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COURT FINDS FRANCIS LANIGAN GUILTY OF MURDER COMMITTED IN 1998

Summary of Judgment

Mr Justice Horner, sitting today without a jury in the Crown Court in Belfast, found Francis Lanigan guilty of the murder of John Stephen Knocker who was shot dead on 31 May 1998 at the Glengannon Court Hotel, Dungannon.

FACTUAL BACKGROUND

The court was told that moments before his death, John Stephen Knocker ("JSK") had given Francis Lanigan ("the defendant") a severe beating. The fight was captured in full by CCTV camera in the car park of the hotel. JSK was then shot twice in the head. The shooting was witnessed by a number of persons leaving the EXIT 15 nightclub, which was attached to the hotel, who described the murderer "swaggering" to a Vauxhall Cavalier in which he made good his escape. The trial judge said "by any standards this was an appalling act of barbarous inhumanity". The defendant was charged with the murder of JSK and the possession of a firearm and ammunition with intent. He pleaded not guilty to both charges. The case against him was primarily a circumstantial one based on three main strands of evidence:

- Eye witness evidence at the time of the murder;
- Evidence of Nuala Delaney, a former girlfriend of the defendant; and
- DNA evidence.

The prosecution also sought to rely on other evidence including the evidence of bad character of the defendant, the failure of the defendant to give sworn testimony and to submit himself to cross-examination, and the fact that he fled the murder scene, crossed the border and assumed a new identity as Ciaran McCrory until he was arrested by the An Garda Síochána ("AGS") in 2013. The court heard that the defendant had been convicted at Belfast Crown Court on 2 May 1986 of possession of a firearm with intent. The trial judge was satisfied that it was neither unjust to rely on the conviction nor would the proceedings be unfair if the evidence of the conviction was admitted. As it was one which demonstrated his previous contact with firearms and ammunition and his ability to access them. The court also noted that the defendant was offered the opportunity to give evidence and warned of the consequences if he failed to do so. He chose not to give sworn testimony. The trial judge commented that the court should not consider whether or not it is proper to draw an inference that the defendant is guilty of the offences as charged unless it is satisfied that the defendant has a case to answer and such a case is disclosed by the other evidence in respect of the two offences with which he is charged.

EVIDENCE

CCTV Evidence

The Court was shown CCTV footage of a fight between JSK and a person who it was claimed by the prosecution was the defendant. The trial judge said it was not so much a fight as "a brutal beating

dished out by JSK to the other party". He commented that the party on the receiving end displayed what might be described as "a peculiar passivity, offering no resistance whatsoever". The trial judge said it was not possible to make a positive identification of the person being assaulted save to note that he had a similar build to that of the defendant.

Affidavit Evidence

In an affidavit sworn on 16 December 2013 the defendant averred that he was attacked outside the Glengannon Hotel in May 1998 and "arising from that, John Knocker lost his life". The trial judge said it was clear from this and other evidence that the defendant was the person physically attacked outside the hotel by JSK. He said the affidavit also links that attack JSK's loss of life but was silent on the nature of the connection.

Eyewitness Evidence

The trial judge referred to evidence from 13 eyewitnesses and noted that while their evidence was strikingly similar, the descriptions of precisely what happened and who was involved do differ. He said this was unsurprising given the eyewitnesses were trying to do their best in testing circumstances and the murder took place more than 20 years ago. It was therefore important to look at all of the eyewitness evidence in the round before examining each of the particular versions. The judge said there was clear evidence of the following facts:

- There was a fight outside the EXIT 15 nightclub between JSK and the gunman in which JSK was the obvious aggressor;
- The gunman, and the judge said he was satisfied from all the evidence that there was only one gunman, sustained facial injuries and was bleeding, although this was only mentioned by some of the witnesses;
- JSK was shot in the head;
- The gunman got into a Vauxhall Cavalier, registration number IDZ 1233, and was driven off from the scene. There were definitely two others in the car and highly likely that there were two women and another male;
- The gunman got into the passenger side of the Cavalier. Two of the eyewitnesses are clear that he climbed into the front passenger seat.
- The prosecution say that the person who JSK physically assaulted, the defendant, is the same person who immediately afterwards obtained a gun from one of the two female passengers in the Cavalier and shot JSK twice in the head, once at long range and the other at close range, killing him.

The trial judge said he was satisfied that at the relevant time there was only one fight in the car park that night and that was the one between JSK and the defendant. He considered there was a prima facie case established from the eyewitness evidence, the bad character evidence and the affidavit evidence of the defendant that he was the gunman who fired the gun which killed JSK. He also considered there was compelling evidence that the defendant shot JSK at long range bringing him to the ground:

> "He then coldly and callously finished him off by firing a bullet at point blank range into his brain. It was a savage and barbaric act, devoid of any pity. Far from being ashamed of what he had done, the defendant gloried in this appalling act. In retrospect the defendant's passivity when under attack from JSK must have concealed

> a resolve for bloody revenge which he was determined to exact in front of all those who had witnessed his earlier humiliation. By murdering JSK in full view of all those onlookers no doubt the defendant thought he had proved if not to himself, then to onlookers, who was the boss."

The trial judge noted that the defendant had not given evidence which meant he had failed to provide an explanation for:

- His affidavit in which he admitted he was the person who was attacked by JSK and that as a result of this JSK lost his life, without providing further elucidation;
- The eyewitness evidence of those in the car park linking the victim of the assault by JSK to the person who chased JSK through the car park and up the hill;
- The evidence that the second man who chased the first man was described by a number of witnesses as being responsible for shooting JSK and he was seen by witnesses getting into the Vauxhall Cavalier;
- The evidence from one of the eyewitnesses that the defendant was the one assaulted by JSK.

The trial judge said he had no doubt that the defendant has chosen to remain silent because he has no answer to the prosecution's case and certainly none that would bear forensic examination. The court also took into account the defendant's determination to avoid detection by the police, his escape to Dublin and his assumption of a new identity, all designed to enable him to avoid having to explain his actions on the night in question. The trial judge said he was satisfied to the requisite criminal standard on the basis of this evidence that the defendant was guilty of both murder and possession of a firearm with intent.

The evidence of Nuala Delaney

Nuala Delaney was at the EXIT 15 nightclub with the defendant, Cathy Keenan and Gregory Fox on the night of 30 May 1998. She was originally charged with murder but following the direction of the PPS her charges were reduced to assisting an offender, possession of a firearm and possession of a firearm without a firearm certificate. She pleaded guilty and was given two years' detention on the first two charges and 12 months on the third charge. It was claimed by the defence that a deal was done between Ms Delaney and the prosecution whereby the charges were reduced. This was denied emphatically be the prosecution. The judge concluded that there was no such deal saying there was no evidence adduced before the court that would permit it to reach this conclusion.

The trial judge was aware that he should proceed with caution as Ms Delaney may have a motive for minimising her role such as trying to put the defendant in the frame to permit the real perpetrator, who it was alleged by the defence was Gregory Fox, to escape justice. It was also suggested that her evidence was coloured by the fact that she was no longer the defendant's girlfriend. The trial judge, however said he was impressed by Ms Delaney's "steely resolve" when giving her testimony and was satisfied that the spoke "the unvarnished truth" when she told the court that:

- The defendant got into the front seat of the Vauxhall Cavalier and placed the Browning pistol in his lap. She said she took the gun off him and put it on the floor at her feet. The trial judge said she could easily have said that Cathy Keenan performed this task;
- Ms Delaney then described taking the gun and trying to hide it at a telegraph pole in the countryside. She was unable to climb the bank and Gregory Fox took it off her and concealed

it. The trial judge again said that if she had been lying she could have easily said that Fox had taken the gun from the car and concealed it;

- She had already been charged and sentenced. She now lives in the Republic of Ireland and had no need to voluntarily give sworn testimony.

The trial judge said he had no doubt the defendant brought the gun which had been used to shoot JSK into the car and placed it on his lap. Ms Delaney took the gun from him and put it in the back at her feet. She then tried to conceal it. The trial judge said the gun had since been recovered from the location at the telegraph pole where Ms Delaney said it was and according to the unchallenged forensic evidence was "almost certainly" the gun which was used to shoot JSK. When she was asked why she and the defendant changed addresses immediately after the shooting she said she didn't remember asking but "obviously Frankie knew that he had murdered somebody and needed to like low". The person she alleged the defendant to have murdered was JSK.

Forensic Evidence

The post mortem report concluded that the cause of death was bullet wounds to the head, one to the back of the head and one to the left side behind the ear. The first shot was likely to have been fired at long range and the second at close range. Other injuries were consistent with JSK having fallen forwards onto the ground which tied in with the evidence of a number of the eyewitnesses.

Forensic analysis of spent cartridges found at the scene revealed they had been discharged from the pistol found at the telegraph pole. The defence contended that there had been a failure to adequately examine the gun and in particular the barrel and slide. An explanation as given by the forensic scientist that the reason for neither fingerprints nor DNA being present on the gun was that it had been subject to weathering by the elements.

Dublin DNA Evidence

A forensic scientist analysed 64 items relating to the murder scene and determined that blood present on a wall, turnstile and blood was male in origin but did not belong to JSK. Blood recovered from the Vauxhall Cavalier was also not that of JSK. The prosecution case was that the defendant had received a severe beating and that his face and hands were covered in his blood. The defence argued that even if the defendant's DNA was admitted it is not of any real probative value as he had admitted being at the hotel and was bleeding as a result of being beaten up. Further the absence of DNA from the gun and the fact that none of the witnesses observed any blood or facial injury on the gunman was highly supportive of the conclusion that the gunman was not the defendant. The trial judge said, however, that this ignores the evidence of eyewitnesses who had seen the defendant bleeding from a cut over the eye, the gunman getting into the Vauxhall Cavalier, the deposit of the defendant's blood on the door handle of the car and the evidence of Ns Delaney that the defendant brought the gun back to the car. The defence also claimed that there were different descriptions given of the gunman. The trial judge rejected this saying that the evidence as a whole was clearly to the effect that there was only one gunman, the defendant, operating in the car park of the hotel. While none of the eyewitnesses gave evidence that the gunman was bleeding, the trial judge said there was nothing to stop the defendant from wiping the blood from his face after the beating. The eyewitnesses saw the gunman get into the Vauxhall Cavalier and blood was left in the car: "That blood, and only that blood, belonged to the defendant".

In August 2005, AGS received confidential information relating to the activities of the defendant which indicated he was living and Dublin, working in a barber's shop attached to a gym and using the name of Ciaran McCrory. Following discussions with the PSNI, in early July 2009 an undercover officer in AGS ("Garda B") was tasked with carrying out covert surveillance of the defendant so as to confirm his address and try to obtain a sample which could be used to obtain his DNA profile ("the Dublin DNA"). Garda B obtained a paper coffee cup discarded by the defendant at the gym and this was analysed in the forensic science laboratory at AGS Headquarters. The profile was identical to the DNA evidence obtained by the PSNI in the course of their investigation into the murder of JSK. The coffee cup and DNA profile was handed over to the PSNI on 30 March 2011.

The defence objected to the admission of the Dublin DNA evidence on the grounds that it should be excluded as unfair evidence and/or the prosecution should be stayed as an abuse of process. It was argued that AGS ignored the provisions of the Criminal Justice (Mutual Assistance) Act 2008 ("the 2008 Act") and in particular by not seeking the consent of the occupier of the property or obtaining an order of a judge of the District Court in accordance with section 75(7) of the 2008 Act. The prosecution responded that there was no requirement to comply with the 2008 as the provisions had not been engaged when the cup was collected and that what AGS did was something they were able to do under the relevant domestic legislation in the Republic of Ireland.

The trial judge said he was satisfied that the prosecution was correct in its submissions. He said he could see no evidence of any misconduct by the PSNI or AGS in obtaining the Dublin DNA sample. Further, the defendant had not been able to demonstrate to the court that there were any breaches of other relevant legislation or Conventions. The trial judge did not consider that the admission of this evidence would have an adverse effect on the fairness of the proceedings and commented that there was a marked absence of any submissions on behalf of the defendant setting out why there would be an adverse effect. The trial judge also did not see any basis upon which he could stay the proceedings as an abuse of process.

Belfast DNA Evidence

The defendant was extradited from the Republic of Ireland in January 2019. On 17 September 2019 he was taken out of Maghaberry Prison and interviewed by the police in relation to two other murders, an attempted murder, possession of a firearm and membership of a proscribed organisation. These offences were committed in 2004. Two DNA samples ("the Belfast DNA") were taken from him at the police station and these produced the same DNA profile as the Dublin DNA. The trial judge said these provided cogent and compelling evidence of the defendant's presence at the scene of the fight, the defendant having contact "with JSK given his blood on JSK's hand" and his leaving the scene in the getaway car where he deposited blood on the visor.

The defendant sought to exclude the Belfast DNA evidence on the basis that it was an abuse of process because it was obtained after he was extradited unlawfully from the Republic of Ireland, it demonstrated bad faith by the police in trying to manipulate the collection of evidence and that it would have such an adverse effect on the fairness of the proceedings that it ought not to be admitted pursuant to Article 76(1) of the Police and Criminal Evidence (NI) Order 1989 ("PACE").

A detective from the PSNI gave evidence that she was unaware there was an old DNA sample from the defendant on file (although it was noted in the judgment as not being of a quality that could be used in evidence) and claimed his DNA needed to be retaken. The trial judge said, in fact, that the

defendant's DNA had been submitted to the Forensic Science in 2004 along with 37 other people and had not come up with a match. It was suggested that the detective was aware of this and that obtaining the DNA sample in respect of the earlier crime was just a pretext. The trial judge said that while the detective claimed to have no intention to mislead the court, he found it difficult to accept she did not know that an attempt had been make to make a comparison with the defendant's DNA previously. The defence claimed that this was a deliberate rouse to obtain a fresh DNA sample in case the DNA sample obtained in Dublin was held to be inadmissible. The trial judge said he was not satisfied that he was being told the whole truth:

> "It seemed to be more likely that the DNA was being taken in September 2019 in respect of the 2004 criminal investigation so as to ensure that there was a fall back evidential sample that could be compared with the defendant's DNA if the Dublin DNA was held to be inadmissible. It is disappointing, to use as neutral a term as possible, that the police officers did not feel able to be frank with the court. The court is entitled to expect that police officers do not try and dupe the court regardless of whether their intentions, as here, were to adopt a "belt and braces" approach so as to ensure that evidence as to the defendant's DNA was before the court."

The Specialty Rule

Counsel for the defendant claimed that taking him out of Maghaberry Prison to interview him in respect of offences committed in 2004 was not an action that was specified or requested in the European Arrest Warrant ("EAW"). The defence said this contrary to the principle that the requested person must only be dealt with in the requesting state for the offences for which they had been extradited. This rule of extradition law is known as "specialty". The trial judge noted, however, that the investigation of a suspect's involvement in other offences pre-charge is not captured by the specialty provisions and does not cover a situation where the local police want to arrest and interview a suspect following his return to this jurisdiction. Further, a pre-charge interview is not an action for which surrender could be sought.

The trial judge also noted that the defendant is not being prosecuted for the 2004 offences. He said that while the PPS could not prosecute him for further offences other than those specified on the EAW it in no way precluded from investigating other offences or from using evidence gathered in those investigations in the prosecution of the defendant: "The decision to exclude or admit such evidence is a matter of judicial discretion governed by Article 76 of PACE".

The trial judge stated that the defence argument that it would be an abuse of process to allow the prosecution to use the Belfast DNA was "a hopeless one". He said the rule of specialty does not apply to the gathering of evidence after a person has been extradited in general and, in particular, does not preclude as of itself, the use of DNA samples which were obtained in the prosecution of the defendant: "The specialty provisions are to protect a surrendered person against a member state circumventing the EAW Convention."

The trial judge said the question the court must ask itself when considering the police's decision to obtain the Belfast DNA sample is whether the court should stay proceedings because "it offends the court's sense of justice and propriety in those particular circumstances". He said the two issues to consider are: To what extent is the accused prejudiced and to what degree are the rule of law and the administration of justice undermined by the behaviour of the investigators. The trial judge noted that manipulation of procedure can amount to an abuse of process but it is not the role of the

court to express "disproval of the police misconduct and to discipline the police". He said the factors he weighed in the balance in determining this matter included the seriousness of the offending, the interests of the defence and the prosecution, the fact there was no dispute that the DNA sample was that of the defendant, the nature of the misconduct which he considered to be "ill-judged" rather than grave, and the fact the police could have lawfully obtained a sample of the defendant's DNA under Article 63 of PACE anyway even if the defendant did not consent:

> "In the circumstances having carried out this balancing exercise I am wholly satisfied that the scales come crashing down in favour of admitting the Belfast DNA evidence. I should also make it clear that the balance still favours admitting the Belfast DNA evidence if I am wrong about whether or not the police could lawfully have taken a sample … under Article 63 of PACE."

The court was also asked to exclude the Belfast DNA as being unfair evidence under Article 76 of PACE. In these circumstances the test for the court must be whether it offends the fairness of the proceedings. It should not be used by the court to mark its disapproval of the way in which the evidence was gathered. The trial judge said he was not satisfied that the statutory test was met and did not consider that he should exclude the Belfast DNA evidence. He said the submissions on behalf of the defendant were marked by an absence of any detail as to how the admission of the Belfast DNA evidence visited any unfairness on the defendant when it was clear that it was his DNA, or how the admission of such evidence would unfairly affect the fairness of the criminal proceedings.

Conclusion

The trial judge considered there was an overwhelming case established from the eyewitness evidence, the evidence of Nuala Delaney, the forensic evidence including the DNA evidence, the bad character evidence and the affidavit evidence of the defendant that the defendant was the gunman who fired the gun which killed JSK:

- There was a fight at about 2.00am in the car park outside EXIT 15 which was caught on CCTV;
- The participants in that fight were JSK and the defendant. The trial judge said it was not possible to be certain it is the defendant from the CCTV footage only although the person being struck is of the same physical build as the defendant. However, the defendant has accepted on affidavit that he was the one who was involved in the fight and the judge said that was clear from consideration of all the eyewitness evidence;
- An eyewitness gave evidence that there had been a scuffle between JSK and another man in a grey T-shirt in the car park. JSK was then pursued by the person whom he had been fighting with. The witness saw the pursuer with a gun in his right hand. He could see smoke from the gun and he then saw the gunman fire at point blank range into JSK's head. The gunman then got into a passenger seat of the Vauxhall Cavalier IDZ 1233;
- A second eyewitness described the murderer as getting into the front seat of the Cavalier. Another saw the gunman getting into the passenger side of the Cavalier although he was not sure whether it was the front or the back;
- A further eyewitness saw the shooting and a silvery coloured Vauxhall Cavalier IDZ 1233 come to collect the gunman who had lent down and fired into JSK's head. He thought he climbed into the nearside rear passenger seat;

- A doorman at EXIT 15 knew the defendant. He saw JSK punching the defendant who did not defend himself. He noted that the defendant had a cut above his eye and was bleeding. He saw the defendant running after JSK. His view was then obscured. He then heard shots and then saw JSK lying on the road;
- The defendant's ex-girlfriend was with the defendant that evening. She saw him bring the murder weapon into the front seat of the Vauxhall car. She took the gun off him and then helped in its concealment. She went "on the run" with the defendant because of what he had done, that is murder JSK;
- It was the defendant's blood on the car handle and on the visor of the front passenger seat of the Vauxhall Cavalier IDZ 1233. That is where witnesses said the gunman had been seated.

The trial judge said there was compelling evidence that the defendant shot JSK at long range bringing him to the ground:

> "He then coldly and callously finished him off by firing a bullet at point blank range into his brain. It was a savage and barbaric act, devoid of any pity. Far from being ashamed of what he had done, the defendant gloried in this appalling act. In retrospect the defendant's passivity when under attack from JSK must have concealed a resolve for bloody revenge which he was determined to exact in front of all those who had witnessed his earlier humiliation. By murdering JSK in full view of all those onlookers no doubt the defendant thought he had proved to the onlookers who was the boss."

The trial judge noted that the defendant was entitled not to give evidence, to remain silent and make the prosecution prove his guilt beyond reasonable doubt. However, the court is entitled, and does draw an adverse inference against the defendant because of his failure to give sworn testimony. This means the defendant has failed to provide an explanation for:

- His affidavit in which he admitted he was the person who was attacked by JSK and that as a result of this JSK lost his life, without providing further elucidation;
- The eyewitness evidence of those in the car park after the disco ended at the hotel linking the victim of the assault by JSK to the person who chased the attacker through the car park and up the hill;
- The evidence that the second man who chased the first man was described by a number of witnesses as being responsible for shooting JSK and he was seen by witnesses to get into the front passenger seat of the Vauxhall Cavalier IDZ 1233, although one witness did think he had got into the rear passenger seat;
- The doorman's evidence was that the defendant was the one assaulted by JSK;
- Nuala Delaney's evidence of the defendant bringing the murder weapon to the front passenger seat of the Cavalier and then going "on the run" to avoid being arrested for the murder of JSK.

The trial judge said he had no doubt that the defendant had chosen to remain silent because he had no answer to the prosecution's case and certainly none that would bear forensic examination. Further, the court also took into account the defendant's determination to avoid detection by the police, his escape to Dublin and his assumption of a new identity, all designed to enable the defendant to avoid having to explain his actions of 31 May 1998. The trial judge said the evidence against the defendant in respect of both counts was overwhelming and, consequently, that he was satisfied to the requisite criminal standard on the basis of the evidence that the defendant was guilty

of both the offences with which he was charged, namely murder and possession of a firearm with intent.

The trial judge commented that there was no evidential basis for the allegation that JSK's murder was the responsibility of a third party, whether or not it was Mr Fox or some other unidentified person. He said he had no hesitation in dismissing such a suggestion as fanciful in the light of all the evidence. The trial judge also made it clear that he was satisfied beyond reasonable doubt that the defendant is guilty of both offences on the basis of the eyewitness evidence, excluding the eyewitness evidence of Nuala Delaney and also excluding the DNA evidence, but taking into account the affidavit sworn by the defendant, the bad character evidence and the adverse inferences he drew from the defendant's escape to the Republic of Ireland and his refusal to give evidence:

> "In the circumstances and for the reasons I have set out I have no hesitation in finding the defendant guilty of the murder of John Stephen Knocker on 31 May 1998 and of possession of a firearm and ammunition with intent to endanger life or property, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981. As the defendant has been convicted of murder I am obliged by law to impose a sentence of life imprisonment."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://judiciaryni.uk).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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