

Neutral Citation No: [2023] NICC 20

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

ICOS No: 20/076746

Delivered: 30/06/2023

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

**JONATHAN BROWN, MARK SEWELL, ROBERT SPIERS,
WALTER ALAN ERVINE, GLENN RAINEY, JILL MORRISON,
THOMAS McCARTNEY, CHRISTOPHER HAIRE, REECE KIRKWOOD
AND NEIL OGLE**

**Mr D McDowell KC with Ms R Walsh (instructed by the Public Prosecution Service)
for the Prosecution**

**Mr K Mallon KC with Mr A Thompson (instructed by McCann & McCann Solicitors) for
the third defendant Spiers**

**Mr G Berry KC with Mr S Devine (instructed by McConnell Kelly Solicitors) for the fifth
defendant Rainey**

**Mr C Murphy KC with Mr M McAleer (instructed by McConnell Kelly Solicitors) for the
tenth defendant Ogle**

RULING ON APPLICATION FOR NO BILL

O'HARA J

Introduction

[1] On 27 January 2019, soon after 9pm, Ian Ogle was murdered in Cluan Place in East Belfast. The prosecution case is that he was kicked, beaten and stabbed by a large group of men, up to seven in number, in the street. When he fell to the ground the attack continued, becoming ever more vicious with bats being used and Mr Ogle being stamped repeatedly on the head.

[2] Ten defendants have been returned for trial. Five are charged with murder. Four others are charged with offences including perverting the course of justice,

assisting an offender and withholding information. Three of the accused have applied for a No Bill, ie a ruling that on the prosecution case taken at its height no reasonable jury could convict them of the offences with which they are charged. If their applications for a No Bill are successful, those charges will be dismissed with immediate effect without a trial because no individual should be put on trial on a charge if the evidence is such that he or she cannot be convicted.

[3] The three accused who make these applications are :

- (i) The third defendant, Spiers, who is charged with murder.
- (ii) The fifth defendant, Rainey, who is also charged with murder.
- (iii) The tenth defendant, Ogle, who is charged with withholding information concerning an arrestable offence, contrary to section 5(1) of the Criminal Law Act (NI) 1967.

[4] This ruling is in respect of the first two of those three applications for a No Bill. (The application in respect of Neil Ogle had to be adjourned for technical reasons. However legal submissions have been lodged and a public oral hearing will take place in early September after which the whole trial can be listed for hearing.) The No Bill applications are not inter-related. I have to consider each application on its own merits and make my decision exclusively on those merits.

[5] There is no dispute between the parties as to the legal approach to be adopted. From the case law the following principles can be drawn:

- (a) The trial ought to proceed unless the judge is satisfied that the evidence does not disclose a case sufficient to justify putting the accused on trial.
- (b) The evidence for the Crown must be taken at its height (or best) at this stage.
- (c) The court has to decide whether on the evidence adduced a reasonable jury properly directed could find the defendant guilty and in doing so should apply the test formulated by Lord Parker CJ when considering applications for direction set out in Practice Note [1962] 1 All ER 448.

[5] There are two parts to the test which is to be applied under the statute which is section 2(3) of the Grand Jury Abolition Act (NI) 1969. The first part is whether on looking at the committal papers alone the court is satisfied that a case is disclosed which is sufficient to put the defendant on trial. If the court is so satisfied, the application for a No Bill must be dismissed. If, however, the court is not so satisfied, the court does not inevitably grant the application. That is because the section gives the judge power to enter a No Bill, but it does not oblige him to do so. There are various approaches as to how this discretionary power should be exercised but they

are not of significance in this case because according to each of the applicants, the committal papers simply do not disclose a case against them.

[6] On the prosecution analysis and summary of the case, it is accepted that the case is a circumstantial one. As the prosecution has, however, emphasised, that does not in any way mean that it is anything less than a strong case. In this context I have been reminded of *R v Courtney* [2007] NICA 6 at para [31] where the court stated:

“In a case depending on circumstantial evidence, it is essential that the evidence be dealt with as a whole because it is the overall strength or weakness of the complete case rather than the frailties or potency of individual elements by which it must be judged. A globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case.”

[7] The effect of this approach is that a case does not fail, certainly at the No Bill stage, because a single strand or perhaps even a few strands are exposed as being flimsy. What the court has to consider is the strength of the interwoven strands.

[8] Having set out that foundation, I will turn to consider each of the applications in turn.

Application by Robert Spiers

[9] On behalf of Mr Spiers it was emphasised by counsel that there is no evidence against him in the form of admission, no evidence against him in the form of identification and no forensic evidence at all. Rather, the case against him rests on two planks. The first is what the prosecution say is phone evidence of his contacts with other accused, specifically the first defendant Brown. Second, the prosecution relies on connecting Spiers with a knife which was found in a nearby river on 14 February, just over two weeks after the murder of Mr Ogle.

[10] In relation to the phone evidence, the starting point for this, according to the prosecution, is that when interviewed by the police Spiers denied that he had a mobile phone at all. The prosecution attach significance to that, a factor which the defence seek to downplay by suggesting that given the murder of Mr Ogle becoming notorious in very little time at all, it was understandable that Spiers might deny owning a phone. It seems to me, however, that there is a more sinister interpretation available for a jury to consider and that is that Spiers was seeking to distance himself from his contact with anyone who was involved in the murder. In this context it is significant, as a strand, that the defendant Brown accepts that there is a case for him to answer at trial and that the focus of the prosecution evidence about phones is on the contact between Spiers and Brown in particular. Part of the significance of Brown's alleged

involvement is that on the prosecution case, the event which led to the murder of Ian Ogle was an attack on the tenth defendant, Neil Ogle, shortly after 8:45pm that evening. On the prosecution case Neil Ogle then called Brown, following which Brown made a number of calls, the first of which was to Spiers. Within minutes of these calls starting the group had gathered which was responsible, on the prosecution case, for the murder of Ian Ogle. Brown himself was part of that group.

[11] On behalf of Spiers it is highlighted that Spiers and Brown had contact earlier in the day, thereby suggesting that his later contact with Brown cannot be presumed to have been sinister. That may be the case but equally, in my judgment, it may not be so. A flurry of phone activity immediately after 8:45pm and leading up to the minutes before the murder of Ian Ogle, is potentially persuasive circumstantial evidence. So also are the gaps in phone activity afterwards. On this basis alone, I reject the No Bill application on behalf of Spiers.

[12] Having done that it is not necessary for me to deal in any detail with the question of whether there is a proper and meaningful connection between Spiers and the knife which was found in the river just over two weeks later. As matters stand this is on any view a weaker strand of the evidence against Mr Spiers. First, it cannot be said conclusively or even with confidence that that knife was used in the attack on Mr Ogle. Secondly, the analysis of knives by a scientific officer on behalf of the prosecution is limited to saying that "there is support for the proposition that the knife in the river was originally part of a set which included the knives found in Mr Spiers' home address. It is not, however, possible to exclude the possibility that the knife ... originated from an alternative set of knives."

[13] In these circumstances the connection between Spiers and the knife might be regarded as flimsy, at this stage at least. However, as indicated above, there is sufficient strength in the telephone evidence for the application for a No Bill on behalf of Spiers to be rejected.

Application by Glenn Rainey

[14] On the prosecution case, the circumstantial evidence against Rainey has more strands to it than the case against Spiers. Those strands can be summarised as follows:

- (i) Phone contact between Brown and Rainey after 8:45pm as the gang which murdered Ian Ogle assembled.
- (ii) Phone contact between Kirkwood and Rainey during the same period.
- (iii) The involvement of a Seat Leon car in the build up to the murder.
- (iv) Rainey's DNA being on the inner nearside door handle of the Seat Leon.

- (v) The alleged identification from clothing of Rainey as one of a group of five men walking towards the murder scene at 9:18pm.
- (vi) Cell site evidence consistent with Rainey's phone being on his person and moving along the route taken by the killers.
- (vii) Phone contacts with Brown after the murder.
- (viii) His sudden departure from Northern Ireland to Thailand from Dublin Airport with Brown the day after the murder, neither of them having bought tickets before 28 January.

[15] On behalf of Rainey it is emphasised that there is no identification of Rainey at the scene of the killing nor is there any forensic scientific evidence against him to connect him either to the scene or to Ian Ogle.

[16] For Rainey it is also contended that the evidence of his presence in the Seat Leon is rendered valueless because he was a good friend of Mr Brown who is the partner of Ms Morrison, the owner of that car. In the same context it is contended that there is nothing even remotely sinister about Rainey and Brown going to Thailand the following day because they were close friends and Mr Rainey was a frequent visitor to Thailand in any event.

[17] In the course of the written submission on behalf of Rainey, at para [24], it was suggested that the prosecution had ignored the fact that on the day after the murder of Ian Ogle "Mr Brown was clearly in crisis." That "crisis" arose because Brown admits to being at the scene and seeing Ian Ogle being attacked and perhaps stabbed by another person. In my judgment however that matter is clearly a matter for the jury, not for a No Bill. It is, of course, entirely appropriate to acknowledge that the case against Brown is, from some perspectives, stronger than the case against some other defendants, but the fact is that on the case as it currently stands one of the strongest strands connecting Rainey to the murder is his significant telephone contact with Brown during the important period after the attack on Neil Ogle and up to the murder of Ian Ogle.

[18] There are certainly issues about the identification of Rainey by the clothing which is attributed to him and, in particular, whether there is anything unique, singular or striking about that clothing which makes that connection one which holds any weight. In my judgment, however, it is a significant exaggeration of the case against Rainey for the defence to have suggested that the case is "utterly dependent upon a clothing comparison." I do not accept that on the matters outlined to me that can be said with any confidence whatever. On the contrary, there are significant other strands to the case against Rainey which mean that the application for a No Bill must be dismissed.