

Neutral Citation No: [2022] NICC 16

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

ICOS No: 21/064133

Delivered: 06/05/2022

IN THE CROWN COURT IN NORTHERN IRELAND

R

v

ANDREW LESLIE

**MrMcCreanor QC with Sean Mullan (instructed by Donnelly & Wall Solicitors) for the
Applicant**

Mr McDowell QC with Laura Ievers (instructed by the PPS) for the Prosecution

NO BILL APPLICATION

O'HARA J

Introduction

[1] This defendant faces three charges in the context of a murder trial in which two other defendants are charged with the murder of William Pat McCormick on 30 May 2019. Those two defendants are this defendant's uncle, David Gill and Ms Lesley Anne Dodds. The three counts against this defendant in respect of which he seeks a No Bill are:

- (i) Count 4, assisting an offender on 31 May by helping him in the disposal of Mr McCormick's body;
- (ii) Count 5 - assisting an offender on 31 May by permitting access to the curtilage of Dufferin Cottage at 35 Magherascouse Road in Comber for the purposes of disposing of the body of Mr McCormick;
- (iii) Count 6 - withholding information between 30 May and 5 July 2019 which was likely to secure or give material assistance in securing the apprehension, prosecution or conviction of David Gill without reasonable excuse.

[2] The prosecution case is that Mr McCormick was murdered by David Gill and Ms Dodds on 30 May. Ms Dodds having lured Mr McCormick to her flat where David Gill then killed him. Whilst David Gill initially denied killing Mr McCormick he admitted when re-interviewed by the police, at his own request, in December 2020 that he had done so but asserted that he had not intended to. He further admitted that he had removed the body from the flat and disposed of it in a wheelie bin in a lake on 31 May. That lake is behind Dufferin Cottage where this defendant was living for at least part of the time. Mr McCormick's body was not found until 9 July. On the prosecution case David Gill was assisted in various ways by the third defendant who is his brother, William Gill, by this defendant who is William Gill's son, by the fifth defendant, Jonathan Montgomery, and by Jack Rowden, the sixth defendant. All of these defendants deny various charges which encompass assisting David Gill, withholding information and perverting the course of justice.

[3] Mr McCormick was killed in Comber. This defendant was living between his mother's address in Moneyreagh and Dufferin Cottage in Ballygowan. These three locations are in close proximity to each other in Co Down. During the oral submissions on the No Bill Application an issue was raised about who might have had access to Dufferin Cottage and the surrounding land behind which lies the lake where the body of Mr McCormick was found. In a subsequent note the prosecution confirmed that the cottage is understood to be owned by another and different uncle of this defendant, Thomas Leslie, and that two other people appear to have been using or renting parts of the land around Dufferin Cottage. For the purposes of this ruling I interpret that to mean that while this defendant lived in Dufferin Cottage for part of the time he did not control access to the surrounding land leading to the lake.

[4] On the morning of 31 May 2019, the morning after the killing, this defendant's father, William Gill, who lives in Lurgan travelled to Comber to meet his brother, the first defendant. The prosecution case is that William Gill's trip was to advise and assist the first defendant following the killing of Mr McCormick. The first defendant appears to have disposed of the body by 16:36 hours on the afternoon of 31 May, the time when he was seen in a shop in nearby Lisbane with wet or muddy track suit bottoms. Prior to that the first defendant's van was seen driving towards Comber. William Gill denies knowing about the killing of Mr McCormick and therefore of assisting his brother in any way.

[5] On the same morning of 31 May this defendant did his driving test. CCTV footage shows him in Comber town centre before and after the test. Investigation of his mobile phone and other phones shows a number of calls and messages both made and received by him to the first defendant and to various other defendants including the fifth and sixth defendants. Relying on cell site data the prosecution contends that at 11:22 this defendant was in Comber and that by 11:28 he was at or near his home which has a different cell site. He continued to use that cell site until 14:48 after which there was no activity until 16:18.

[6] Investigation of this defendant's mobile phone also shows that all his messages were deleted for the period from 29 May to 2 June. Strangely messages up to 28 May were not deleted nor were messages from 3 June onwards. To say the least that is suspicious. It is also suspicious that when this defendant was questioned by the police he largely gave no comment interviews. The phone which the prosecution attribute to him has a number ending in 035. The subscriber to that phone is his mother who is not among those charged but has still refused to provide a witness statement. The phone was found in Dufferin Cottage on 5 July when this defendant was arrested at that address. The number 035 is the one which he used to contact his driving instructor and it appears in the first defendant's phone contact list under the name of "Andrew."

[7] The prosecution case is that this defendant was at his primary residence at Dufferin Cottage on the afternoon of 31 May. That much is supported by cell site analysis. The first defendant's van with the body in it was seen travelling in a direction consistent with it going towards Dufferin Cottage at 13:45. In all probability the body was in the lake by 16:36 when the first defendant was seen at the shop in Lisbane.

[8] In these circumstances the prosecution submits that a reasonable jury could interpret the phone messages (or deletion thereof), various phone calls and the phone locations as establishing that it is much more than a coincidence that the first defendant put the body of Mr McCormick in the lake adjacent to this defendant's home at a time when this defendant, his nephew, was at home. It is contended that it can reasonably be inferred that this defendant actively helped his uncle dispose of the body because it would have been exceptionally difficult for the first defendant alone to have manoeuvred the heavy bin containing the body over what is plainly difficult terrain. In addition, or in the alternative, the prosecution submit that at the very least this defendant permitted access to the curtilage of Dufferin Cottage to the first defendant in order that the first defendant could dispose of the body.

[9] On the charge of withholding information the prosecution submit that a reasonable jury would accept that it is an irresistible inference that this defendant must have had information that his uncle was at or adjacent to Dufferin Cottage that May afternoon. That inference comes from the phone records, the deleted messages, his contacts or attempted contacts with various defendants and the very fact that his uncle was at the same location.

[10] For the defendant it is submitted that the case is entirely circumstantial. This defendant does not own Dufferin Cottage nor does he have exclusive control over the lands adjacent to Dufferin Cottage. There is at least one other possible access to the area or spot at which the bin was put in the lake. There is no direct physical or forensic evidence implicating this defendant and connecting him to the bin or the straps or any rope found in the bin. The prosecution theory that it would have taken two people to move the bin is just that, a theory. The prosecution reliance on this defendant being alerted by barking dogs which he does not own illustrates how

speculative the case is. Phone contact with family and friends is normal rather than sinister or suspicious. The fact that some messages were deleted is of limited evidential value. In short, it is contended that the prosecution case against this defendant is entirely guess work. Putting it even more strongly Mr McCreanor submitted that it is contrary to the prosecutorial duty to establish a particular act to justify putting this defendant on trial.

[11] As part of this application I was shown photographs of Dufferin Cottage and lands around it. It is clearly possible for others to access the lake but it is striking in the extreme that the dead body was disposed of in that lake so adjacent to where this defendant was, as established by his phone, at what is almost certainly the time of the disposal. It is also striking in the extreme that this defendant deleted messages from his phone for the days immediately around 31 May but retained earlier and later messages. I do not believe that the evidential value of that is as limited as is proposed on behalf of this defendant.

[12] If the prosecution case is vulnerable to a No Bill application it is on the question of the specific role which this defendant played on 31 May. In what way did he help with the disposal of the body and in what way did he provide access to the curtilage of Dufferin Cottage when he did not control that access? Those are questions which the trial judge may have to consider at the conclusion of the prosecution case depending on how exactly the evidence stands at that point but at this stage there are too many striking aspects of the circumstantial case for me to hold that a reasonable jury properly directed could not find the defendant guilty on counts 4 or 5.

[13] The focus of this defendant's application was on those two counts rather than on the charge of withholding information and rightly so. In my judgment it is not in any way difficult to envisage that a properly directed jury could find the defendant guilty on the count of withholding information. Accordingly, the application by this defendant for a No Bill is refused.