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Judge questions charges decision

BY Staff reporter

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THE judge in the Robert McCartney trial yesterday asked why two co-accused who are charged with causing an affray on the night of the killing are not also standing trial for murder.

At Belfast Crown Court Mr Justice Gillen raised the question with prosecutor Gordon Kerr QC who said the charges against all three accused were based on witness evidence.

Terence Malachy Davison (51) is charged with murdering the father-of-two from the Short Strand area of east Belfast, who was beaten and stabbed after a brawl in Magennis's bar in the city centre on January 30 2005.

Mr Davison and two others – James McCormick (39) and Joseph Fitzpatrick (47) – are all charged with affray. All three deny the charges.

Mr Kerr addressed the court in response to defence applications that all three men had no case to answer.

Witness evidence placed the three men in Market Street but when the judge asked why all three were not charged with murder, Mr Kerr replied: "It depends on the evidence."

Mr Kerr said two witnesses say they saw Mr Davison come into violent contact with Mr McCartney in Market Street and Cromac Square.

When the judge asked whether Mr McCormick and Mr Fitzpatrick had been a "punch or blow" away from a murder charge, Mr Kerr re-plied that this was the case.

"An argument occurred in the bar involving Terence Davison and Mr McCartney," Mr Kerr said.

"There is evidence there was a confrontation between Terence Davison and Mr McCartney outside the bar."

Mr Kerr said there was evidence that Mr Davison had been part of the group that went down Market Street.

"There is evidence from Brendan Devine of actual contact between Terence Davison and Mr McCartney at some stage," he said.

"There is also evidence from Witness C of his involve-

ment in an attack on Mr McCartney."

Witness C has already told the trial she saw a man she later identified as Mr Davison attack Mr McCartney at Cro-mac Square and make several swiping motions at his torso.

The prosecution says it believes these movements were the fatal stabbing.

The judge said he had no doubt that Witness C was independent and honest.

However, he said she had made three key errors in her evidence:

n one concerning the length of the attacker's hair

n she did not initially tell police of the swiping motions

n she saw no weapon or in-strument in the attacker's hand.


Orlando Pownall QC, for Mr Davison, said the vexed issue in the case was where the stabbing had occurred.

He said the prosecution had failed to establish where the fatal wound was inflicted.

The trial continues.

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