

08/44421

**IN THE CROWN COURT FOR NORTHERN IRELAND SITTING AT
LONDONDERRY**

**THE QUEEN -v- JAMES OLIVER MEEHAN, BRENDA DOLORES MEEHAN
and SEAN ANTHONY DEVENNEY**

RULING: SPECIAL MEASURES (RE JASON GRAHAM)

McCLOSKEY J

Confidentiality and redactions

[1] An unredacted version of this judgment was provided to both prosecution and defence during the trial. At this remove, the judgment is to be published on the Internet. The medical records which are the subject matter of the judgment give rise to considerations of confidentiality and the rights of the individual concerned under Article 8 of the European Convention on Human Rights and fundamental freedoms. To reflect these considerations, this is a redacted version of the judgment.

RULING

[2] The court is asked by the prosecution to make a “live link” special measures direction in respect of the witness and injured party Jason Graham, pursuant to Article 7 of the Criminal Evidence (Northern Ireland) Order 1999 (“*the 1999 Order*”) and Rule 44 BA of the Crown Court Rules, as amended. This application is based on a medical report. The first paragraph of this report suggests that Jason Graham has requested that his testimony be adduced by video link. The next paragraph reports that during the last two years, the author has interacted with Jason Graham on twelve separate occasions, most recently on 20th May 2009 in relation to his medical treatment. The report details his current state of health and the author’s opinion of the effect on him of giving evidence.

[3] Article 5(1) of the 1999 Order lies at the heart of the regime established for the purpose of determining this type of application. It provides:

“For the purposes of this Part a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this paragraph if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings”.

By Article 5(2), the court is enjoined to take into account certain factors in particular. The court is also required to consider any views expressed by the witness, in accordance with Article 5(3). Medical evidence of the asserted fear or distress is not an essential requirement: see *The Queen -v- Petraidis* [2008] NICC 15, per Hart J. If the court concludes that the witness in question is eligible for assistance, it must then determine, in accordance with Article 7(2)(a), whether any of the available special measures “... would, in its opinion, be likely to improve the quality of evidence given by the witness ...”. If this determination is positive, the court must then select the appropriate measure and give a direction accordingly. In considering these matters, the court must take into account all the circumstances of the case, including in particular “(a) any views expressed by the witness; and (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings”.

[4] The Crown application was initially opposed by the Defendants both on its merits and on grounds of lateness. However, in the event, these objections evaporated. In determining the application on its merits, I have had the benefit of considering extensive medical records relating to the witness concerned: see my related ruling on third party disclosure, given on 4th May 2009. I consider that the medical records provide adequate support for the views and conclusion contained in the medical report referred to in paragraph [2] above. It is particularly clear from the records that the witness has articulated his fears of the Defendants and the associated impacts which these have had on him. Furthermore, the assessment of the witness by the provider of the medical report referred to in paragraph [2] above is both current and unchallenged. While the latter factor is not determinative, I have no reason to query or disagree with any aspects of the assessment of the provider of the medical report.

[5] In the circumstances, and taking into account the absence of any enduring objection on behalf of the Defendants, I conclude that the statutory conditions for making a special measures direction in respect of this witness are satisfied. I consider the appropriate special measure to be live link, in accordance with Article 12(1) viz. “a live link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are held, is able to see and hear a person there and to be seen and heard ...”, per Article 12.

[6] Next , I turn to consider the issue of timing. In this respect, the critical factor is the date of the medical report referred to in paragraph [2] above. I consider that the prosecution, realistically, had no measure of control over either the production or the timing of this medical report, on the information available to the court. In the circumstances, I find that a satisfactory explanation for the timing of the application has been provided. In thus concluding, I have taken into account the observations of Gillen J in *The Queen -v- Black and Others* [2007] NICC 4, paragraph [14] especially. In short, I am satisfied, for the reasons given, that the Crown were unable to make the application in accordance with Rule 44 BA.

[7] Finally, by virtue of Article 7(4) of the 1999 Order, the special measures direction hereby made will specify the particulars of the provision to apply to the evidence of the witness concerned, Jason Graham.