

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

R

v

JULIE ANN VALLIDAY
CHARLES STEPHEN VALLIDAY
&
JAMES JOHN VALLIDAY

RULING ON MISJOINDER/SEVERANCE

TREACY J

Introduction

[1] The first and second named defendants are jointly charged with one count of murder (Count 1) relating to Christopher Mackin, who was shot dead, at College Square North, in Belfast City Centre, at approximately 9.15 pm on 1 March 2012; six other counts, namely possession of a firearm (Count 2) and ammunition (Counts 3 & 4) in suspicious circumstances, contrary to Art 64(1) of the Firearms (NI) Order 2004, and possession of Class A drugs, namely heroin and cocaine (Counts 5 & 7) in contravention of Section 5(1) contrary to Section 5(2) of the Misuse of Drugs Act 1971, and possession of Class A drugs (heroin - Count 6) with intent to supply it to another in contravention of Section 4(1) and contrary to Section 5(3) of the Misuse of Drugs Act 1971.

[2] The third named defendant faces a single, separate count (Count 8) of doing an act, namely purchasing petrol with a view to burning a car which had been used in connection with the murder of Christopher Mackin, with intent to impede their apprehension, in the knowledge that they were guilty of that murder, contrary to Section 4(1) of the Criminal Law Act (NI) 1967.

[3] The Prosecution contends in respect of Count 1 that the first and second named defendants were both knowingly involved in the murder of Christopher Mackin, who was shot dead outside his mother's home at College Square North Belfast, sometime after 9.15pm on the evening of 1 March 2012. The various strands of the complex circumstantial Prosecution case were outlined in considerable written detail in the No Bill skeleton arguments supplemented by helpful oral submissions which, for reasons of economy, it is unnecessary to rehearse in detail. Part of the case is that the deceased was lured to his death by the first named defendant ostensibly for the purpose of a drugs deal and that the deceased was then shot by the second named defendant who it is alleged had a motive to kill the deceased. There is significant interlinkage between the evidence relied on in respect of counts 2-7 and the murder charge.

[4] In respect of counts 2-7 the Prosecution case is that the first and second named defendants were both knowingly in possession of a gun (not the murder weapon), ammunition and drugs which were found in an Audi owned and used by the first named defendant. In police interviews the Prosecution case is that she lied to the police in claiming that she had previously got rid of the car and that contrary to this allegedly false claim she can be connected, inter alia, by documentation found in the car when the police located it in the grounds of the Belfast City Hospital ("BCH") on 4 March. On the Prosecution case the Audi vehicle was observed entering the grounds of BCH in convoy with a Mitsubishi Shogun on the evening of 1 March, after the murder had occurred. The Prosecution case is that the first and second defendants can be connected to these vehicles. The Prosecution rely on the expert evidence of Mr Jonathon Greer in relation to the ammunition found in the Audi to submit that the spent cartridges found at the murder scene matched the cartridges found in the first named defendant's Audi in that they had "the same head stamp and bullet type as was recovered from the scene". The Prosecution case is that this finding is consistent with those rounds having been "cycled" in the murder weapon. Further, DNA samples from the weapon found in the Audi and bags containing drugs matches the DNA of the second defendant, Charles Valliday.

[5] The third named defendant is charged with a single count (Count 8). The Prosecution allege that the Mitsubishi Shogun was seen to stop on the Crumlin Road close to a garage after the murder but the vehicle does not enter the garage. The third named defendant, according to the Prosecution, is seen exiting the Shogun with a petrol canister and goes into the garage and purchases petrol and returns in the direction of the Shogun. The Shogun is then seen heading in a direction which would have taken it towards the location where a Clio car, said by the Prosecution to be the car used in the murder, was later found ablaze in Wyndham Street. The Prosecution case is that the third named defendant purchased the petrol with a view to burning the car which was used in the murder of Christopher Mackin.

[6] The first named defendant submitted in written submissions that the indictment should be quashed on the basis of alleged misjoinder thus rendering the indictment invalid and a nullity. During oral submissions counsel accepted that

misjoinder did not render the indictment a nullity and rather than quash the indictment sought the deletion of the offending counts.

[7] Mr MacCreanor QC on behalf of the third named defendant also submitted that there is an issue of misjoinder/severance in respect of the Bill of Indictment. Counsel pointed out that this defendant appears on the indictment which has counts against the first and second named defendants involving drugs and firearms offences with which this defendant has not been charged.

The Law

[8] The Indictments Act (NI) 1945 states at Section 4:

“Subject to the provisions of the Rules under this Act, charges for more than one offence may be joined in the same Indictment.”

[9] The Crown Court (NI) Rules 1979 states at Rule 21:

“Charges for any offences may be joined in the same Indictment if those charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.”

The Governing Principles

[10] Joinder of the accused is considered at Blackstone 2016 D11.75 onwards and severance is dealt with at D11.86 and D11.88. The governing principles are set out in R v Assim [1966] 2 QB 249. At p258 the Court in Assim stated:

“The first point that becomes quite clear upon examination of the authorities is that questions of joinder, be they of offences or of offenders, are matters of practice on which the court has, unless restrained by statute, inherent power both to formulate its own rules and to vary them in light of current experience and the needs of justice.” [p258]

[11] Further at p261 the Court stated:

“As a general rule it is, of course, no more proper to have tried by the same jury several offenders on charges of committing individual offences that have nothing to do with each other than it is to try before the same jury offences committed by the same person that have nothing to do with each other.

Where, however, the matters which constitute the individual offences of the several offenders are upon the available evidence so related, whether in time or by other factors, that the interests of justice are best served by their being tried together, then they can properly be the subject of counts in one indictment and can, subject always to the discretion of the court, be tried together. Such a rule, of course, includes cases where there is evidence that several offenders acted in concert but is not limited to such cases."

[12] The approach in Assim has been followed in this jurisdiction by the Court of Appeal in R v Pierce & Anor [1996] NIJB 184 at 192 which stated that the issue of misjoinder falls to be determined by the common law practice in Assim.

Submissions

[13] The first named defendant submitted that the murder offence and counts 2-7 the residual possession are misjoined and that the offending Counts should be deleted.

[14] Counsel submitted that the murder offence and the possession offences are not founded on the same facts or form or are part of a series of offences of the same or a similar character. It is argued that:

- (i) the murder offence, on the Prosecution case, relates to the murder of Christopher Mackin, who was shot dead by an unidentified assassin, at College Square North at approximately 9.15pm, when it is alleged that a Renault Clio, driven a female, was in the vicinity of the murder scene;
- (ii) although the murder weapon has never been recovered, the prosecution expert evidence confirms that the gun found in the Audi car was not the murder weapon; and
- (iii) there is no evidence to prove that counts 2-7 were committed on the date specified in the indictment (1 March 2012) as the Audi was only found by the police in BCH on 4 March 2012 and there is no evidence as to whether the Audi left BCH after it allegedly entered on 1 March.

[15] The first named defendant submitted that the murder offence and the possession offences are not part of a series of offences of the same or similar character – the offences being of an entirely dissimilar character further submitting that there is no common feature which binds these offences to any significant degree, which would render these sets of offences as either necessary or convenient to try together.

[16] The first named defendant contended that it was not in the interests of justice to have these matters tried together. The first named defendant enjoys an Article 6 Convention right to a fair trial. It is submitted that by the joinder of these two sets of offences the defendant is prejudiced in her defence (in both directions) and any direction of the Court to the jury would not be sufficient in perfecting the unfairness attributed to the joinder.

[17] The third named defendant submitted that he appears on the Indictment which has counts against the first and second named defendants involving offences with which he is not charged. There were, it was submitted, a number of factors which provided a proper basis to order an amendment to the indictment to prevent him being tried with the first and second named defendants in respect of all the offences faced by them. The factors relied upon were as follows:

- (i) there was no evidence connecting him to anything found in the Audi car;
- (ii) the Prosecution could not make the case that what was found in the Audi car was linked to the murder;
- (iii) the firearms and drugs offences are not so closely related to the murder count so as to merit a joint trial;
- (iv) the third named defendant is prejudiced and embarrassed by appearing on the indictment as presented; and
- (v) given the family connection between the defendants the impact of the further allegations against the first and second named defendants is likely to impact significantly by association against the third named defendant; and the "firearm/drug" evidence as linked to the Audi is not admissible against the third named defendant and it would be contrary to the interests of justice to have him on trial with his co-accused on the indictment.

[18] In short form, the Prosecution submitted that the counts and the evidence underlying them form part of the same series of events. There is forensic evidence connecting the second named defendant to the rounds found in the Audi car, which is also connected to his wife and which also contained a firearm, ammunition and heroin. They also relied on the fact that there is evidence suggestive of the fact that the rounds recovered from the murder scene may have been cycled through the same weapon as the ammunition recovered from the Audi. Furthermore, the evidence indicates that the Audi and the Shogun were operating in tandem and that the Shogun was clearly linked to the third named defendant who exited from that vehicle to purchase the petrol which forms the basis of Count 8. Thus the Prosecution contend that the events surrounding all of the charges are inextricably linked, evidentially related, complex and circumstantial. Further the Prosecution referred the Court to paraD11.88 of Blackstone to the effect that whilst the decision whether or not to grant severance is one within the discretion of the Trial Judge that

the decision should be in favour of a joint trial unless the risk of prejudice is unusually great.

Conclusion

[19] Applying the principles set out in Assim, I consider that the matters which constitute the individual offences of the several offenders are, on the evidence, so related that the interests of justice are best served by these offences and the offenders being tried together. Any potential risk of prejudice by reason of the joinder of the offences or offenders can be addressed if need be by the provision of suitable directions to the jury. Accordingly, I reject the applications.