a result of her decision. She should be under no illusions that her position may well be detrimentally affected if she does not have the advantage of legal representation at her trial.