

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **04/06/09**

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: THIRD PARTY DISCLOSURE

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, some six months later, 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. I refer also to paragraph [7], *infra*. To reflect these considerations, this is a redacted version of the judgment.

RULING

[2] On 27<sup>th</sup> May 2009, the court, acceding to an application on behalf of the Defendant Sean Devenney, made a third party disclosure order pursuant to Sections 51A and 51B of the Judicature (Northern Ireland) Act 1978. The order was directed to two agencies, requiring them to produce to the court all records and any other documentary materials relating to the treatment of one Jason Graham arising out of an assault allegedly perpetrated against him on 5<sup>th</sup> May 2007. Jason Graham is identified in the second count on the indictment (cf. earlier rulings). It is evident that he will also be a significant prosecution witness relating to the main count (viz. murder), attesting to events both during “phase one” (i.e. at the Carlton Redcastle Hotel, County Donegal) and “phase two” (i.e. at Moyola Drive, in the Shantallow Estate of Londonderry).

[3] Compliance with the order has now been effected and I have considered the documentary materials produced. It is important to recall that the main impetus for the application culminating in the order was a late “special measures” application on behalf of the prosecution, whereby it seeks to have Jason Graham’s evidence adduced through the medium of a live television link, pursuant to Article 4(1)(a) of the Criminal Evidence (Northern Ireland) Order 2009. This application is opposed and its adjudication awaits the court’s determination of the third party disclosure issues. The materials submitted by the prosecution in support of their special measures application include a medical report which relates to Jason Graham. The first paragraph of this report suggests that Jason Graham has requested that his testimony be adduced by video link. The next paragraph records that during the last two years, the author has interacted with Jason on twelve separate occasions, most recently on 20<sup>th</sup> May 2009 in relation to his medical treatment following the assault. The report also details his current state of health and the author’s opinion of the effect on him of giving evidence.

[4] I should record that, according to Miss McDermott QC (appearing with Mr. Reel on behalf of the accused Mr. Devenney) it had been intended to pursue a third party disclosure application independently of the prosecution’s special measures application. In this respect, I note that the court’s papers include a Notice dated 18<sup>th</sup> June 2008 signed by Messrs. Walker, Madden & Co., albeit this was directed to the Altnagelvin Hospital and seems more likely to have been concerned with forensic issues relating to the patient’s injuries. The further issues which it was proposed to investigate relate to any information given by Jason Graham to health care providers containing any material account of the alleged incident/s. Such an application would also have had, as its focus, the question of Jason Graham’s reliability and credibility. While such application apparently did not materialise, I have considered the issue of third party disclosure from those perspectives also.

[5] While I have no reason to question the adequacy of the compliance by the third parties with the court’s order, the standardised form of general practitioner’s records relating to Jason Graham has not been included in the materials disclosed. Nor is there anything relating to recent appointments and assessments by the author of the report summarised in paragraph [3] above. The explanation for these omissions may well be that he is not one of the Respondents to the court’s order. This ruling is made subject to this qualification and reservation.

### **Determination**

[6] By virtue of Section 51A(1) of the 1978 Act, the test to be applied is whether the materials disclosed by the third parties constitute “*material evidence*”. It is clear that the related duty imposed upon a prosecutor by Section 3(1) of the Criminal Procedure and Investigations Act 1996 to disclose anything which “... *might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused*” should guide the court in third party disclosure matters. This is confirmed by Hart J in *Regina -v- Fox and Others* [2009]

NICC, paragraph [11]. See also *Regina -v- Hume and Another* [2005] NIJB 147 and [2005] NICC 30, paragraph [16], per Hart J.

[7] Where medical records of individuals are concerned, the court must be alert to considerations of confidentiality, sensitivity and rights under Article 8 of the Convention: see *Council -v- A and Others* [2007] 1 All ER 293, *Re EC (a minor)* [1996] 3 FCR 521 (at p. 563 especially) and *The Queen -v- O'N and Another* [2001] NI 136, at pp. 155/156 especially (per Girvan J). As observed above, these considerations apply with somewhat reduced force in the present circumstances, where the prosecution have already placed in the arena a medical report disclosing details about the assessment and treatment of the witness concerned.

[8] I have examined meticulously the various materials disclosed pursuant to the order of the court, juxtaposing them with the bill of indictment, the thrust and shape of the prosecution case (as summarised in earlier rulings) and the issues and arguments ventilated on behalf of the Defendants. Applying the approach set out above, I conclude that the materials contain nothing which might reasonably be considered capable of undermining the case for the prosecution against any of the accused or assisting the case for the accused. I make this conclusion subject to the reservation highlighted in paragraph [6] above.

[9] Furthermore, I must bear in mind the fluctuating and organic nature of this trial, which behoves the court to maintain under review the assessment made at this stage. This approach will be applied during, *inter alia*, the hearing to be convened for the purpose of determining the special measures application, when it is proposed that evidence will be adduced from the author of the medical report considered in paragraph [3] above. Alternatively, if the records relating to Jason Graham are disclosed by the author to the prosecution without objection by the patient, they can be transmitted to the court, unread by any of the parties, for further consideration by me. If this materialises and if proper grounds for a further ruling are thereby stimulated, I shall act accordingly.