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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **12/4/2019**

IN THE CROWN COURT SITTING AT BELFAST

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R

-v-

RAYMOND O'NEILL

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COLTON J

Introduction

[1] The defendant in this case is charged with the murder of Jennifer Dornan and arson with intent at 21 Hazel View, Dunmurry, endangering the lives of the occupants on 2 August 2015.

[2] The defendant asked the court to order a "no bill" pursuant to Section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.

Background

[3] The deceased was aged 30, born 1 May 1985. She was single. She had three children aged 1, 4 and 8 and lived at 19 Hazel View, Lagmore, Poleglass.

[4] The defendant was aged 37 in August 2015. At that time he was living at 89 Amcomri Street, Belfast.

[5] At 04.43 hours on Sunday 2 August 2015 Northern Ireland Fire and Rescue Service received a 999 call from a resident of 21 Hazel View which was the other semi-detached house next door to No. 19. She was awakened by the smell of smoke and when she opened the curtains and blinds in her bedroom she saw flames coming from the upstairs area in the deceased's house.

[6] Firefighting crews were deployed and arrived at 19 Hazel View at approximately 05.05 hours. The fire was up through the roof and flames were visible through the front right window of the premises.

[7] Whilst searching the premises firefighters located a person in the main front bedroom. The body was badly burnt and was lying on the floor just inside the doorway.

[8] The fire was then brought under control and due to concern about roof and gable wall collapse all firefighters were removed from the building. The body was recovered and was identified as that of Jennifer Dornan.

[9] The deceased was conveyed from the scene at 19 Hazel View to the Northern Ireland Regional Forensic Mortuary, Royal Victoria Hospital, Belfast on 2 August 2015 at 19.05 hours. A post mortem examination was conducted at the Mortuary, Royal Victoria Hospital, Belfast on 3 August 2015 by pathologist Dr Charlotte Randall. It was her conclusion that Jennifer Dornan had died due to three stab wounds to the chest. Her body was badly burnt and analysis of carbon monoxide levels in her blood confirmed that she was not alive and breathing after the fire had started.

The prosecution case

[10] The prosecution case centres on evidence relating to the movement, activities and behaviour of the defendant before and after the offences were committed, including his prior contact with the deceased earlier that morning. This evidence involves statements from persons who were in contact with him and CCTV evidence showing him at various locations. For the purposes of this application it is not disputed that the defendant is shown in this CCTV evidence and I shall refer to this as the "*known footage*" in the remainder of this ruling. The evidence was set out in detail in the no bill application by Mr Ciaran Murphy QC who appears for the prosecution with Mr David Russell. In addition an essential element of the prosecution case is the CCTV evidence of a person at the scene of Hazel View seen entering and exiting the premises and shortly thereafter in White Glen in the early morning of the offences. It is the prosecution case that this person was the perpetrator of the offences and for the purpose of this application the court accepts that this is so.

[11] It is also the prosecution case that the person shown in the CCTV evidence at the scene is in fact the defendant.

[12] Both the prosecution and the defence set out a detailed and helpful chronology of the evidence in relation to the defendant's movements before and after the offences were committed.

[13] I do not propose to set this out in detail for the purposes of this application.

[14] Importantly there is evidence that the defendant arrived at 71 Lagmore Avenue, Belfast, the home of David Quinn at approximately midnight. He entered the house carrying what looked like a "carry out".

[15] Chantelle Quinn is the daughter of David Quinn and Kerrie Robinson. When the defendant arrived back at the house he asked Chantelle to help him count his money. The total came to over £100. Chantelle's evidence is that Raymond O'Neill rang and ordered a Chinese food delivery to the house from the landline.

[16] The food was delivered and paid for with "*a big pile of change*" that the male receiving it had in his possession.

[17] David Quinn, his daughter and Derry O'Keefe arrived back at the house at approximately 1.00 am on Sunday 2 August 2015. David Quinn observed Harp cans on the table and two bottles of champagne. He was unsure whether the champagne was his as he had a number of bottles in the kitchen cupboard or whether the defendant had purchased them. There were also the remnants of a Chinese food delivery in the house and the defendant was standing at the door talking to the Chinese delivery driver who he obviously knew. The defendant subsequently told Derry O'Keefe that the champagne was for the girls when they got back from the Devenish Arms.

[18] The girls referred to are the deceased and Kerrie Robinson. They arrived at 71 Lagmore Avenue some time after 0130 hours having been dropped off by Derry O'Keefe.

[19] The girls are shown entering the Devenish Arms at 2211 hours on 1 August 2015 and leaving on 2 August 2015 at 0133 hours. Derry O'Keefe who brought them home described both women as being drunk.

[20] When they arrived at 71 Lagmore Avenue, David Quinn states that they were giggly, bubbly and noisy. The girls sat in the kitchen with the defendant whilst Quinn sat in the living room watching television. When Kerrie and the deceased arrived they took a couple of tins of Harp from the fridge and started drinking them with the defendant. He stated that he heard a cork pop and went into the kitchen where he saw the defendant with a champagne bottle in his hand. The evidence suggests that the three of them continued drinking.

[21] Eventually David Quinn states that when he was standing at the front door having a cigarette, the deceased came out and told them she was going home as she had her kids early the next day. Quinn said that she could stay the night but she said that she would go home. He watched her walk off down the street towards her house until she was out of sight.

[22] David Quinn Junior says that he was in his bedroom playing computer games. He states that he saw the deceased walking down Lagmore Avenue towards her home. He states that she had a wine bottle in her hand and was carrying her shoes and handbag in her other hand.

[23] When David Quinn returned to the kitchen after watching the deceased walking down the road and out of sight, Kerrie was lying over the kitchen table so he helped her up to bed. He then started to tidy up and recalled throwing at least one of the bottles of champagne into a bin bag along with tins of Harp.

[24] The defendant then asked David Quinn to order him a taxi and gave him the number 0289062222. Mr Quinn rang the number but there was no answer. This call was timed at 0258 hours. Within 5 or 10 minutes the defendant shouted into the kitchen that he was away and the door slammed whilst David Quinn was tidying in the kitchen.

[25] Returning to the deceased, there is CCTV evidence obtained from 10 Hazel Crescent showing her walking down the street towards Hazel View on 2 August 2015 at 0215 hours. The distance from 71 Lagmore Avenue to 19 Hazel View has been measured as 416 metres and a timed walk took 4 minutes 51 seconds. CCTV footage obtained from 17 Hazel View shows the deceased arriving home at 0253/0254 hours and going round to the rear of the house.

[26] Footage from the same CCTV shows a person wearing a light coloured jacket climbing over the front fence at 19 Hazel View and appearing to walk round the back of the house at 0312 hours. The person had the jacket pulled up to cover his face. According to a statement from Kerrie Robinson, the deceased always kept her back door open. It is possible to walk from 71 Lagmore Avenue to 19 Hazel View without passing the CCTV in Hazel Crescent, but to pass a CCTV at 17 Hazel View. This was demonstrated in a map in one of the exhibits. The distance for this route is 411 metres and a timed walk took 4 minutes 22 seconds.

[27] CCTV footage at 0327 hours shows the same person with a light coloured jacket come from the rear of the property, again with the face being covered by the jacket, standing in the area of the car park in the deceased's driveway. That person then returned back to the property at 0342 hours. The same male appears from the rear of the property returning inside at 0343 hours. At 0355/0356 hours the downstairs lights come on briefly and again at 0414 hours, remaining on until 0419 hours.

[28] CCTV footage at 0419 hours shows the person in the light coloured jacket walking across the middle of the garden, again with his face covered by the jacket, getting over the fence and walking across the road in the direction of the turning circle for buses in Lagmore View. He is then seen walking left to right on the screen. A knife connected to the events by the deceased's DNA was recovered in the garden of 16 White Glen. The location where the knife was found is consistent with the direction of travel of the person leaving No. 19 Hazel View.

[29] At 0423 hours fire can be observed coming from the upstairs bedroom window. At 0444 hours the occupants of 21 Hazel View can be seen evacuating their

property. At 0455 hours Northern Ireland Fire and Rescue Service arrive at the scene.

[30] Further CCTV footage obtained from 56 White Glen, Dunmurry, shows a person walking past the house in the direction of Teeling Avenue at 0422 hours on 2 August 2015. The male had a bald spot on the crown of his head and was carrying a light coloured jacket over his arm as he walked by. The distance to this point from the deceased's house was measured at 365 metres and a timed walk took 3 minutes 28 seconds. The sighting of the person passing this point is consistent with him being the person who left 19 Hazel View a few minutes before. There is no other pedestrian activity recorded in the period 0204-0504 hours.

[31] At approximately 5.00am on Sunday 2 August a Paul Smith had left 109 Laurelbank, Poleglass where he had been drinking to head home to 13 Woodside View, Poleglass. As he entered an alleyway a few houses down from 109 he met the defendant who was a friend who stated to him "*you're a hard person to find*". Smith says that he found O'Neill's demeanour unusual. He was soaking wet and wearing a grey t-shirt with the word McKenzie in yellow print on the front of it. He was wearing dark jeans and brown boots. His tee-shirt was drenched. The distance from the deceased's home to the area of this meeting is approximately 2660 metres and a timed walk took 28 minutes 20 seconds.

[32] Both men then walked the short distance to Eileen McIlveeny's house at 109 Laurelbank. On entering the house the defendant handed some rosary beads to Eileen. According to Smith the defendant was talking about God to Eileen. He also noted at that time that the defendant had a cut to his hand as he could see blood. The defendant then exchanged his clothing for a Barcelona football top belonging to Paul Smith. The deceased had a tin of beer and Eileen phoned for a taxi. Both Paul and Eileen noticed a large amount of change in the defendant's pocket.

[33] A taxi arrived at approximately 0520 hours. The taxi driver describes a male getting into the taxi and asked to be taken to the "Falls". He was dropped off at Lady Street and walked into Devonshire out of view.

[34] At approximately 0530 hours a Mr Shane O'Neill describes being asleep at his home at 12 Devonshire Close, Belfast when he heard banging at a door. When he got up and answered the door he found his uncle, the defendant, standing there – CCTV footage shows the arrival at 0532 hours. The defendant is wearing a football top. The defendant asked him to take him to George's to get some drink and then take him to Poleglass. Mr O'Neill confirms in his statement that he recalled the defendant had been wearing a cream coloured jacket the previous evening when he had left him at David Quinn's house but he did not have it with him that morning. The defendant grabbed and put on a grey coloured hoodie that was in the hall. CCTV footage shows them departing the house at 0553 hours.

[35] They drove to George's shop on the Falls Road but it was closed. The defendant then asked Shane to drive him to meet "Smickers" (Paul Smith) so they drove to Laurelbank. When he arrived there apparently Smickers had left. The defendant then directed Shane O'Neill to Smickers house in Woodside. When they arrived in Woodside Paul Smith was standing outside his house drinking a can of beer. They had a conversation and they both got into the car with Shane O'Neill. He describes both Raymond and Paul as being drunk and slurring their words. At this stage the defendant was now wearing a light blue Dublin Gaelic top. On request Shane O'Neill drove them to Windsor Cabs on the Donegall Road where beer was purchased. They eventually arrived back at Paul Smith's house at Woodside. On arrival Smith got out of the car went round the back of the house and subsequently appeared at the front door. The defendant then went into the house. Smith states that when the defendant was approaching the house he threw the Barcelona top across the garden to him and told him to throw it in the wash as he had cut his finger and there was blood on it. The time at this stage was approximately 0700 hours. Shane O'Neill drove home.

[36] When they entered the house at 13 Woodside View Paul Smith states that he put the Barcelona top in the wash but did not turn the washing machine on. The defendant lay down on the settee and fell asleep.

[37] There is further evidence about the defendant's movements and conversations on 2 and 3 August culminating in the defendant getting a taxi to the bus station at Glengall Street, Belfast on 5 August 2015.

[38] It is the prosecution case that the person seen entering and exiting the deceased's premises is the defendant.

The application

[39] The power to order a "no bill" is derived from Section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) Act 1969, which provides:

> "*The Judge presiding at the Crown Court shall, in addition to any other powers exercisable by him, have power to order an entry of 'No Bill' in the Crown book in respect of any indictment presented to that court after the commencement of this Act if he is satisfied that the depositions or, as the case may be, the statements mentioned in subsection (2)(i), do not disclose a case sufficient to justify putting upon trial for an indictable offence the person against whom the indictment is presented.*"

[40] The principles governing this application have been discussed in a number of cases - **R v Adams** [1978] 5 NIJB and **R v Macklin's Application** [1999] NI 105. The test and the principles to be applied have been outlined by Hart J in **R v McCartan v Skinner** [2005] NICC 20 at paragraph [2]:

> *"(i) The trial ought to proceed unless the judge is satisfied that the evidence does not disclose a case sufficient to justify putting the accused on trial.*
>
> *(ii) The evidence for the Crown must be taken at its best at this stage.*
>
> *(iii) The court has to decide whether on the evidence adduced a reasonable jury properly directed could find the defendant guilty, and in doing so should apply the test formulated by Lord Parker CJ when considering applications for a direction set out in Practice Note [1962] 1 All ER 448."*

[41] The test formulated by Lord Parker CJ is the well-established one that if there is no sufficient evidence on which a reasonable jury properly directed could return a verdict of guilty then the case must be withdrawn from the jury.

[42] I am grateful to counsel for their detailed written and oral submissions. As already indicated Mr Ciaran Murphy QC leads Mr David Russell for the prosecution. Mr Martin O'Rourke QC leads Mr Mark Farrell for the defendant.

[43] In their respective submissions there was a debate between the parties as to the proper categorisation of the prosecution case. Mr Murphy describes the case as a circumstantial one and he relies on the authorities dealing with how the court should approach such a case. For his part Mr O'Rourke says that in reality this is an identification case and the court should apply the principles in approaching the no bill application set out in the well-known cases of **R v Galbraith** and the guidelines for identification as set out in **R v Turnbull -** "the Turnbull Guidelines".

[44] In order to obtain a conviction the prosecution must satisfy the jury beyond a reasonable doubt that the person shown at the scene of Hazel View and shortly afterwards in White Glen is in fact the defendant.

[45] Because the person in this footage deliberately covers his face from the cameras it is not possible to make an identification based on his facial features. It is the prosecution case that the person can be identified as the defendant by examining that footage and by comparing those images with the known footage of the defendant from the same evening. The defence argue that the quality of this footage (hereinafter referred to as 'the contested footage') is of such poor quality that no jury could identify the person shown as being the defendant.

[46] In particular, the prosecution rely on an "expert" report from a Mr Derek Kinnen who reviewed the CCTV footage to look for common features between the known footage and the contested footage. He provided enhanced images of the footage to demonstrate similarities between the footwear, jacket, belt, jeans, facial shape and hairline and manner of walk in both footages. In relation to the footwear

he points to distinctive metal eyelets on the lace holes of the shoes shown in both. In relation to the jacket he refers to the straight collar which is formed by a band of material with a different texture or surface to the rest of the jacket and a large pocket, the content or shape of which is causing it to bulge, in both footages. In relation to the belt he refers to a silver colour shape just above the left pocket of the jeans which is again shown in both footages. In relation to the jeans he refers to a distinctive mark which can be observed on the left leg, which can be seen in both footages. Observing this in the motion sequences he describes what appears to be a fold which reflects light when at a raised angle to it. He points to a similar mark at the same position on the left leg and relative to the knee bend in each of the footages. Finally he refers to the suspects "*distinctive hairline and bald patch on the crown and to apparent similarities of the gait shown in the comparable CCTV images*".

[47] The prosecution also obtained a report from Mr Ivan Birch who is an expert in forensic gait analysis. Having viewed the relevant footage his opinion was that the figure in the contested footage and the subject in the known footage could be the same person. Based on his experience of human gait, in view of the combination of features of gait, and taking into account limitations in the CCTV footage, he suggested that the forensic gait analysis provides "*limited support*" for the proposition that the figure in the contested footage and the subject in the known footage are the same person.

[48] These opinions need to be treated with great care. The opinion of Professor Birch is of very limited probative value and really only establishes that the defendant could not be excluded as a suspect.

[49] I agree with Mr O'Rourke's submission that in fact Mr Kinnen's opinion on whether or not the similarities he identifies are sufficient to identify the defendant is inadmissible and do not in fact constitute expert evidence. Mr Kinnen's expertise is in the preparation of the enhanced images but it is for the jury to assess whether or not any similarities allegedly demonstrated in the contested footage and the known footage are sufficient to identify the defendant.

[50] Mr Kinnen is not a facial mapping expert. His view on the similarity in the walk of the person or persons in the respective footage could not supplant or add to that of Professor Birch.

[51] Returning again to the legal test and the issue between the parties as to whether this is an identification case or a circumstantial case I take the view that this is in fact an identification case but one which is potentially supported by other circumstantial evidence.

[52] In relation to the identification I adopt the approach set out in Blackstone at F19.18 which states:

"The Turnbull *guidelines require the trial judge to direct an acquittal in cases where identification evidence is both deficient and unsupported by sufficient alternative evidence. If necessary, the trial judge should invite the defence to make submissions to that effect (*Fergus *(1993) 98 Cr App R 313). In such cases, the Court of Appeal may quash any conviction, even though the judge's direction on the evidence was otherwise impeccable (see, e.g.,* Pope *(1986) 85 Cr App R 201).*

In dealing with such cases, a court must not merely apply the principles set out in Galbraith*[1981] 2 All ER 1060 (see* **D16.55 et seq***.) but must apply what the Court of Appeal in* Richardson *[2012] EWCA Crim 639 referred to as 'an acute combination of* Galbraith *and* Turnbull*'. There is rarely any issue as to whether prosecution witnesses are attempting to tell the truth, but it may still be necessary to decide whether there is sufficient evidence on which a court or jury could properly convict (*Daley v The Queen *[1994] 1 AC 117;* Macmath *[1997] Crim LR 586). Such evidence need not, however, be particularly strong, and a case based on largely unsupported identification evidence may still be left to the jury even though the defence can point to several potential deficiencies in that evidence (*H *[2014] EWCA Crim 420).*

*In some cases, a witness may have qualified his identification by admitting that he was 'not quite certain', or was only '90 per cent sure'. A defendant cannot properly be convicted on qualified identification evidence alone (*George *[2002] EWCA Crim 1923;* Brown *[2011] EWCA Crim 80). But as with other kinds of weak identification evidence, a qualified identification may have a legitimate role to play alongside other, more reliable, evidence. In* Brown*, for example, the identification was not merely qualified by uncertainty but was weak in many other respects, having been made six years after the alleged offence. But the finding of B's fingerprints on documents strewn around the scene of the crime made up for that. The fingerprint evidence was 'devastating' and B had not been able to offer any credible explanation for it."*

[53] Turning again to the debate as to the proper characterisation of the case it is clear that identification is central to the prosecution case. I agree with Mr O'Rourke's submissions that the prosecution depends "*wholly or substantially*" on the identification of the defendant. That being so the court should consider this application in the context of the Turnbull Guidelines. In circumstances where an identification depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications.

[54] The guideline goes on to state that what is at issue is the quality of the identification.

> *"All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of mistaken identification is lessened; but the poorer the quality the greater the danger."*

[55] The guideline goes on to state that:

> "*When in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of identification. This may be corroboration in the sense lawyers use that word; but it need not be so if its effect is to make the jury sure that there has been no mistaken identification …"*

[56] Mr O'Rourke accepts that normally it would not be appropriate to make an application for a no bill based on allegedly poor identifying evidence before the court has an opportunity to hear and assess that evidence. However, in this case the court is in a position to assess the relevant evidence in relation to identification. It is not a case which is dependent on the evidence given by, for example, an eye witness in which his or her evidence may be tested.

[57] Applying the appropriate Galbraith test in circumstances where the prosecution depend upon the correctness of an identification the following approach is stated in Blackstone at D16.60:

> *"The correct approach to submissions to no case to answer in prosecutions turning upon identification evidence was laid down by the Court of Appeal in* ***Turnbull*** *[1977] QB 224, namely that, if the quality of the identification evidence on which the prosecution case depends is poor and there is no other evidence to support it, the judge should direct the jury to acquit. However, supporting evidence capable of justifying leaving a case to the jury, even where the identifying evidence is poor, need not be corroboration in the strict sense.*
>
> *Although* ***Turnbull*** *predates* ***Galbraith*** *[1981] 2 All ER 1060, there is no suggestion that the principles in it have been affected by the later decision. In fact, the obligation on the trial judge to uphold a submission if the identifying evidence is poor and there is no supporting evidence may be regarded as the clearest*

example of the application of the second limb of the ***Galbraith*** *test."*

[58] What is the effect of applying these principles to the circumstances of this case?

[59] The court had an opportunity to view and examine the enhanced discs prepared by Mr Kinnen and compare the contested footage with the known footage. I also took the opportunity to consider these in my chambers after the conclusion of the hearing. I accept Mr O'Rourke's submissions that in the context of this case the court is obliged to make some assessment of the quality of the contested CCTV footage. In doing so the court recognises that the quality or strength of identification evidence may range from poor or weak to strong or compelling.

[60] Having assessed the evidence carefully I have come to the conclusion that it is not sufficiently poor so as to compel the court to grant a no bill in this case. There are undoubted issues with regard to the quality of the evidence. As already indicated the person's face in the disputed footage is never seen. The footage is often grainy and indistinct. The footage in parts has limited resolution and lighting. The individual similarities between the clothing, footwear and shape and hairline of the persons shown in isolation would be insufficient to support an identification. However taken together I consider that they are capable of amounting to a reliable identification. That is not to say that a jury properly directed would come to the conclusion that the defendant is in fact the person shown in the contested footage. I therefore consider that the evidence relied upon by the prosecution, taken at its height, is better than "poor". In any event I consider that there is supporting evidence in this case. It is in this context that the circumstantial case relied upon by the prosecution is relevant.

[61] The contested CCTV footage is not the beginning or end of the prosecution case.

[62] The court is familiar with the proper approach which should be adopted for the consideration of circumstantial evidence. In particular I refer to the passage in Blackstone at F1.18 as follows:

"***Introduction***

Circumstantial evidence needs to be contrasted with direct evidence. Direct evidence is evidence of ***facts in issue****. In the case of testimonial evidence, it is evidence about facts in issue of which the witness claims to have personal knowledge, for example, 'I saw the accused strike the victim'. Circumstantial evidence is evidence of* ***relevant facts*** *i.e. facts from which the existence or non-existence of facts in issue may be inferred. It does not necessarily*

follow that the weight to be attached to circumstantial evidence will be less than that to be attached to direct evidence. For example, the tribunal of fact is likely to attach more weight to a variety of individual items of circumstantial evidence all of which lead to the same conclusion, than to direct evidence to the contrary coming from witnesses lacking in credibility.

*Circumstantial evidence 'works by cumulatively, in geometrical progression, eliminating other possibilities' (**DPP v Kilbourne** [1973] AC 729 per Lord Simon at p. 758). Pollock CB, likening circumstantial evidence to a rope comprised of several cords, said:*

> *'One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.*
>
> *Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together may create a strong conclusion of guilt, that is with as much certainty as human affairs can require or admit of (**Exall** [1866] 4 F and F 922 at p. 929).*

However, although circumstantial evidence may sometimes be conclusive, it must always be narrowly examined, if only because it may be fabricated to cast suspicion on another. For this reason, it has been said that:

> *'It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.' (**Taper v The Queen** [1952] AC 480, per Lord Normand at p 489). Nonetheless, there is no requirement, in cases in which the prosecution's case is based on circumstantial evidence that the judge direct the jury to acquit unless they are sure of the facts proved are not only consistent with guilt but also inconsistent with any other reasonable conclusion (**McGreevy v DPP** [1973] 1 All ER 503)'."*

[63] The prosecution point to a number of pieces of evidence which taken together they say supports the conclusion that the defendant is indeed the person shown in the contested footage.

[64] As was said by Kerr LCJ in the case of **R v Courtney** [2007] NICA 6 in which the court proceeded with an application of "*no case to answer*" at paragraph [31]:

> *"In a case depending on circumstantial evidence, it is essential that the evidence be dealt with as a whole because it is the overall strength or weakness of the complete case rather than the frailties or potency of individual elements by which it must be judged. A globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case."*

[65] The prosecution point to a number of features of the evidence which support the contention that the defendant did commit the offences and that the defendant is shown in the contested footage.

[66] They point to the following factors:

(a) The accused was outside the deceased's house at 9.30 pm the night before she was killed. He knew where she lived and had the opportunity to observe the CCTV cameras at 17 Hazel View. He was in her company for a period before she went out and knew she intended to socialise and consume alcohol.

(b) The accused was again in the deceased's company at 71 Lagmore Avenue. It seems he purchased alcohol in the anticipation that she and Kerrie Robinson would return there. He was in her company from shortly after 1.30 am to 2.45 am.

(c) The deceased left 71 Lagmore Avenue first and made her way home. The proper inference from the CCTV evidence is that no one entered or left 19 Hazel View whilst she was out socialising. She is seen to return to her home. The footage and other evidence suggest she was intoxicated to some degree. It is suggested that the defendant would have been aware of this from his time in her company and would readily have known that in returning to her home she would be there on her own.

(d) The defendant left 71 Lagmore Avenue shortly after the deceased. The time at which the figure is seen making his way along Hazel View and into number 19 is entirely consistent with the journey time between the two properties and the time at which the defendant left. These events took place at approximately 3.00 am in what appears from all the footage to be

a quiet residential area and the sighting of the man in the contested footage is at the very time when the defendant was in the streets having left 71 Lagmore Avenue.

(e) The CCTV footage after the alleged murderer left 19 Hazel View is consistent with the journey time from there, past the location at which the knife was found at 56 White Glen and the defendant's subsequent meeting with Paul Smith in Laurelbank at 5.00 am.

(f) The fact that the defendant at that stage is wearing different clothing despite the prevailing weather conditions the prosecution say is consistent with someone wishing to dispose of clothing so that he could not be forensically linked to the incident.

(g) There is evidence to suggest that the defendant has given a dishonest or an inaccurate account of where he was in the period between leaving Hazel View and arriving at Laurelbank.

[67] Taken globally these individual strands of evidence are capable of supporting the prosecution contention that the defendant is the person shown in the contested footage. That evidence taken with the evidence which the court has considered concerning the similarities between the images shown in the contested footage and the known footage of the defendant prior to the murder is in the court's view sufficient to put the defendant on trial.

[68] Accordingly the application for a no bill is refused.