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*(subject to editorial corrections)*

**THE QUEEN**

**V**

**B A R R Y  D A V I D  S K I N N E R**

**R I C H A R D  D A V I D  M c C A R T A N**

# R U L I N G

**by**

**THE HONOURABLE MR. JUSTICE DEENY**

**On**

**WEDNESDAY, 18 JANUARY 2006**

**B.C.1 18.1.06 R. –v- SKINNER & McCARTAN**

## R U L I N G

This is a ruling in the case of R. –v- Barry Skinner and Richard McCartan. It is on foot of the two linked applications on behalf of the Prosecution to admit in evidence the statements, the four statements, of a Prosecution witness, Kathleen Knox.

I heard submissions from counsel extensively on Monday, 16th January 2006, and understood the matter was urgent and so I have listed the ruling for today, Wednesday, the 18th January. This has given me sufficient time to allow careful consideration of the case and the exercise of my judicial discretion but I would readily say not to polish my remarks, and that might be borne in mind in due course.

It is also right to note that I have recently given a lengthy ruling on the operation of Articles 18 and 20 of the Criminal Justice Evidence (NI) Order 2004. It would be otiose to repeat those remarks extensively, and I do not do so. I do note, however, that in this application, or these conjoined applications, I must also consider the additional factor of Article 25.

I consider it appropriate to begin by reading briefly from Article 20 of the Order. It provides at Article 20(1) that – "In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter; (b) the person who made the statement is identified to

the court's satisfaction, and (c) any of the five conditions mentioned in paragraph 2 is satisfied." 21(a) and (b) are satisfied here so I turn to see whether any of the five conditions mentioned in paragraph 2 is satisfied.

The one relied on by the Crown initially, and it is their initial hurdle, is Article 20(2)(e), namely, that through fear the relevant person does not give oral evidence in the proceedings either at all or in connection with the subject matter of the statement and the court gives leave for the statement to be given in evidence. Obviously, Article 22(a) is of relevance later and I will mention that but for these purposes the first hurdle the Crown must overcome is to prove that the witness Kathleen Knox is indeed in fear.

Article 20(3) of the Order provides that for the purposes of paragraph (2)(e) fear is to be widely construed and, for example, includes fear of the death or injury of another person or financial loss. Article 20(4) is obviously highly relevant but can be left for the moment.

TO C.H. 2.10 pm

CH.1 2.10pm (From BC)

R – v – SKINNER & McCARTAN

The first issue is whether I am satisfied that Kathleen or Kathy Knox, as she has been referred to, is indeed through fear not giving oral evidence in these proceedings. As I ruled in the earlier Ruling and in my earlier judgment in R – v – Davidson, 2005, NICC, 28, I consider that this is a matter which the Crown must prove beyond reasonable doubt in accordance with the normal standard of proof in criminal cases. I also in the earlier Ruling followed the English authorities and indeed the decision of our own Courts in Neil – v – Antrim Justices to the effect that the Court should provide first-hand evidence of the alleged fear.

Consistently with that the Crown called Detective Constable Lawrence Donnelly to give evidence on Monday, 16 January. He had prepared a statement and he also gave oral evidence. He had called on 11 January to the house of Miss Knox with two other police officers. He had been briefed in the matter but was not otherwise involved in the investigation of the murder of Mr. McKinley. He took notes over a period of approximately one hour while the two other officers, Detective Superintendent Maines and Detective Constable McAuley, spoke to her.

He first of all observed that she herself was quite nervous and upset during this conversation. She was in tears no less than seven times during the conversation. He formed the view she was genuinely upset and afraid. She openly discussed suicidal thoughts which she had been having in relation to giving the

evidence. She had been ready to give evidence before Christmas, she said, and indeed had attended Court for consultation, but the delay had added to the stress upon her as the case was not commenced immediately following my Ruling of 19 December and since then she had lost all will to give evidence in the case and was in fear. I have therefore the benefit of his own observation of her but also her statement with regard to that fear.

He was carefully cross-examined about this by one of the senior counsel involved. I take that into account. I take into account that she is a young woman, a 25-year-old single mother with a child, living in the same middling-sized city as the Defendants and any friends or associates or anybody who thinks that they may be helping them even without their wishes being expressed. I note further that this is a city where, according to the Police Service of Northern Ireland and the Independent Monitoring Commission, whose views I take judicial notice of, there are a number of criminal gangs operating of one kind or another. In all the circumstances, therefore, I am satisfied beyond reasonable doubt that the Prosecution have shown that she has a genuine fear here. Special measures were raised with her but would not assist and in all the circumstances, therefore, I conclude that that aspect of their application is made out. I am therefore taking into account Article 24 (c) in saying that.

However, that does not end the matter. I then have to consider the exercise of my discretion under Article 20 (4). I should say that I have had the benefit, as indeed I have briefly indicated, of helpful submissions from Mr. David Hunter QC for the Prosecution and Mr. Dermot Fee QC for Mr. McCartan and Mr. Terence McDonald QC for Mr. Skinner and I take them into account even if I do not expressly refer to each of counsel's individual submissions.

I observe that as part of her statements come from her own knowledge they are arguably admissible under Article 20, whereas part of her statements deal with what she learnt from the deceased, Mr. McKinley, and they require the exercise of my discretion under Article 25. Inevitably, therefore, my remarks to some degree overlap between the applications of those two Articles but, as I say, ultimately I bear in mind the higher test under Article 25.

I should also say at this stage that I expressly accept the submission of Mr. Fee that I should look at the totality of the evidence that will be put in in statement form and not view these statements of this particular witness in isolation. I take into account the fact that part of the Crown case will already be in the form of statements from Mr. Ferguson, Mr. Irvine and Miss Giles.

CH.4

R – v – SKINNER & McCARTAN

As I ruled in R – v – Davidson and indeed earlier in this trial, I consider that the test at this stage is not one of beyond reasonable doubt but is an exercise of judicial discretion.

2.15pm to BC

B.C.3 2.15 pm

However, as I said at paragraph 33 of R. –v- Davidson I consider that a court would wish to be clearly and firmly of the opinion that it is in the interests of justice before admitting a statement under this provision.

The jurisprudence in connection with this is both domestic and European. The European jurisprudence, of course, stems in part from the express provision of Article 6(3)(d) of the European Convention on Human Rights to the effect that an accused person should have the right to examine witnesses. This part of the European Convention has been the subject of considerable judicial scrutiny, some of which I have averted to in previous rulings. I have also had the opportunity of considering the full and helpful Judgement of Lord Justice Waller in the R –v- Sellick and Sellick, 2005 2 CAR 15. The Court of Appeal in England therein were considering an appeal by two brothers, Carlo and Sabatino Sellick from conviction for murder in the Crown Court where the trial Judge had admitted in evidence against them statements of two of their associates who were in fear. The court reviewed the European jurisprudence in detail and I consider it helpful to set out the conclusions of Lord Justice Waller which are to be found at paragraph 50 of his judgement, which was the judgement of the court, and I quote - "What appears from the above authorities are the following propositions:

(i) the admissibility of evidence is primarily for the national law;

(ii) evidence must normally be produced to the public hearing and, as a general rule, Article 6(1) and Article 6(3)(d) require a defendant to be given a proper and adequate opportunity to challenge and question witnesses;

(iii) it is not necessarily incompatible with Article 6(1) and 3(d) for the depositions to be read and that can be so even if there has been no opportunity to question the witnesses at any stage of the proceedings. Article 6(3)(d) is simply an illustration of matters to be taken into account in considering whether a fair trial has been held. The reason for the court's holding it necessary that statements should be read and the procedures to counterbalance any handicap to the defence will all be relevant to the issue of whether where statements have been read the trial was fair.

(iv) The quality of the evidence and its inherent reliability plus the degree of caution exercised in relation to reliance on it will also be relevant to the question of whether the trial was fair."

I pause for a moment to draw attention to that fourth conclusion of the Court of Appeal in England, namely, that the quality of evidence and its inherent reliability plus the degree of caution exercised in relation to reliance on it are relevant. This indicates

a two stage assessment. It is the assessment which I have to carry out which does indeed address the quality of the evidence and its inherent reliability, but there is also the assessment that the tribunal of fact carries out when it comes to rely on the statements if they have been admitted in evidence.

TO C.H. 2.20 pm

In England of course that would be by a jury. In this particular trial it is by a Judge alone.

It has been said, inter alia by Lord Carswell, as he now is, in R – v – Singleton that the evidence should not be the sole or decisive evidence for the Prosecution and that test is consistent with the European jurisprudence including Saidi – v – France, 1993, 7-EHRR, 251. I have been given the Crown opening by Mr. Hunter, a written opening which he has prepared, which obviously conveniently summarises the Crown case. It is clear that part of the circumstantial case, for such it is, against the two Defendants is material coming from the witness Kathleen Knox. She indicates there was a transaction involving a Peugeot motor car. She states that the deceased, Mr. McKinley, knew Mr. Skinner and Mr. McCartan, she herself having met Mr. Skinner with him, and she says that on the night of his death Mr. McKinley was leaving to meet Mr. Skinner in connection with this transaction.

So that is certainly part of the Crown case, but in addition to that they have within the car where Mr. McKinley was fatally wounded a tax book which has a fingerprint of one of the accused. They have carried out an elaborate analysis of the mobile phones of the deceased and of the two Defendants and they show that with regard to Mr. McCartan there seems to have been no less than nine calls in all that evening between him and the deceased, 28 calls over the previous three days, also a number of calls

between Mr. Skinner and Mr. McKinley. They also rely on the fact that Mr. Skinner was seen immediately afterwards in the immediate vicinity leaving it by a police officer who knew him. They say that this evidence and the mobile phone evidence means that he lied to police about his movements when he was questioned. That is indicative therefore, they would say, of a guilty mind. They also rely on the fact that the mobile phones, due to the satellite technology under which they operate, can place both accused in the immediate area at the time or close to the time of the fatal shooting. They also rely on certain other matters, including certain remarks of Mr. McCartan to the police which they say are incriminating and the timing of certain conversations or telephone calls between Mr. McCartan and Mr. Skinner.

That brief summary indicates that while Kathleen Knox's evidence is an important and valuable part of the Crown case it would not appear to meet the description "sole or decisive". Mr. Hunter says the case would proceed even if he could not put her statements in evidence or could not call her. One should look at the simple and ordinary meaning of "decisive" while bearing in mind that this is not in the statute in any event but is something that arises from the European jurisprudence based on Article 6 (3) (d) of the Convention. It seems to me that the mere admission of these statements, this evidence of Miss Knox, does not decide the

case and indeed, in deference to Mr. Fee's submission, even if I couple it with the statements which I have already admitted from Messrs Ferguson, Irvine and Mrs. Giles, they do not decide the case. You could not convict these men merely on what Miss Knox says, Mr. Ferguson says and even less Mr. Irvine and Mrs. Giles. It does not seem to me therefore that it is the sole, decisive or indeed even properly described as the main evidence against them. It is part, though a valuable and important part, of the Crown case.

In reaching that conclusion I take into account the decisions of our own Courts referred to in my earlier Ruling with the addition of a further authority which I noted in the interval of the Superintendent of Police – v – Griffin, a judgment of Lord Chief Justice Hutton in the Court of Appeal on 15 June 1992. I note further the substantive decision in Sellick itself and also the decision of the Court of Appeal in England in R – v – Alkawaja, 2005, EWCA (Crim), 2697. They are both examples of cases where statements were relied on in the absence of the witnesses although they might well be described as the sole or decisive evidence, but clearly the facts of those cases differ from the facts here.

2.25pm to BC

B.C.6 2.25 pm

With regard to Article 20 I am enjoined under Article 20(4) as follows - "Leave may be given under paragraph (2)(e)" - that is the fear provision – "only if the court considers that the statement ought to be admitted in the interests of justice having regard (a) to the statements contents; (b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence)", and 'relevant person' there, of course, is Ms Knox in this case.
"(c) in appropriate cases to the fact that a direction under Article 7 of the Criminal Evidence (NI) Order 1999 that a special measures direction relating to eligible witnesses could be made in relation to the relevant person, and (d) to any other relevant circumstances." I address these elements in the course of my subsequent remarks.

There is material that must be borne in mind in these statements which is direct hearsay and not double hearsay, ie it emanates from Kathleen Knox herself. Furthermore, it might be said that in itself it is not really controversial but has only become controversial because of what happened subsequently, ie she says she met Mr Skinner herself with the late Mr McKinley on the basis they were friends. She believed Mr McCartan was also a close friend of Mr Skinner and the deceased. That is part of her evidence, but Mr McKinley had Mr Skinner's telephone number on

his 'phone memory and spoke to him a number of times in the three days leading up to his death so the defence have not lost any opportunity to cross-examine her about that because they can hardly gainsay that Mr Skinner knew Mr McKinley. It is even more true of Mr McCartan who seems to have had a very considerable number of conversations with the deceased right up to the time of his death. It seems to me, therefore, that they suffer no real unfairness in that evidence going in.

Furthermore, the car transactions, which I need not go into in detail had a direct relevance to Ms Knox. She had been driving a Ford Fiesta provided by Mr McKinley and this was to be changed and, indeed, had been changed for a Peugeot motor car. Indeed, she apparently still has that motor car, or did so at the time of making her statements. As I mentioned, the tax book of that motor car was found in the murdered man's car with the fingerprints of one of the accused on it. Some suggestion that the car may have belonged to a relative of one of the accused I see in the ruling of Mr Justice Hart, but that is not presently before me and I don't take that into account, but even without that it can hardly be gainsaid, therefore, that Mr McCartan had some knowledge of dealing with the Peugeot motor car, as his fingerprint was found on the tax book.

It seems to me, therefore, that as a starting point and bearing in mind my subsequent remarks, it is likely that I would consider it my duty to admit part at least of her statements against the accused. Obviously in the circumstances one cannot

admit them against one accused and not against the other, though as I will deal with in a moment, the weight will vary, perhaps significantly.

I take into account not only that what she says above is not controversial but that a key part of the Crown case is not really controversial either, namely, that Mr McKinley told her that he was going off to meet Mr Skinner on the night of his death, if it were not for subsequent events.

TO C.H. 2.30 pm

So that this is not a case where the double hearsay relates to a disputed admission by an accused or to a fleeting glimpse in an identification case. It is merely stating something rather obvious, that a man might tell his partner who he was going off to meet when he left the house.

It is interesting to test the point by considering a roughly parallel Defence application and I accept it's not exactly parallel. If the Defence had a witness whose statement was admissible, perhaps not under exactly these provisions but, say, under Article 20 (2) (c), admittedly the statement would be admissible without leave in those circumstances, ie. that the person was abroad. But say the Defence wanted to put in that statement because it quoted a deceased person saying that he had met the accused at the time of the offence and providing an alibi to the accused, it seems to me that, particularly if it was a Diplock case being tried by a Judge alone, one would be likely to grant that application by the Defence. It's possible it would be different in the case of a jury trial.

I think it's also right to bear in mind, taking it slightly out of the running, the provisions of Article 28 of the Order, allowing the Defence to challenge the credibility of either Miss Knox or Mr. McKinley. There is express provision for that. There was also reference by counsel to Article 30 and I readily accept that the Court has a general discretion. I don't have to rule, I consider, on

the point as to whether it is applicable at this stage or in the course of the trial proper, but in any event it seems to me that it gives rise to no difficulty and I would be satisfied before reaching a conclusion on the other points that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, that that test is not applicable here and there would not be a waste of time and Article 30 would not prohibit me in these facts from admitting the statements.

What is the position currently about the credibility of Miss Knox? There is no attack upon her. There has apparently been no disclosure that she has a criminal record for dishonesty. There is no disclosure of medical records to say she is unstable or mentally ill. Her first statements and last statement are it seems to be not only coherent but honest and straightforward and indeed were subject to very little criticism except that she precedes a number of her remarks by the words “I think”. I take into account the various submissions that were helpfully made by counsel in that regard.

Her statement of May 2003 is open to the criticism that not only is it some six months after the incident but that a case could be made that she was being prompted by police officers at that time who were desirous of implicating Richard McCartan. It does not seem to me proper for me to rule on that now but I believe in

fairness I should acknowledge that that is an arguable case that has been put forward by counsel. It appears to me that if the statements are being admitted it would be right that the Prosecution should tender for cross-examination any officer who took that statement or indeed any of the statements from Kathleen Knox if required to do so by the Defence so that they could explore that question further as to whether they were involved with interviews or proposed interviews with Mr. McCartan and the state of their knowledge at the time. But of course the Defence's position would not be confined to that. They can challenge under more than one Article of the Order, as I have pointed out, the weight to be given to these statements in a number of respects. The accused could give oral evidence themselves that they were not meeting Mr. McKinley or that she is wrong about the car transaction or that they had never met her or they weren't friends of one another or they weren't friends of Mr. McKinley and the trial Judge could assess that.

2.35pm to BC

Or they could call other evidence from third parties if they had it, or they could put in matters which attack the credibility of either Ms Knox or the deceased - it seems to me that would be legitimate and admissible - or they could do so by counsel's submissions. Again, it is relevant that we are dealing with a judge alone because the submissions of Counsel, it seems to me, ably made to me could also be made to the trial judge.

What then of the parts of the statements that do not emanate from Ms Knox solely but emanate from the deceased, Mr McKinley? To be admissible it seems clear that they must comply with Article 25 of the Order of 2004. I read that Article. It bears the rubric 'Additional requirement for admissibility of multiple hearsay' and reads – "Article 25(1) a hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless (a) either of the statements is admissible under Articles 21, 23 or 24; (b) all parties to the proceedings so agree, or (c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose."

Now, 25(1)(a) and (b) do not apply here so if the Crown are to succeed they must satisfy the court under (c) that the value of the evidence is so high that the interests of justice

require the latest statement to be admissible for that purpose, taking into account how reliable the statements appear to be.

There appears to be only one authority on this new piece of legislation, for new it is as yet, and that is R. –v- Xabri, 2005 EWCA Criminal 3735, a decision of the Court of Appeal in England. I note in particular paragraphs 37 and 39 of that decision. In that case a young woman claimed to be the victim of false imprisonment and compulsory prostitution and rape at the hands of the defendant. Part of the Crown case was that while being detained by the defendant and his associate she tried to convey to other persons messages about her predicament and the trial judge inter alia admitted two such messages passed on to a police officer. It is striking to note that the Court of Appeal upheld this decision by the trial judge sitting with a jury even though the two persons concerned were not identified. Not only were they not before the court but they were not identified so it was a double hearsay from unidentified witnesses who in turn were relaying information from the unfortunate young woman. In a sense, therefore, it might even be described as triple hearsay. Other evidence of a multiple hearsay kind was admitted. However, it is fair to say that the facts of that case are different from here but they certainly indicate a relatively robust view on the part of the court towards these provisions.

TO C.H. 2.40 pm

As I have indicated, it seems to me that I have to take into account what I know about the sources of the hearsay statement, ie. Miss Knox and Mr. McKinley. As to Miss Knox, it is relevant to the reliability of the statements that her character has not been attacked. She is not a child. She is not so elderly as to be infirm. She is not suffering from mental illness. The late Mr. McKinley was not apparently mentally ill or a child or elderly. The statements would indicate that his character may be questionable. That is a matter that may or may not be explored ultimately, but I note Mr. Fee's point that his character does seem to be questionable.

In what other ways is the statement reliable? As I say, this overlaps to some degree with the earlier consideration under Article 20. The first two statements are made by her shortly after the fatal killing. In part they are from her own knowledge and in part directly from her former partner, her deceased partner, Mr. McKinley. In part they are vaguer I readily acknowledge, but in a way that she is quite open about. I take into account how reliable those statements appear to be.

In considering that phrase "how reliable" under Article 24 I proffer this observation when looking at the wording of it. Is it really saying or asking whether I am satisfied that the statements can be relied on as evidence and, if they can, to what extent? I think the words "how reliable" must imply that. But when one

reflects on that that is a very similar task to the task of a tribunal of fact deciding once evidence has been admitted whether it has any weight. If it has been admitted of course it should be relevant. But, if so, how much weight has the evidence, if any, and that, as I say, seems consistent with the earlier observation of Lord Justice Waller that Parliament, in laying down this particular additional requirement for double hearsay and referring to how reliable the statements are, can be taken to intend consideration not only by a Judge in my position but by the tribunal of fact.

If the tribunal of fact here were a jury I would have to consider editing of the statements, but as it is a Judge of the High Court, with considerable experience in criminal trials as it happens, it seems to me that I can with some confidence and considerable confidence leave to him the task of assessing the weight of the different parts of the statements in the light of counsel's submissions regarding the hearsay without a clear source or statements that may appear to be prompted to some degree by police questions. I am supported in that view by the observation of Lord Justice Waller which I quoted earlier, namely that "the degree of caution exercised in relation to reliance upon the hearsay by the tribunal of fact will be relevant to whether the trial was fair".

I take into account the passage in Phipson on Evidence, 16th

Edition, paragraph 30.19, cited by Mr. Fee. The learned authors say of this requirement in Article 20 (5), that I have to be satisfied that the value of the evidence is so high, et cetera, was imposed because the Law Commission viewed multiple hearsay as generally less reliable than first-hand hearsay “because of the danger of distortion and erroneous transmission”. That is Report 245 at paragraph 8.137.

2.45pm to BC

B.C.11 2.45 pm

I note this with agreement but it seems to me that the risks of distortion or erroneous transmission are very slight here where the hearsay consists of a man telling his partner he was going out to meet his friend, Barry Skinner, or query Barry Skinner and Richard McLaughlin, perhaps particularly so when this would appear to be the penultimate conversation they were to have before his fatal shooting. I also take into account the comments of Ward and Davis in their Practitioner's Guide to the Criminal Justice Act 2005.

It seems to me that two further factors may be relevant here. Under Article 20(1) and 20(2)(a) the remarks of the deceased would be admissible without leave if Ms Knox was here to give evidence. Parliament has expressly provided for that.

Secondly, the double hearsay is from a man who is not only dead but murdered. An application that there was no case for the accused to answer by one of the accused was rejected by Mr Justice Hart and I take it that no application was made on behalf of one of the other accused. There is, therefore, a case for them to answer though I don't prejudge it, of course, in any way, but there is a case for them to answer. It seems to me of inherent justice and importance that almost the last thing the deceased told his partner should be known to the court if it is relevant and, as is the case here, if it was entirely innocuous at the time it was made. While it was entirely innocuous at the time I can readily understand why the Crown say it is of high value to them as linking Mr McKinley to the two accused at the very time

of his death. It was them that he was going to meet and a reason is provided why he was going to meet them which links them to the tax book found in the car. I need not go into that in further detail.

To return to the nature of the tribunal for a moment, if it was a trial by jury I would consider an editing process although I note counsel's submissions that there would be difficulties about that. I am not persuaded that editing would be inappropriate or would be impossible but this is not a jury trial. The statements are in part, I conclude, completely reliable, in part highly reliable and in part less reliable but the latter is not because of any apparent dishonesty on the part of the witness Knox or of the witness McKinley because while Mr Fee rightly draws attention to the possibility or to the likelihood that he had a secret life he was free to come and go vis a vis Mx Knox and there would be no particular reason why he should mislead her as to who he was going to meet, particularly in the light of the various 'phone calls. I say that not only because of that but because she is open when she is less sure of some matters, e.g. by the use of the words 'I think'. That is something the tribunal of fact can readily assess for itself. Furthermore, the possibility of the police prompting part of her third statement in May 2003 may impair the reliability but this is something that can be explored further.

Therefore, in the light of all those factors and without enunciating every submission of Counsel on either side the Prosecution have satisfied me that the value of the evidence here

is so high, placing Mr McKinley at the scene meeting Mr Skinner and Mr McCartan, that having regard to how reliable the statements are and taking that into account I am satisfied that the interests of justice require all four statements of Kathleen Knox be admissible for that purpose and I do admit them under Article 20 and 25 of the Criminal Justice Evidence Order (NI) 2004.

I should say that I have taken Article 18, paragraph (2), into account although it is not directly applicable and noted counsel's submissions in particular with regard to it. They do overlap as we discussed to a considerable degree with the other matters. It doesn't seem to me that the extent of any difficulty facing the Crown here creates a sufficient risk of fairness, if any risk, to undermine the application by the Prosecution.

I direct that the Crown tender the officers who interviewed Ms Knox for her four statements to allow them to be cross-examined.

TO C.H. 2.50 pm

I leave the weight to be given to the four statements to the trial Judge. It is for him to be satisfied, in the light of all the evidence, of the guilt or innocence of each accused. I am confident that he can and will exclude from his consideration anything that in all the circumstances is dubious or of negligible or even conceivably of no weight within the statements.

That concludes the Ruling. I am going to direct that a transcript be prepared forthwith for the benefit of counsel. It seems to me that in this instance it might be of assistance if the trial Judge had the transcript of the Ruling also. It seems to me that might be in ease of the Defence as indicating that I have not given an imprimatur saying that everything that is being admitted in evidence is completely reliable but acknowledging .....

MR. FEE: I would want to look at the transcript. I appreciate what your Lordship is saying but there are other matters which might not be appropriate, therefore I would not come to any conclusion or view on that until I had an opportunity to see the transcript.

THE JUDGE: I think that's entirely proper.

MR. McDONALD: I respectfully agree, my Lord.

THE JUDGE: Mr. Hunter.

MR. HUNTER: Yes, my Lord. I accept that entirely.

THE JUDGE: The alternative might be for counsel to read some brief note that Mr. Hunter could convey to the Judge

indicating that I was leaving issues of weight.

MR. FEE: Sorry for cutting across your Lordship. Obviously issues of weight still remain for the Tribunal of Fact clearly, but we will discuss that as to the proper way forward.

THE JUDGE: I think the course I will take then is to, as I say, direct that that be prepared as soon as possible. If all three senior counsel are in agreement that the Ruling, when they have seen it and have had a short time to consider it, a short but sufficient time, should go to the Judge then it may go to the Judge. If you require me to sit again to rule if there is any disagreement I will sit again. I think I am in this building next week and I will do so. I imagine that counsel would like a little time to consider the Ruling which they have just heard and which they have not yet seen.

MR. HUNTER: Yes, my Lord. I think all parties would be grateful for the opportunity to reflect perhaps rather more than shortly upon your Lordship's extremely careful Ruling. Taking into account all the circumstances it is the proposal (and I think it's a consensual proposal) that the trial at this stage should be adjourned until Tuesday morning before Mr. Justice Gillen, if that's acceptable to your Lordship.

THE JUDGE: It's certainly acceptable to me and that's agreeable to counsel, is it?

MR. FEE: Yes.

THE JUDGE: I'll adjourn the matter until Tuesday morning at 10.30 in this building and again I will remand the two Defendants in custody and on bail as they have previously enjoyed.

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