

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

Delivered: **24/04/09**

IN THE CROWN COURT FOR THE DIVISION OF LONDONDERRY

THE QUEEN

-v-

RM

RULING [NO. 3]: EDITING

McCLOSKEY J

[1] Prosecution and defence have reached a substantial measure of agreement on the editing issues which have arisen in this trial. However, it has become necessary for the court to rule on a discrete number of contentious matters.

[2] It is necessary to recall that the Bill of Indictment, as amended, contains eighteen counts, each of which alleges the offence of cruelty to a person aged under sixteen years, contrary to Section 20(1) of the Children and Young Person Act (Northern Ireland) 1968. The earliest date specified is July 1993 and the most recent is March 2006. The alleged injured parties are the four children of the family, all boys, who are now aged nineteen, eighteen, thirteen and ten years respectively.

[3] On behalf of the Defendant, Mr. McCrudden QC submits that the passages in dispute are purely prejudicial, in no way probative of any of the offences alleged. Alternatively, insofar as they have any probative quality, this is clearly outweighed by their prejudicial effect. The essence of the replying submission by Mr. Hunter QC, on behalf of the prosecution, is that the contentious passages constitute valid contextual evidence. The battle lines are drawn in this way.

[4] The controversial passages have two sources. The first is the witness statement of R, the oldest son of the family. The second is the transcription of the interview of P, the second oldest son. Having considered the competing contentions of the parties, I rule as follows.

Witness Statement of R

- [5] (a) The five line passage on p. 3 of the statement, at lines 7-10, beginning with the words "*When I was twelve years old ...*" and ending with "*Always put me down, discouraging me*" should be removed. I consider that this passage lies outwith the boundaries of the context pertaining to the eighteen counts contained in the amended Bill of Indictment which should, properly, be considered by the jury.
- (b) Ditto the short sentence at lines 17-18 "*He has never been a father to me or my brothers*", for the same reason.
- (c) The sentence on p. 4 "*I did ask my mum at times to do something but she was too afraid*" should remain, since in my view this falls within the ambit of the cruel nature of the alleged conduct and would also be potentially relevant to issues of delayed reporting, not seeking external advice, guidance or assistance and like matters which, foreseeably, may arise during the trial.

Transcription of P's Interview

- [6] (a) The disputed passages at pp. 69-72 are, in my view, probative of nothing and should be removed. I would add that the jury will have ample opportunity to form their own impression about the credibility and reliability of this witness.
- (b) The disputed passages at pp. 98-105 constitute a rehearsal of the interviewing police officer's subjective understanding and perception of what he had been told by the witness during the course of the interview. This, in my view, does not constitute probative evidence.
- (c) The contentious passage at p. 85 contains the witness's judgmental comments about the Defendant's alleged alcohol consumption. In my view, it is not probative of any of the alleged offences. Insofar as factual issues of alcohol consumption by the Defendant feature in the evidence at the trial, the jury will form their own views - to be contrasted with the views of this witness.
- (d) In my view, the short contentious passage at p. 93 falls within the ambit of the question of whether the Defendant acted with cruelty towards the injured parties, which lies at the heart of the indictment.

- (e) I consider that the short contentious exchange between the interviewer and the witness at *p. 97* [four lines in total], which elicits the witness's subjective emotional state about the Defendant's more recent departure from the family home, is probative of nothing.
- (f) Finally, I consider that the brief contentious passage at *p. 108* [lines 7-8] should remain, for the same reason as given in relation to (d) above.

Conclusion

[7] Finally, I have given consideration to Article 15 of the Criminal Evidence (Northern Ireland) Order 1999, which is concerned with the topic of video recorded evidence-in-chief. Article 15(3) provides:

"In considering for the purposes of paragraph (2) whether any part of a recording should not be admitted under this Article, the court must consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview".

Based on my review of the papers, it appears that a special measures direction encompassing the witnesses in question has previously been given by the court. Having regard to Article 15(1) and (2) of the 1999 Order, there seems to me scope for debate whether, *at this stage*, the court is obliged to consider Article 15(3). Moreover, it may be observed that, properly analysed, Article 15(3) may add nothing of substance to the familiar common law test which entails a balancing of probative value and prejudicial effect. Notwithstanding these reservations, I have considered Article 15(3) in the context of this ruling. Adopting this approach, I consider that none of the prejudice to the Defendant which I have identified above is "*... outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview*".

[8] It follows that the relevant portions of the papers should be edited in accordance with the ruling given in the above paragraphs.