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**IN THE PETTY SESSIONS DISTRICT OF CRAIGAVON**

**DPP**

**-v-**

**Robert ATKINSON**

**-and-**

**Eleanor ATKINSON**

**-and-**

**Kenneth HANVEY**

**District Judge (Magistrates' Court) Peter King**

**Introduction**

1. The choice before any Magistrates' Court following a committal hearing is a binary one - either to commit a defendant for trial in the Crown Court or to discharge him. What this court is definitely not to do is to treat the committal as a trial. Accordingly a decision to commit is no indicator of guilt and a decision to discharge is not a decision to acquit.
2. The background to this case has been exhaustively laid out by the Lord Chief Justice at paragraphs 2 to 17 in his judgement delivered on the 12<sup>th</sup> March 2014 in **In The Matter of an Application By the Public Prosecution Service for Judicial Review [2014] NIQB 29:**

“[2] In the early hours of 27 April 1997 Robert Hamill was violently attacked and beaten by a group of persons on a street in Portadown. He

died from his injuries on 8 May 1997. A total of six individuals, including Allister Hanvey, were charged with the murder of Robert Hamill. However, the charges against five of them, including Hanvey, were subsequently withdrawn due to insufficient evidence to prosecute and the sixth person was acquitted following trial.

[3] Reserve Constable Atkinson had been on duty on 27 April 1997 and in the vicinity when Robert Hamill had been attacked. Later on the morning of 27 April 1997, at 08:37 hours, a phone call was made from the home of Reserve Constable Robert Atkinson to the home of Allister Hanvey. It is alleged that Reserve Constable Atkinson advised Allister Hanvey to destroy the clothing he was wearing at the time of the incident. It was further alleged that he also kept Hanvey updated as the police investigation into the murder progressed.

[4] Reserve Constable Atkinson was interviewed by police on 9 September 1997 about these allegations. Atkinson denied making the telephone call. When the telephone records were later put to him, he claimed that the telephone call had been made by Mr Michael McKee, who had stayed at his house that night, and who was the uncle of Hanvey's girlfriend. The police investigated the matter further and Michael McKee, his wife Andrea McKee and Atkinson's wife Eleanor Atkinson all provided statements to police which supported Atkinson's version of events.

[5] Three years later in June 2000, following the breakdown of her marriage to Michael McKee, Andrea McKee approached police and provided them with a further statement in which she admitted that neither she nor her husband stayed at the Atkinsons' house on the night in question and that she had been asked by her husband to make the false statement to police following a request from Reserve Constable Atkinson to provide a false explanation for the telephone call. Michael McKee was interviewed by police and admitted to making a false statement in 1997. Both he and Andrea McKee were prosecuted for doing an act tending to pervert the course of justice and pleaded guilty at Craigavon Crown Court. On 7 May 2002 Michael McKee was sentenced to 6 months imprisonment while Andrea McKee was sentenced to 6 months imprisonment suspended for 2 years.

[6] In April 2003 the Director of Public Prosecutions (“DPP”) initiated a prosecution against Reserve Constable Atkinson and his wife for conspiracy to do an act tending to pervert the course of justice along with Kenneth Hanvey, the father of Allister Hanvey. A preliminary investigation was listed for hearing on 22 December 2003 at which Andrea McKee was due to give evidence. She did not attend court on that date claiming that her young child was ill. The committal was adjourned and the prosecution and police made further investigations as to the reason for Andrea McKee’s no attendance. At that stage she was residing in Wales. She claimed she had received a threatening letter telling her not to give evidence and also that she needed to attend a medical examination in respect of a job which she had been offered. The PPS considered the matter and a memo by the then Assistant Director of Public Prosecutions, Ivor Morrison, dated 16 March 2004, directed that the criminal proceedings be withdrawn on this basis:

“in view of the threadbare state of Andrea McKee’s credibility there is no longer a reasonable prospect of convicting any of the defendants of the offences with which they are charged ... it has always been clear that she was the key witness in this case. Without her testimony there is not a shred of evidence upon which the defendants could now be convicted”

The criminal charges against the three defendants were formally withdrawn by the PPS in open court on 19 March 2004.

[7] On 16 November 2004 the Secretary of State announced a public inquiry into the circumstances surrounding the death of Robert Hamill. Between January 2009 and December 2009 the Inquiry heard evidence from, inter alia, Andrea McKee, Reserve Constable Atkinson, Eleanor Atkinson and Kenneth Hanvey. In its interim report dated 12 March 2010 the Inquiry recommended the DPP reconsider its decision not to prosecute Reserve Constable Atkinson for the offence of conspiracy to pervert the course of justice.

[8] Following a review of the case, including a further assessment of the credibility of Andrea McKee following her evidence to the Inquiry, a decision was taken by the PPS in December 2010 to again prosecute Reserve Constable Atkinson, Eleanor Atkinson and Kenneth Hanvey for conspiracy to pervert the course of justice. Fresh complaints in respect of these offences were laid on 30 June 2011.

[9] The prosecution requested the Magistrates' Court to conduct a preliminary inquiry. The defendants required the attendance of Andrea McKee and other witnesses pursuant to Article 34 of the Magistrates' Courts (NI) Order 1981. On 9 May 2012 the District Judge refused two preliminary applications by the defence. The first was to stay the proceedings as an abuse of process on the ground that the PPS had reversed its previous decision not to prosecute and the second was to exclude the evidence of Andrea McKee under Article 76 PACE. The District Judge, however, noted that he had a continuing duty to consider the question of the fairness of putting any of the defendants on trial.

[10] Andrea McKee attended and gave evidence on 11 June 2012. She was not cross examined by counsel for Robert Atkinson or Eleanor Atkinson but was questioned by the solicitor for Kenneth Hanvey. During this cross-examination she was asked about her divorce from Michael McKee. She stated that whilst she was divorced she had not been the Petitioner because she did not know where Michael McKee was living. She stated that she remarried in 2007, but had not taken her husband's surname. When asked to provide her husband's surname she refused to do so claiming that identifying him may place him or their child at risk. It was then realised that she would need to sign the deposition with her true name and, therefore, an application for an anonymity order would need to be made if she persisted in refusing to give her name publicly.

[11] The hearing of the application for an anonymity order pursuant to section 87 of the Coroners and Justice Act 2009 commenced on 26 October 2012. In accordance with section 89(2)(e) of the 2009 Act, all three defendants were permitted to cross-examine her in relation to whether she had a tendency to be dishonest. During cross-examination she was asked about the reasons for her non-attendance at court in December 2003. She reiterated her original account, namely, the

requirement for medical treatment for her child, receipt of a threatening letter and the need to attend a medical examination for a job. She suggested the letter may have been sent to her following the reporting in the press of her new address in Wales. She confirmed that she had not received any further threatening letter. She maintained her refusal to provide the name of her husband. She stated she was divorced from Michael McKee and believed this had occurred in 2003. She gave birth to her son in October 2001 and married her present husband in a religious ceremony in Tunisia on 27 July 2007. She refused to disclose the religion in question.

[12] The solicitor for Kenneth Hanvey produced a marriage certificate indicating that Andrea McKee had married her current husband at Wrexham Registry Office on 9 February 2001, that she was a lens process technician and that her father was David Peter Jones and was a lorry driver. She denied attending the Registry Office, that she was a lens process technician on that date, or that her father was called David Peter Jones or was a lorry driver. She refused to give her husband's date of birth because of the risk to his safety. The District Judge formally required her to answer the questions put but she refused to do so despite being warned that she may be held in contempt of court. Following further discussion with the legal representatives, the District Judge again warned Andrea McKee. However, she again refused to answer questions relating to her son's birth certificate which had also been obtained by the solicitor.

[13] Although she denied that she had been a lens process technician at the time of her son's birth she later conceded that after his birth she had brought proceedings in an Industrial Tribunal arising out of her employment as a lens process technician. This had been reported in the local press together with her address. She also stated that in October 2001 she did not live with her current husband, which was contrary to the contents of the birth certificate. It was put to the witness that she had married her husband on 9 February 2001 which she denied. She then refused to write her husband's name and date of birth on a piece of paper to be seen by the District Judge only and thereafter kept in a sealed envelope in a safe. The committal proceedings were then adjourned on 26 October 2012 to allow police to investigate the issues raised during the cross-examination, especially the sequencing of events as to the dates of her divorce and second marriage.

[14] On 2 November 2012, during the course of this police investigation, Andrea McKee reported to local police in Wales that she had received a further threatening letter, purportedly from the LVF, warning her to have nothing to do with the criminal proceedings against the defendants. Subsequent examination of the postmark on the envelope revealed that the letter had been processed at Chester Mail Centre in England which also covers the area of North Wales in which Ms McKee lives. This gave rise to concerns that she had posted the letter to herself.

[15] When the case was adjourned on 26 October 2012 the District Judge advised Andrea McKee that she should not discuss the nature of the anonymity application with any person who could influence any answers she may give in evidence. Permission had previously been given to Mr Hedworth QC to consult with the witness on the anonymity application. On 23 February 2013 Mr Hedworth and his solicitor together with two police officers consulted with the witness on whether to pursue the anonymity application. As a result of that consultation, the notes of which were made available to the parties, the application was withdrawn.

[16] In April 2013 the PPS made a decision not to prosecute Andrea McKee for perjury or perverting the course of justice on the basis of advice from senior counsel not associated with the case. The alleged bigamy took place in Wales and this was passed to the relevant authorities in Wales for investigation and prosecution. Andrea McKee was subsequently prosecuted by the Crown Prosecution Service in England and Wales for the offence of bigamy, contrary to section 57 of the Offences Against the Person Act 1861, in relation to her marriage at Wrexham Registry Office on 9 February 2001. On 6 November 2013 she pleaded guilty to the offence and was fined £100.

[17] On 16 April 2013 the Magistrates' Court was informed of the PPS's decision not to prosecute Andrea McKee and also that her application for anonymity was being withdrawn. On 21 May 2013 the PPS indicated to the court that, having reviewed the matter, it had decided to continue with the present prosecution against the three defendants despite the issues surrounding Andrea McKee's credibility raised during the anonymity application. It was this decision by the

PPS which grounded a second abuse of process application by the defendants.”

3. It is sufficient to add that this preliminary inquiry commenced on 11<sup>th</sup> August 2014, Andrea Jones (known as Andrea McKee in the judgement referred to above) providing a deposition taken before me over three days of some 184 pages the result of examination in chief by Mr Hedworth QC for the Crown and cross examination on behalf of their respective clients by Mr Rodgers QC, Mr Duffy QC and Mr Montieth.
4. The committal papers were augmented by two further statements, one by Michael Irwin dated 17/08/14 and one by William Richard Cross dated 18/08/14. Both were admitted without objection.
5. I had previously refused a prosecution application brought under article 20 (2) (b) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 to admit hearsay evidence of James Michael McKee.
6. Written submissions were also received from Mr Hedworth, Mr Rodgers, Mr Duffy and Mr Lindsay. Mr Montieth eloquently closed proceedings with oral submissions.
7. For ease of reference I will include paragraphs 23 to 26 of the Lord Chief Justice’s judgement which describe the current statutory scheme:

**“The statutory scheme**

[23] Article 31 of the Magistrates’ Courts (Northern Ireland) Order 1981 (“the 1981 Order”) provides that the prosecution may request a Magistrate’s Court to conduct a preliminary inquiry into committal proceedings provided the accused does not object. Article 32 of the 1981 Order describes the documents which must be furnished to the court and served on the accused by the prosecution. By virtue of Article 34 (2) the court, the prosecution and the accused may each require any person to attend and give evidence on oath and any such person may be cross examined and re-examined. In this case the defendants required Mrs McKee to be produced for cross-examination on foot of that provision.

[24] The statutory test to be applied at committal is found in Article 37 (1) of the 1981 Order.

“Subject to this Order, and any other enactment relating to the summary trial of indictable offences, where the court conducting the preliminary investigation is of opinion after taking into account any statement of the accused and any evidence given by him or on his behalf that the evidence is sufficient to put the accused upon trial by jury for any indictable offence it shall commit him for trial; and, if it is not of that opinion, it shall, if he is in custody for no cause other than the offence which is the subject of the investigation, discharge him.”

[25] The issue of the sufficiency of evidence was considered by the Privy Council in Brooks v Director of Public Prosecutions [1994] 1 AC 568. In that case the applicant was charged with carnal abuse of a girl under the age of 12. The child alleged that the applicant had taken her to an apartment where he had sexual intercourse with her. Her credibility was in issue because she was suffering from a venereal disease and there was evidence that she was having a relationship with another man. The resident magistrate decided that the evidence was not sufficient and declined to return the applicant. The principal issue in the case concerned the subsequent presentation of a voluntary bill on behalf of the prosecution.

[26] The Committee considered the contribution that credibility can make to the sufficiency of evidence at 581A.

“The resident magistrate came to her decision after a long hearing during which she had ample time to form an assessment as to the credibility of the witnesses. Her decision is therefore entitled to be treated with considerable respect. There was however ample evidence on which she would have been entitled to find that there was a prima facie case which justified the applicant



being committed for trial. The resident magistrate's decision must therefore have been based on the lack of credibility of the prosecution witnesses and in particular of the girl who is alleged to have been raped.

Questions of credibility, except in the clearest of cases, do not normally result in a finding that there is no *prima facie* case. They are usually left to be determined at the trial. Nevertheless there are features of the evidence of the complainant which make her decision understandable and their Lordships accept Lord Gifford's submission that an application for certiorari to quash the resident magistrate's decision would have failed."

It is apparent therefore that in certain cases credibility can be material to the issue of whether the evidence was sufficient to put the accused on trial."

### **Credibility**

8. In the instant case the credibility of Andrea Jones is clearly material to the issue of sufficiency of evidence to commit the defendants. Indeed the only issue in dispute between the parties is the credibility of Andrea Jones. It is accepted by all that there is no evidence independent of Andrea Jones capable of sustaining a *prima facie* case against any of the defendants.
9. I was greatly assisted in my assessment of Ms Jones by the judgement of Stephens J in **McCook -v- Department of Regional Development for Northern Ireland** [2014] NIQB 80 in which the principles set out in Gillen J's judgement in **Thornton -v- Northern Ireland Housing Executive** [2010] NIQB 4 were applied. I quote from the McCook judgement:

"[6] In assessing credibility I seek to apply the principle set out by Mr Justice Gillen in *Thornton v Northern Ireland Housing Executive* [2010] NIQB 4. I quote from paragraphs 12 and 13 of that judgment:

[12] Credibility of a witness embraces not only the concept of his truthfulness i.e. whether the evidence of the witness is to be believed but also the objective reliability of the witness i.e. his ability to observe or remember facts and events about which the witness is giving evidence.

[13] In assessing credibility the court must pay attention to a number of factors which, inter alia, include the following;

- The inherent probability or improbability of representations of fact ,
- The presence of independent evidence tending to corroborate or undermine any given statement of fact,
- The presence of contemporaneous records,
- The demeanour of witnesses e.g. does he equivocate in cross examination,
- The frailty of the population at large in accurately recollecting and describing events in the distant past,
- Does the witness take refuge in wild speculation or uncorroborated allegations of fabrication,
- Does the witness have a motive for misleading the court,

- Weigh up one witness against another.”

### **Andrea Jones**

10. I found Ms Jones to be an entirely unreliable and utterly unconvincing witness. She was evasive, obstructive and untruthful peppering her evidence with inconsistencies and outlandish assertions of having no recollection of pivotal moments in her life. Her testimony in respect of key moments contradicted evidence of other Crown witnesses and material disclosed by the prosecution. She deployed the tactics of obfuscation and deflection liberally throughout her performance in the witness box. I came to the firm conclusion at the end of her evidence that I had been treated to a series of lies and half-truths from a witness who was unwilling or unable to provide the court with a truthful account in respect of any aspect of her life since 1997.
11. Convicted of bigamy in November 2013 and of doing an act tending to pervert the course of justice in May 2002 Ms Jones faces two professional disciplinary tribunals in respect of non-disclosure of convictions. She was engaged in an attempt to blackmail her previous husband in 2000. She remains in police terms the sole “person of interest” in respect of the letter purportedly drafted by the LVF sent to her in November 2012 warning her off assisting the prosecution of the defendants. She is well educated to degree level with aspirations to a masters.
12. Adopting the approach of Stephens J I will not list out all the instances of the unsatisfactory nature of Ms Jones’ evidence before me; rather I will give the most egregious examples:
  - a. The first contact between Ms Jones and police took place in the unusual setting of a grave yard half way between her home and Portadown police station on the evening of 8<sup>th</sup> May 1997. Ms Jones maintained that she would have had no objection to meeting at the station. The evidence from DI Irwin was clear that “she had refused to come anywhere near the police station, scared for her life, scared for her property”.
  - b. The second contact with police occurred on 29<sup>th</sup> October 1997 at the office of Mr Sean Hagan, solicitor. At this meeting Ms Jones provided a statement to police completely at odds with the information she had given them during the grave yard meeting. The police officer who took this statement was DI Irwin, the same officer who had been at the earlier meeting. I find it incredible that she gave a statement, with all

the warnings contained on the documentation, to the same senior police officer to whom she had previously met clandestinely to impart an entirely different version. If this second version was a lie she would have known immediately on seeing DI Irwin in Mr Hagan's office that she would be caught out yet she persisted. The fact that Ms Jones did not hesitate to provide the detective inspector with the statement is indicative of someone who is prepared to say anything in respect of the most serious matters regardless of previous inconsistent statements.

- c. By September 2000 Ms Jones and her then husband had separated with Ms Jones returning to live in north Wales. In that month she wrote to Mr McKee requesting that he commence divorce proceedings against her. Included was copy correspondence to DI Irwin implicating Mr McKee in a theft. In stark terms having previously asked "nicely" for a divorce she was now prepared to resort to blackmail. Notwithstanding the negative impact on the credibility of Ms Jones this blackmail attempt has I am struck by the facts that she also was simultaneously withholding information about a crime from the police and extolling McKee to "bullshit" his solicitor in order to progress a divorce through the courts.
- d. Contact between Ms Jones and DI Irwin had resumed in early summer 2000 and as a result she made a statement dated 20th June 2000 which purported to be a truthful and accurate account of the events of April 1997. In short it was Ms Jones resiling from what had previously been her truthful and accurate account of October 1997. In the course of that statement she made a number of very specific representations of fact which I conclude were included in the statement to give it an enhanced air of veracity. By way of example Ms Jones claimed to have been watching on Sky Television a pay per view boxing match featuring Prince Naseem providing an account of how she responded to on-screen prompts to purchase the match. Investigations established that at the relevant time Ms Jones was not a Sky customer, Sky did not screen a Prince Naseem bout nor did any terrestrial channel in either the United Kingdom or Ireland.
- e. Ms Jones claims to have instructed solicitors to obtain a divorce from Mr McKee at some stage in 2000. She has no recollection of which firm she instructed, the grounds pleaded or how the professional fee was discharged. I find it completely improbable that this could be the case given her purported recall of details of other events in the years immediately preceding her launch of divorce proceedings. It is all the

more incomprehensible given her subsequent prosecution for bigamy. For reasons not immediately apparent Ms Jones has decided to keep these details from the court.

- f. When questioned by police about the threatening letter allegedly sent by a loyalist terrorist organisation she engaged in, to quote Gillen J “wild speculation” by attempting to blame a solicitor representing one of the defendants in this case. When this was put to her she denied trying to blame anyone despite the transcript of the relevant police interview clearly showing that denial to be untrue.

13. I also reject, inter alia, Ms Jones’ evidence in respect of the following matters:

- a. The reason for her failure to attend Craigavon Magistrates’ Court for committal proceedings listed on 22<sup>nd</sup> December 2003.
- b. Her belief that her marriage to Michael McKee had been annulled.
- c. The circumstances of her marriage to Adel in 2001, her understanding of his immigration status and the reasons for the non-attendance of her family at the ceremony.
- d. Her explanation of her evidence given previously of the religious ceremony she and Adel purportedly celebrated in 2007.
- e. Her recollection of a conversation with police transporting her to Belfast International Airport in 2002.
- f. The manner in which the summons for her bigamy prosecution was received by her.
- g. Her explanation of the untruthful answers provided to this court on previous occasions.

### **Discussion**

14. The statutory task I now am obliged to undertake is to consider whether the credibility of Ms Jones is so undermined that the evidence is not sufficient to put the accused on trial.

15. I accept that the credibility of any witness is divisible. Mr Hedworth has helpfully referred me to **R. -v- Cairns, Zaidi and Chaudhary [2003] 1 Cr. App. R. 38, CA** and **R. -v- Daniels [2011] Cr. App. R. 18**. Indeed, Stephens J in **McCook** confirms this proposition at paragraph 7:

“[7] I would add that because an individual is not credible in relation to one issue that does not mean that his evidence will be rejected in relation to the other issues in the case. It is all a matter of assessment and degree.”

16. Following the reasoning in Cairns and Daniels the prosecution were perfectly entitled to call Ms Jones. They accept the difficulties with their witness but are, in simple terms, urging me to find a single island of truth in a vast ocean of lies. However, having had the opportunity over three days to assess her credibility I find myself in the wholly exceptional position of not being able to attribute any degree of credibility to any portion of her deposition. The fact that at the very end of her deposition she denied lying to council officials in Wrexham despite her conviction for a bigamous marriage by a registrar in Wrexham sums up neatly what the previous 179 pages disclosed- that the assessment of Ms Jones by Mr Morrisson in 2004 remains sound in 2014.
17. Accordingly I find that the evidence is not sufficient to put the accused on trial and decline to return them to the Crown Court. I discharge each of the accused in respect of all matters before this court.

3<sup>rd</sup> September 2014