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## Moment of truth is near in McCartney murder trial

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### The Judge in the Robert McCartney murder trial is considering the evidence, writes Alan Murray

by



Unison

By Alan Murray

Sunday June 22 2008

After 19 days of evidence and legal submissions, the Robert McCartney case entered its final phase last Friday afternoon, and Mr Justice John Gillen has retired to consider his verdicts.

None of the defendants entered the witness box, and the Crown prosecutor argued that it would be appropriate for the judge to take an adverse inference from their decision not to give evidence in

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court.

Similarly, the prosecutor argued that the judge could make an adverse inference from the decision of two of the accused men not to make statements to the police.

But the three defendants in the murder trial failed to have the charges proffered against them dismissed by Belfast Crown Court.

Terence Davison, 51, is charged with murdering Robert McCartney and with causing an affray. James McCormick, 47, is charged with affray, and Joseph Fitzpatrick, 39, is charged with affray and assaulting Ed Gowdy.

Their legal representatives submitted that the case was flawed and contradictory and that witness evidence against the three men was unreliable and mutually exclusive.

Patrick Lyttle, acting for Fitzpatrick, suggested the proceedings should be stayed because Ed Gowdy's evidence was "filtered through the prism of an IRA investigation".

Gowdy and Brendan Devine -- another witness who was in Robert McCartney's company in Magennis's Bar on the evening of January 30, 2005 -- admitted they didn't name names or make truthful statements to police until the IRA assured them they could do so without fear of repercussions.

Mr Lyttle argued that Gowdy, who identified Fitzpatrick as his assailant, spent six or seven hours speaking with the IRA about events in the pub and the subsequent murder, and that this had coloured his evidence.

Gowdy was not going to tell the court what was discussed during the IRA interviews and relevant information was not therefore before the court.

Mr Orlando Pownall, acting for Davison, in his application to have murder and affray charges against his client dismissed, claimed the case was a "pick and mix of confection".

He said it was impossible to find areas of agreement between the witness statements because Gowdy, Brendan Devine and the unnamed Witness C presented totally different scenarios for the alleged involvement of Davison in the murder of Robert McCartney.

Devine initially said that both he and McCartney were stabbed in Market Street, but Witness C said she saw the fatal stabbing take place at Cromac Square. Gowdy couldn't explain the presence of Robert McCartney's blood in Market Street, and said he was too drunk to remember many things that had happened in the bar, but could remember someone winning £29 in an accumulator bet.

Mr Devine's evidence was coloured by what he had been told by others and his account of seeing Robert McCartney lying in Market Street -- with Davison allegedly gouging his eye -- was at odds with Witness C's evidence of where thought she might have seen the stabbing take place.

Mr Pownall said Ms C was an honest individual who was clearly mistaken. Her account of swiping movements made against Robert McCartney by an assailant were not consistent with injuries he sustained or the damage to his clothing. And Ms C's description of his client's hair and his clothing was plainly wrong.

At one point Judge Gillen asked how many of the 80 seconds Ms C was stopped at traffic lights and witnessed the incident did Mr Pownall think she devoted to examining the length of hair worn by the man she saw attacking Robert McCartney.

The judge said Davison was perhaps one of the most unlucky people to appear in a criminal trial given that Ms C, who didn't know anything about him, had picked him from 14 men in an ID parade, months later, as the man she saw attacking Robert McCartney.

Mr Pownall submitted that the prosecution had produced no actual evidence that his client had inflicted a fatal wound to Mr McCartney and pointed out that accounts had been given that Mr Devine's co-accused Jim McCormick had a knife that evening and "inflicted injuries to Devine around the same area of the body".

Eilish McDermott for McCormick questioned whether the charge of affray was appropriate in the case.

of father-of-six

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But Judge Gillen observed that a more "paradigmatic case of affray" would be difficult to envisage given the court had heard evidence of a number of men armed with a stick and bottles pursuing Devine and McCartney along Market Street.

He added that he was satisfied it was "not inconceivable that I could draw an inference that the object of the joint enterprise of those men in Market Street, who included Davison, was at least to inflict grievous bodily harm upon Devine and McCartney".

The judge said that, in respect of all the counts, the evidence against the defendants was not so weak or discredited or the identification evidence not so poor or unsupported that it could not lead to convictions.

He said Ms C's evidence was not so weak or discredited it "could not conceivably support a guilty verdict against Davison as a principal with the intent to at least cause grievous bodily harm by stabbing Mr McCartney".

"Even if Davison was not the person who was wielding the knife, there is evidence before me that he was part of a joint enterprise involving men armed with bottles and a stick, some of whom struck Gowdy and stabbed Devine".



In the dock, Davison momentarily lost his assured composure, uttered an inaudible remark and dropped his arms to his side before refolding them across his chest again.

Jude Gillen said that the matter of IRA discussions with Gowdy before he made a statement to the police must be taken into account in assessing his credibility.

But the judge noted that that if visits by paramilitary organisations to witnesses were deemed to taint evidence from witnesses, so as to make such evidence unacceptable to the courts, that would provide a valuable weapon to such groups to undermine the rule of law -- and would enable them to effectively sideline witnesses.

- *Alan Murray*

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