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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 24/028292
	Delivered: 16/05/2025

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE**

THE KING

v

**JOSHUA ADAM COTTER
and
JAKE JOSEPH O'BRIEN**

**Mr C Murphy KC with Mr J Murphy (instructed by the PPS) for the Crown
Mr J Larkin KC with Ms A Smyth (instructed by Phoenix Law Solicitors) for the
Defendant**

RULING ON NO BILL APPLICATION ON BEHALF OF JAKE O'BRIEN

O'HARA J

Introduction

[1] The defendant, O'Brien is jointly charged along with Joshua Cotter with the murder of Shane Whitla. The murder was committed in Lurgan, Co Armagh, shortly after 7:30pm on 12 January 2023. A third person, Kevin Conway, was also charged with the murder but was then himself murdered in Belfast when he was on bail. Notwithstanding that fact the prosecution says the alleged involvement of Conway remains relevant to the case against O'Brien and Cotter.

[2] On behalf of O'Brien, an application has been made for a No Bill, meaning that the evidence against him is so fundamentally weak or flawed that no reasonable jury could convict him. On that basis, it is contended that the case against O'Brien should be stopped now by the grant of a No Bill. The Crown resists that application and submits that the case against O'Brien should proceed to trial.

[3] There is no equivalent application on behalf of Cotter. In effect, that means that although Cotter is pleading not guilty, he accepts at this stage, that there is evidence which, taken at its height, might lead a jury to convict him.

[4] I should mention briefly that both O'Brien and Cotter are also charged with possession of a firearm and ammunition with intent to endanger life. That count stands or falls with the murder charge for the purposes of this application. There is a case to answer on both counts or on neither.

[5] I am grateful to counsel for their helpful and concise written and oral submissions. They agree on the relevant legal test which I am to apply and further agree that the fact that this is a circumstantial case does not mean that it may not or cannot be a compelling one. Rather, the question is whether the prosecution is correct when it says it can present sufficient pieces of evidence which when tied together might convince a jury to convict. As has been repeatedly stated in many judgments, it is the overall strength of the complete case that matters, not the frailties of individual elements.

[6] Having acknowledged that as the law, Mr Larkin for O'Brien, developed his submission by contending that whilst some of the pieces of evidence relied on by the prosecution may or may not carry some weight with the jury, there are other pieces which obviously and simply carry no weight. When one removes those pieces, he says, "there just isn't enough left for any jury to convict. That is why a No Bill should be granted."

[7] The main attacks on the prosecution case were as follows:

- (i) The prosecution cannot prove that Mr Whitla entered the alleyway off Victoria Street, where on the Crown case he was shot.
- (ii) The prosecution cannot prove the identify of either of the two men who it says followed Mr Whitla into the alley.
- (iii) The prosecution cannot prove how Mr Whitla got from the alley after being shot, over a fence and into the park where he was found dead a short time later.
- (iv) There is no forensic evidence to connect two cartridges which were found in the alley but not until 15 January, three days later, with the murder of Mr Whitla.
- (v) While O'Brien was electronically tagged at the time of the killing and was out of his home address at the time of the killing, there is no evidence from any monitoring unit that he was in the area of and around the murder at the time that matters.

[8] Mr Larkin's contention was that while it is possible to question other aspects of the prosecution case, those points are less significant than the ones which I have summarised above. The importance of those five points, he suggested, is that if one removes those pieces from the case, because in truth they are not pieces at all, there just is not enough, not nearly enough, to put O'Brien on trial. He should not face trial on the basis of speculation, hypothesis or conjecture on critical central points which are not supported by actual evidence.

[9] For the prosecution, Mr Murphy submitted that the various strands of evidence must be looked at globally. Inevitably, some strands will be stronger than others, but it is for the jury to decide whether they can come together to make a case for conviction rather than for pieces of the case to be picked apart at this stage in the manner advanced by Mr Larkin.

[10] Mr Murphy summarised the prosecution case as follows:

- (i) Both Mr Whitla and Conway were involved in drug dealing generally and on the relevant date.
- (ii) By combining CCTV evidence, phone evidence and evidence from G4S in relation to O'Brien's tag, the events of the evening can be pieced together and understood.
- (iii) They include phone contact between Conway and Mr Whitla and between Conway and O'Brien. In particular, there is phone contact between Conway and O'Brien both immediately before the murder and immediately after it when O'Brien is known to be out of his home.
- (iv) CCTV evidence shows Mr Whitla leaving his home, returning to it and then leaving again in the direction of Woodvale Street off which the alleyway ran.
- (v) CCTV evidence also shows two men, one of whom can be identified as Cotter, together going towards and then away from the alleyway before and after the murder.
- (vi) The evidence of the pathologist is that Mr Whitla was fatally wounded by at least two shots but did not die immediately, thereby giving rise to a reasonable inference that after being shot he clambered or made his way over a fence and into the park where he died. A wound on Mr Whitla's thigh is consistent with him being injured as he climbed over the fence.
- (vii) Cell site analysis of O'Brien's phone is consistent with him taking the route which the Crown say is the route caught on CCTV, that is the route of the alleged gunmen O'Brien and Cotter.

(viii) There is forensic evidence which, although it does not tie Cotter and O'Brien to the cartridges found in the alleyway on 15 January, does tie them to each other.

[11] In light of the conclusion which I have reached, I do not think it is necessary to go further in setting out the prosecution's summary of the evidence, but there is one specific issue emphasised by Mr Murphy which merits particular attention. When questioned by the police O'Brien denied that a phone with the number ending 9546 was his. It is now conceded, for the purposes of this application, that it can, in fact, be attributed to him.

[12] In my judgment, that is a very significant issue because it ties O'Brien to Conway who was, in turn, directly in contact with Whitla on the evening of the murder. Not only does it tie O'Brien to Conway before the murder, it ties him to Conway immediately after the murder, and the fact or possibility that O'Brien lied about this phone when questioned by the police, a phone which has never been found, leaves it open to a jury to draw an adverse inference against O'Brien.

[13] Against that background, I do not accept the submission advanced by Mr Larkin that the case is based on speculation, hypothesis, and/or conjecture to anything like the degree he suggests.

Conclusion

[14] I accept that there are some aspects of the prosecution case which will or may be easier to prove than others. That is, however, the nature of a circumstantial case.

[15] Yet having considered the evidence in full, including the elements which were not dwelled on by Mr Larkin, I am entirely satisfied that a reasonable jury could convict O'Brien on the evidence before me.

[16] The application for No Bill is, therefore, refused.