

Neutral Citation No: [2023] NICC 30	Ref: OHA12309
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 21/003256
	Delivered: 23/10/2023

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE**

THE KING

v

JAMES STEWART SMYTH

**Mr C Murphy KC with Mr D Russell and Ms N Pinkerton (instructed by the PPS) for the
Prosecution**

Mr M Borelli KC with Mr P Bacon (instructed by Reavey Solicitors) for the Defendant

RULING ON APPLICATION TO SCREEN A PROSECUTION WITNESS

O'HARA J

Introduction

[1] The defendant faces charges as a result of his alleged involvement with the UVF in North Belfast in 1994. The charges are two counts of murder of Catholic workmen on 17 May 1994, one count of attempted murder on the same date, possession of a firearm and ammunition with intent to endanger life and membership of the Ulster Volunteer Force.

[2] I have already heard evidence from a number of witnesses in the trial, including eyewitnesses, together with forensic evidence which, on the prosecution case, ties the defendant to the crimes. The next stage in the hearing is that the prosecution will call as a witness, one Gary Haggarty. Haggarty pleaded guilty in 2017 to more than 200 terrorism counts. They included the two murders for which this defendant is on trial, three more murders, one count of aiding and abetting murder and five counts of attempted murder. He admitted this catalogue of offending in the context of being a member of the Ulster Volunteer Force. His evidence in this trial is to be that he himself was directly involved in May 1994 in the murders of Mr Convie and Mr Fox together with the attempted murder of Witness

A, but that the defendant Smyth was the gunman as well as being a fellow member of the UVF.

[3] In return for his various admissions and guilty pleas, Haggarty received a reduced sentence and has been taken into an assisting offenders scheme under which he has been resettled outside Northern Ireland. He entered a contract as part of that exercise under which he had to disclose fully his involvement in crime and agree to give evidence against individuals such as the defendant Smyth.

[4] When Haggarty pleaded guilty in 2017 to his various crimes, he appeared in open court. He also appeared on sight-link when his sentence was increased some months later by the Court of Appeal.

[5] In advance of his attendance at court to give evidence at this trial a two-fold application was made by the prosecution. One part, which the defence did not resist, and which I approve, is that Haggarty is not be asked questions of any specified description which might lead to the revelation of his current identity/appearance and address. (I was shown on a confidential basis some information in the most general terms imaginable about where Haggarty now lives along with a number of photographs which show his appearance in 2023 compared to his appearance in years gone by.) There is no need for any of these issues to be raised in questioning and I commend the defence for recognising that fact and accepting it.

[6] The other part of the prosecution application is resisted by the defence. It is that when giving evidence, Haggarty should be screened from everyone except me as the judge, the court clerk and the two legal teams. In other words, he should be screened from the defendant, Smyth, and from the public.

[7] Moving the application for the prosecution, Mr Russell relied on a statement by Detective Superintendent Griffin who currently has oversight of the PSNI's Protected Persons Unit, Haggarty being one such protected person. His statement referred to the following points:

- Haggarty left Northern Ireland in 2017.
- There is a potential risk to Haggarty's life.
- Should Haggarty's face and appearance be seen by the defendant or the public, efforts might be made to "identify his current location and subsequently raise risk to his life."
- The threat to Haggarty's life is real given the information he provided about his alleged former associates.

- That threat will increase if he is not screened because people who may want to harm him will see his current appearance.
- His current appearance is significantly different to when he last appeared in public in Northern Ireland.
- If screening is not permitted the management of the risk will have a significant cost implication to public funds and will undermine established methodology to protect witnesses.
- If Haggarty is not screened others may be less willing to become assisting offenders.

[8] Mr Russell conceded that considerable weight has always been placed on the principle of open justice with the defendant in particular but the public generally having the right to see the accuser. He further conceded that the bar is set very high for success in applications such as the present for Haggarty to be screened. Helpfully, he referred me to a number of authorities including *R v McKeown and others* [2006] NICC 8 and *R v Grew and others* [2008] NICC 6.

[9] Mr Russell suggested, and Mr Borelli agreed, that I should first consider whether there is a need to screen the witness from being visible to the defendant and the public. Whether such a need exists will depend on the degree of risk which being seen will create for him. That risk must be a greater risk than currently exists.

[10] Having considered the authorities and submissions carefully, I am not satisfied that there is such a need in this case. That conclusion is based on the following:

- (i) From the photographs which I have seen Haggarty is now an older version of his previous self, rather than someone whose identity has changed significantly eg by way of plastic surgery. Therefore, his appearance now will give no obviously greater clue as to what he looks like than already existed.
- (ii) In addition, I am not satisfied that his present appearance will assist anyone who might be looking for him in the future or who has already been looking for him. His whereabouts are apparently not known to those who could do him harm. Seeing him in court will not, in my judgment, assist whatever efforts they might make in future.
- (iii) This is not a case which is analogous to those in which police officers or customs officials work under cover and would not be able to do so in the future if their appearances and identities were revealed in court.
- (iv) When Haggarty entered the Assisting Offenders' Scheme, he was not promised, and could not have been promised, that he would be screened if

called on to give evidence. Such a promise or guarantee was not within the gift of the prosecuting authorities.

- (v) In relation to deterring future potential assisting offenders, my view is that the much greater attraction of the scheme for an assisting offender is the significant reduction in his or her jail term. Haggarty is an illustration of this. In order to minimise his time in prison he became an assisting offender. In the absence of any identified need he should not be screened, and neither counsel could recall any case in which an assisting offender has ever been screened.

[11] For these reasons, I reject the application to screen the witness Haggarty from the defendant or the public. I should add that Haggarty is already protected in the sense that he cannot be photographed while he is in court. I will add to that protection by directing that nobody, whether as a member of the public or the press, can make a drawing of him. The public are not entitled to do so in any event. Insofar as this restriction impedes media coverage of the trial, it is a deliberately limited inference with that coverage. As a further protective step, I will not allow sight-link to be in operation while Haggarty gives evidence lest there be some flaw in its operation which allows photographs to be taken or recordings to be made which show Haggarty's appearance.