Neutral Citation No. [2006] NICC 11

Ref: **MORF5570**

Judgment: approved by the Court for handing down

Delivered: **10/05/2006**

(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

MARK HADDOCK

RULING

MORGAN J

[1] This case is proceeding before Mr Justice Weatherup. The Crown case is almost complete and the Crown now wish to apply to introduce bad character evidence in respect of the defendant pursuant to the provisions of the Criminal Justice (Evidence) (Northern Ireland) Order 2004. Although no Notice as required by the rules has yet been prepared it is submitted that the evidence is admissible on any one of three grounds:

(a) The evidence is admissible pursuant to article 6(1)(d) of the 2004 Order to show propensity.

(b) The evidence is admissible pursuant to article 6(1)(f) of the 2004 Order in order to correct a false impression.

(c) The evidence is admissible pursuant to article 6 (1) (g) of the 2004 Order on the basis of an attack upon Mr Gowdy, a prosecution witness, in the course of his evidence.

[2] I have not seen the proposed bad character evidence. I have acted as disclosure judge in relation to the trial but have not been otherwise involved in the trial.

[3] The prosecution raised this matter with me as a matter of caution. They contend that matters of admissibility are essentially matters for the trial judge. In a Diplock case the trial judge may have to deal with issues of

admissibility by way of exclusion of evidence. Similarly it is submitted that it is for the trial judge, who is best placed to exercise the judgment, to determine whether or not to permit the Crown to introduce the bad character evidence.

[4] For the defendant Mr Gibson BL raises an issue of delay in relation to the first two grounds relied upon by the Crown but accepts that the cross examination of Mr Gowdy constituted an attack upon his character made in the last few days of the trial. He is concerned as to the breadth of the application and in particular whether it will involve simply any criminal record or whether it will embrace the alleged circumstances of the offending. He is concerned about the risk of prejudice to his client if the application is made and refused.

[5] A court undoubtedly has power under s.40 of the Criminal Procedure and Investigation Act 1996 to make pre-trial rulings on questions of admissibility before the commencement of the trial. Such a ruling may be varied by the trial judge if he considers it in the interests of justice to do so. I have been referred to no authority to support the view that a judge other than the trial judge has power to make such a ruling in respect of the admissibility of evidence in an ongoing trial. That reflects the fact that the trial judge will always be in the best position to assess the extent to which the evidence falls within one of the gateways in article 6 of the 2004 Order and any question of unfairness which arises under article 6(3) of the said Order.

[6] There must always be some risk that an application of this sort could give rise to the disclosure of information which might prejudice the ability of the trial judge to continue with the trial. If the judge is so prejudiced he must recuse himself and the trial will have to commence before another judge. That is generally an adequate protection for the Convention Rights of the accused. In the circumstances put before me I see no basis upon which to entertain any application for the admission of bad character evidence in this trial and I decline to do so.