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Judge asks why McCartney trial duo aren't facing murder charges

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Thursday, June 19, 2008

By Ashleigh McDonald

The judge presiding in the Robert McCartney trial has 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.

Mr Justice Gillen raised the question to prosecutor Gordon Kerr QC, who said the charges against the three accused were based on witness evidence.

Terence Malachy Davison (51) is charged with murdering the Short Strand father-of-two, who was beaten and stabbed following a brawl in Magennis' bar on January 30 2005.

He and two co-accused — James McCormick (39) and 47-year old Joseph Fitzpatrick — are all charged with affray and all deny the charges against them.

At Belfast Crown Court yesterday, Mr Kerr addressed the hearing in response to 'no case to answer' applications, which were made on behalf of all three defendants.

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

The prosecutor said two witnesses claim to have seen Davison come into violent contact with Mr McCartney in Market Street and Cromac Square.

When Mr Justice Gillen asked if McCormick and Fitzpatrick were a "punch or blow" away from a murder charge, Mr Kerr replied this was the case.

Mr Kerr told the court: "An argument occurred in the bar involving Terence Davison and Mr McCartney. There is evidence there was a confrontation between Terence Davison and Mr McCartney outside the bar.

"There is evidence that Terence Davison was 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. There is also evidence from Witness C of his involvement in an attack on Mr McCartney. "

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Witness C has already told the trial she saw a man she later identified as Davison attack Mr McCartney at Cromac Square and make several swiping motions at his torso. This, the Crown believe, is the fatal stabbing which claimed the life of the deceased.

However, Mr Justice Gillen said that despite there being "no shadow of a doubt" that she was an independent and "honest" witness, she had made "three key errors" in her evidence — including the length of the attacker's hair and the fact she didn't initially tell police of the swiping motions she claimed to see. He also pointed out that she saw no weapon or instrument in the attacker's hand.

In response to Mr Kerr's comments, Davison's defence barrister Orlando Pownall said the "vexed issue" in the case was where the stabbing occurred. He said the Crown had failed to establish where the fatal stab wound had been inflicted, adding it was "impossible" to "pin down" the stabbing to Cromac Square.

He said: "People may clamour in this court and elsewhere for justice, but justice does not mean finding a case against an individual when in theory no such evidence exists."

At hearing.

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