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Judgment: approved by the Court for handing down  
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IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

CHRISTOPHER POWER

REASONS (at conclusion of trial) FOR RULING OF NO CASE TO ANSWER

DEENY J

[1] This defendant has been jointly accused with Louis Maguire of the murder of Eamon Ferguson between 13 and 16 March 2014. At the conclusion of the Crown case Mr Gavin Duffy QC, who appeared with Mr Denis Boyd made an application of no case to answer in respect of the count of murder, the only count on the indictment.

[2] The defendant's counsel and the prosecuting counsel, Mr Ciaran Murphy QC and Mr Peter Magill provided helpful written and oral arguments which were of assistance to the court.

[3] It is not in dispute that the leading authority on this topic remains R v Galbraith [1981] 2 All ER 1060. This was re-affirmed by our Court of Appeal in R v William Courtney [2007] NICA 6. I shall quote from the judgment of Sir Brian Kerr LCJ.

*"The applicable principles*

[18] The judgment in *Galbraith* remains the *locus classicus* for the exposition of the principles to be applied in determining whether a direction of no case to answer should be made. This is how Lord Lane CJ described it: -

'How then should the judge approach a submission of 'no case'? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there *is* evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury'."

[4] It is of assistance in this case to also quote what the Lord Chief Justice said regarding circumstantial evidence which is relevant to the case against Christopher Power.

"[20] Where, as in this case, the prosecution rely on circumstantial evidence to establish the defendant's guilt, it is well established that a particular approach to the evaluation of the evidence is required. This is perhaps still best encapsulated in the well-known passage from the judgment of Pollock CB in *R v Exall* [1866] 4 F&F 922 at 928; 176 ER 850 at 853 (endorsed in this jurisdiction by the Court of Appeal in *R v Meehan No 2* [1991] 6 NIJB 1): -

'What the jury has to consider in each case is, what is the fair inference to be drawn from all the circumstances before

them, and whether they believe the account given by the prisoner is, under the circumstances, reasonable and probable or otherwise . . . Thus it is that all the circumstances must be considered together. It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more likely the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence -- there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of'.

[31] We can quite understand how the judge came to focus on the evidence of the McCulloughs and Mr Hagan since the claim that they made was the centrepiece of the Crown case. But we consider that he was wrong to isolate this evidence from the remainder of the Crown case. In a case depending on circumstantial evidence, it is essential that the evidence be dealt with as a whole because it is the overall strength or weakness of the complete case rather than the frailties or potency of individual elements by which it must be judged. A globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case."

[5] Mr Duffy also, properly, relied on the decision of the Supreme Court in R v Jogee [2016] UKSC 8; (2016) 1 Cr App R 31 with regard to the issue of joint enterprise. I shall quote briefly from the joint judgment of Lords Hughes and Toulson with whom the President and Deputy President of the Supreme Court and the Lord Chief Justice of England agreed.

[7] Although the distinction is not always made in the authorities, accessory liability requires proof of a conduct element accompanied by the necessary mental element. Each element can be stated in terms which sound beguiling simple, but may not always be easy to apply.

[8] The requisite conduct element is that D2 has encouraged or assisted the commission of the offence by D1.

[9] Subject to the question whether a different rule applies to cases of parasitic accessory liability, the mental element in assisting or encouraging is an intention to assist or encourage the commission of the crime and this requires knowledge of any existing facts necessary for it to be criminal ...

[11] With regard to the conduct element, the act of assistance or encouragement may be infinitely varied. Two recurrent situations need mention. Firstly, association between D2 and D1 may or may not involve assistance or encouragement. Secondly, the same is true of the presence of D2 at the scene when D1 perpetrates the crime. Both association and presence are likely to be very relevant evidence on the question whether assistance or encouragement was provided. Numbers often matter. Most people are bolder when supported or fortified by others than they are when alone. And something done by a group is often a good deal more effective than the same thing done by an individual alone. A great many crimes, especially of actual threatened violence, are, whether planned or spontaneous, in fact encouraged or assisted by supporters present with the principal lending force to what he does. Nevertheless, neither association nor presence is necessarily proof of assistance or encouragement; it depends on the facts: see R v Coney (1882) 8 QBD 534, 540, 558."

[6] Mr Eamon Ferguson was beaten to death, almost certainly with a hammer found in 11 Ardoyne Place, the scene of the crime and the home of Louis Maguire where Christopher Power was also staying. The Crown case is that Louis Maguire was likely to be the actual wielder of the hammer rather than Christopher Power but that Christopher Power was present as a joint principal in the attack or at the least encouraging or assisting. As these reasons which I am now dictating will not be

heard in public until the conclusion of the trial it is acceptable to say that the case against Louis Maguire is a strong one given all the circumstances including the forensic findings.

[7] Counsel for Power submits that in contrast there is “no evidence available to the jury as to Power either assisting in the attack or encouraging the attack”. There was no evidence of assistance; indeed the evidence suggests the victim succumbed quickly to the attack. There is no evidence of a motive on the part of Power to want to encourage or assist in any attack. There is no evidence of planning or encouragement.

[8] Counsel wants to submit therefore that it would be wrong to invite the jury to speculate on what might or might not have been done by Power or what he might or might not have intended.

[9] Counsel for the prosecution disputes this contention and submits there is a case fit to go to the jury against Christopher Power.

[10] I shall summarise some of the salient features of the evidence as it stands at the conclusion of the Crown case. I note at this point that an application to introduce bad character evidence against Christopher Power based on a criminal record which included a robbery and a conviction for assault occasioning bodily harm has been adjourned, by consent, into the defence case.

[11] It is common case that Power stayed in Louis Maguire’s house the night before the murder and that they made their way on the morning of 14 March to the Falls Road Benefit Office.

[12] In a series of interviews with DC McCloud and DC Thompson Power maintained that he had no memory of 14 and 15 March, or of Maguire or Ferguson from the early afternoon of 14<sup>th</sup> when he was drinking in the city centre, until he found himself outside 11 Ardoyne Place at about 2.40 am with Louis Maguire banging on the door to get in.

[13] It is implicitly now accepted that that was not the truth on Power’s part. In his defence statement, at paragraph 3 he accepts that he had been in the company of Maguire and Ferguson and that all three returned to the house. “After returning to the house the defendant went upstairs, removed some clothing and went to sleep. The defendant is a heavy abuser of alcohol and had a lot of alcohol taken by that time”. Power goes on to assert in that statement that he awoke and came downstairs and discovered the scene of Mr Ferguson having been assaulted and killed, but was not present when the assault took place.

[14] This concession on his part that he had returned to the house with Maguire and Ferguson is consistent with CCTV evidence from a number of locations and the

evidence from the taxi driver Danny McErlean and of Anthony Riley. It is clear therefore that he was in the house at the time that Mr Ferguson was murdered.

[15] It is also clear that he took part in what is now admitted to have been a charade or an attempt to mislead the police with Maguire by purporting to return to 11 Ardoyne Place at about 2.40 am demanding entry and subsequently suggesting that dissidents or other intruders had broken into the house while Maguire and Power were out of it and had murdered Mr Ferguson in mistake for Mr Maguire.

[16] If Christopher Power really knew nothing about the assault until he came downstairs afterwards he was an innocent man. He should have gone to the police and reported it.

[17] Even if he lacked the fortitude to do that the Crown invite the court, and will invite the jury ultimately, to infer that this was evidence of a guilty mind on his part i.e. an attempt to set up a different explanation for the killing.

[18] That attempt to mislead the police is consistent, at least, with the further attempt to mislead them in the interviews by claiming that he knew nothing of his movements for some 12 or 13 hours.

[19] On the Crown case it seems likely that Louis Maguire was the assailant and was wearing a blue lady's Berghaus jacket. Power would have been well aware of that. Megan McKee (page 183) gave an account that at about 2.40 am that morning she saw Louis Maguire with another man fitting the description of the defendant Power who was carrying a blue coat over his right arm. The blue coat was subsequently found on the road by a Council cleansing worker, Sean White, early the following morning. This is evidence that Power disposed of or was involved in disposing of a coat that linked Maguire to the murder.

[20] The defence rely on an answer of the Crown's principal witness, Lesley Ann Beck to Mr Duffy in cross-examination. She agreed with a statement in the second report of Mr Hayward, the forensic scientist for Maguire, that the distribution of blood regarding Power does not link him to being present during the assault of Eamon Ferguson. But that must be read in the light of the witness's earlier observations that the absence of blood on the upper clothing of Christopher Power may be explained by not wearing those clothes during the attack on Mr Ferguson.

[21] What is the case is that there was forensic evidence on which the Crown relies. A major profile matching the deceased was obtained from blood from the upper part of the back of Power's black hooded jacket. A major profile was obtained from two bloodstains from the socks. Admittedly that might have been caused by Power coming downstairs after the assault and stepping in some blood, but as the witness said it was probably from contact with wet blood it is open to the jury to take a different conclusion. This is particularly so as there is not only blood on the inside of Power's tracksuit bottoms, which could be explained by him pulling them

over the bloodied socks but there is blood, possibly from Mr Ferguson, on two points on the outside of the tracksuit bottoms. There was bloodstaining on top of his trainers as well as on the sole and inside the trainers. The blood on top of the trainers might point to presence while Mr Ferguson was being attacked.

[22] Finally for these purposes there is the matter of the jeans of Mr Power. He told the police, untruthfully as it is now clear, that he wore the tracksuit bottoms in which he was arrested on the morning of 15 March all of Friday 14<sup>th</sup>. In fact it is clear from the CCTV evidence that he was wearing a pair of demin jeans. These have never been found. Despite questioning by the police he would not or could not disclose their whereabouts. When coupled with the disappearance of Maguire's Berghaus jacket that must allow a jury to infer that the jeans too were bloodied and were disposed of for that reason.

[23] Taking the case as a whole, as the authorities require me to do, I am satisfied that Christopher Power does have a case to answer. A jury properly directed could conclude, taking the evidence as a whole into account, that he was present and encouraging Louis Maguire in the assault on Eamon Ferguson. A weakness in the Crown case is the absence of motive against Power as opposed to Maguire. But it is not far-fetched to contend that these two men were present at the fatal assault on Eamon Ferguson, and if the jury so found, for them to take an adverse view on the issue of Power's intention at such a time.