

IN THE CROWN COURT IN NORTHERN IRELAND

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**LONDONDERRY DIVISION,
sitting in Coleraine**

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THE QUEEN

-v-

**SEAN CRUICKSHANK and
EDWARD McELENY**

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RULING NO. 1: THIRD PARTY DISCLOSURE

McCLOSKEY J

[1] On 17th July 2009, the court acceded to an application on behalf of the accused Edward McEleny for disclosure of certain medical notes and records. The third party agencies concerned having complied with the Order of the court, I have duly considered the materials produced and now make the following ruling.

[2] The indictment in this trial comprises two counts. The first count asserts that on 4th August 2007 in the County Court Division of Londonderry, the Defendants murdered one Liam Anthony Devlin. Both Defendants plead not guilty. The Defendant Sean Cruickshank has pleaded guilty to the second count, which accuses him of assaulting John Devlin thereby occasioning him actual bodily harm on the same date.

[3] The applications to which the court acceded on 17th July 2009 relate to three witnesses - Neil Michael Gillespie (date of birth 14th April 1984); Stephen Hutton (date of birth 18th June 1990); and Conor Porter (date of birth 18th February 1991). Common to each of these applications is the following averment:

“The medical notes and records may be relevant in all the circumstances in the trial of the Defendant and by reason of the charges preferred. In particular, the Defendant seeks access to any history of illicit drug and/or alcohol abuse”.

As was observed at the time when the court acceded to these applications, it is eminently desirable that applications of this kind be fully particularised, containing all material supporting averments. This will be in the interests of everyone concerned – the moving party, the prosecution, the third parties and the court.

[4] It is well settled that the test to be applied by the court is that of *materiality* and it is equally settled that this test is no less exacting than the test of materiality which governs the prosecutor’s duty of disclosure. See *The Queen -v- Hume and Another* [2005] NIJB 147, paragraphs [14] – [16] especially; *The Queen -v- Fox and Others* [2009] NICC 30, paragraph [11]; and *The Queen -v- Brushett* [2000] All ER (D) 3432 and [2001] Crim. LR 471, per Otton LJ. Further, where, as in the present case, the materials concerned are normally protected by confidentiality, the court must also be alert to the rights of the third parties potentially affected under Article 8 of the Convention: see *The Queen -v- O’L and Another* [2001] NI 136, at pp. 155/156 especially. Finally, where documents are produced to the court in the context of third party disclosure, it is for the court to examine them in order to determine whether dissemination is appropriate. If the outcome of this exercise is affirmative, disclosure is made to the moving party, any co-defendant and the prosecution: see *Hume*, paragraph [45] (per Hart J).

[5] As regards the witness Neil Michael Gillespie, the order of the court elicited a response from the relevant medical practice in a local health centre to the effect that Mr. Gillespie is not registered with that practice. By direction of the court, this information has only been communicated to the moving party’s solicitors.

[6] The medical records of the witness Stephen Hutton have been produced to the court. I would observe that the exercise of attempting to decipher and interpret medical records is frequently a difficult one and the present case is no exception, in this respect. Having performed this exercise, I have directed that the medical practice concerned be requested to clarify two matters in particular. Subject thereto, it is clear that there is nothing in this person’s medical records which either relates to elicit drug and/or alcohol abuse or otherwise satisfies the test of materiality.

[7] Finally, I have studied the medical records of the witness Conor Porter which have been produced to the court. There is nothing in these records which either relates to elicit drug and/or alcohol abuse or otherwise satisfies the test of materiality.

[8] Accordingly, the outcome of this exercise is that there is nothing to be disclosed to the parties and there is no basis for issuing a witness summons against any of the third party agencies concerned.