Neutral Citation No. [2010] NICC 12 | *Ref:* **McCL7730**

Judgment: approved by the Court for handing down | *Delivered:* **25/01/10**

*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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[BELFAST]

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THE QUEEN

–v-

MICHAEL PATRICK CLARKE
and
STEPHEN PAUL McSTRAVICK

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RULING NO. 3:
NO CASE TO ANSWER

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McCLOSKEY J

[1] The case for the prosecution having concluded, both Defendants invite the court to rule that they have no case to answer in respect of all counts and direct not guilty verdicts accordingly .

[2] The submission of Miss McDermott QC and Mr. Campbell on behalf of the first-named Defendant, Michael Clarke, highlights that there is no evidence linking him with any of the various scenes in play, except the car park adjacent to the Portside Inn, Duncrue Street, Belfast, it being accepted that he is the person depicted in the video recorded evidence removing black bags from the yellow salt bin and driving off in a red Volkswagen Golf vehicle. It is further accepted, by implication, that the black bags contained the ransom money of £85,000 and that Mr Clarke duly disposed of this. The thrust of the submission is that the prosecution have adduced no evidence which would enable the jury to infer that Mr. Clarke was a participant in a joint enterprise; in particular, no evidence of any agreement between him and others or of his possession of knowledge of the essential matters constituting the index offences of kidnapping, false imprisonment and robbery. The forensic evidence is condemned as inconsequential, it being highlighted that

the mineral water bottle and latex glove play no part in the major events, while the DNA traces attributed to Mr. Clarke cannot be dated.

[3] The submission of Mr. Weir QC and Mr. McAlinden on behalf of the second Defendant, Mr. McStravick, suggests that the finding of the empty "Pampers" baby wipes packaging in the wheelie bin at their client's home is of no moment, there being no evidence of any connection between this article and the house on the Ravenhill Road – or , one might add, the nearby purchase transaction. The forensic link between the two Defendants arising out of the presence of DNA traces attributable to both Defendants on a variety of items wrapped together in a single plastic bag is similarly attacked as insubstantial. This submission further emphasizes the circumstantial nature of the prosecution case and the significant limitations which obtain in respect of inferences which the jury may properly make. The thrust of both Defendants' submissions is that the prosecution case is incurably flimsy and speculative.

[4] In reply on behalf of the prosecution, Mr. Hunter QC submitted that the evidence as a whole disclosed an all-encompassing, meticulously planned operation, the elements whereof incorporated the identification of JL as a suitable target; reconnaissance of him and his home; a planned and forced entry of his premises; the use of minimal physical force; the impressively precise kidnapping and false imprisonment of EL and ML at the house on the Ravenhill Road; the precise and careful instructions emitted to JL; the numbers involved throughout the operation; the deposit and collection of the money; the various rendezvous arrangements involving the second Defendant throughout the day; the number of vehicles involved; and the burning of the two principal vehicles. It is submitted that all of these constitute inextricably linked elements of a meticulously planned operation spanning a period of approximately eighteen hours and involving a large number of actors. The apparent claims of both Defendants that they were, in effect, random, innocent, ignorant and unpaid participants are decried as absurd. Both Defendants, it is argued, played a vital role in the operation, as active and participating members of a criminal gang.

[5] With specific reference to the first Defendant, Mr Clarke, reliance is placed on his failure to respond in interviews, until confronted with the video stills evidence. Also highlighted is the evidence of what he stated about his general background, the debts owed by him to others, the threats to him, his refusal to identify anyone else and like matters. Attention is further drawn to the evidence that the Defendants clearly knew each other and the contents of the plastic bag, which, it is suggested, link the Defendants together. The position of the plastic bag is suggestive of a recent disposal, giving rise to a proper inference of recent contact between the two Defendants. Further, it is argued, the jury *could* find that the "Pampers" packaging relates to the relevant purchase at the Anchor Lodge Spar/BP Filling Station.

[6] As regards the second Defendant, Mr McStravick, the submission advanced is that it is simply not credible that any actor involved in this meticulous plan would not have known of its essential elements and dominant purpose [a submission which might be applied to both Defendants]. It is argued that the links between the two Defendants give rise to an inference of Mr. McStravick being connected with the collection of the £85,000. It is further submitted that there is an obvious link between Mr. McStravick and the goods purchased (per the video recorded evidence and, perhaps to a lesser extent, the "Pampers" packaging find in his domestic wheelie bin), giving rise to a series of further links – with the kidnapping of EL and ML; their false imprisonment at the house on the Ravenhill Road; and the central purpose of the overall operation viz. the commission of the robbery. It is further submitted that Mr. McStravick was demonstrably untruthful throughout the majority of his interviews, providing a series of mendacious accounts relating to his movements on the date in question; his driving routes; whether he was accompanied; whether he was present at the Anchor Lodge outlet; the "plating" of his car; ownership of the vehicle; whether he recognised the "purchaser" shown in the video recordings; and his acquaintanceship with EL. It is also submitted that the jury could find his attempts to distance himself from his passenger to be blatantly untruthful, in circumstances where the link between the passenger and the passenger's purchases (on the one hand) and the events at the house on the Ravenhill Road (on the other) is irresistible.

[7] With reference to the governing principles[1], it is submitted on behalf of both Defendants that this is a "type 1" case viz. one where there is no evidence of either Defendant having committed the offences alleged as members of a joint enterprise. It seems to me that the prosecution case may be likened to a voyage, entailing a route with a clearly marked point of departure and destination and several co-ordinates in between. The Defendants would say that the co-ordinates simply cannot be linked together, the voyage being in truth a mere adventure or exploration; while the prosecution would retort that the entirety of the journey is both logical and coherent.

[8] In essence, I prefer the submission of Mr. Hunter QC. In my view, there is sufficient evidence from which the jury, properly directed, could reasonably conclude that the Defendants are guilty of the offences specified in the indictment, by virtue of what has been disclosed about the nature and strength of their association *inter se*; their individual associations with other protagonists; their individual associations with highly material locations; their connections with significant vehicles; and their individual associations with

[1]See The Queen –v- Galbraith [1981] 73 Cr. App. R 124 – together with other reported cases, set out fully in ***The Queen –v- Cruickshank and McEleney*** [McCL7649, 19/10/09, paragraphs [21]-[23].

obviously important events. The question of whether *inferences* based on primary facts should properly be drawn is a classic jury function. In making my conclusion, I distinguish between legitimate, reasonable inferences (on the one hand) and perverse or unreasonable inferences (on the other). I consider that in the present case, inferences made by the jury implicit in a verdict of guilty against either Defendant would belong to the former category. In the language of Lord Lane CJ, it is enough for the court at this stage to form "***one possible view of the facts***" to this effect. In thus concluding, I have considered the entirety of the evidence presented and I have been alert to distinguish between the prosecution case against the two Defendants.

[9] I find, accordingly, that there is a *prima facie* case against both Defendants. Thus I refuse the application. The presentation of this application, coupled with this finding, has the virtue of concentrating minds on a variety of issues pertaining to directions to be given to the jury and available verdicts. All parties will have an opportunity to address the court on these matters.