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Saturday, June 28, 2008

Influence of drink and the IRA clouded evidence in case where misunderstanding led to murder



Robert McCartney: last words were, "Nobody deserves this"

DAN KEENAN Northern News Editor

BACKGROUND: "NOBODY DESERVES this." According to the friend who was attacked with him, these are the three words attributed to a fatally injured Robert McCartney as he was being beaten and stabbed outside a Belfast bar on a winter's night in early 2005.

They were appropriate words, as deputy state pathologist Dr Alistair Bentley told the trial of the man accused of the murder and two others.

The 33-year-old father of two had been stabbed in the abdomen, an injury which cost him his life within 24 hours. According to Dr Bentley the victim also suffered a broken nose in two places, cuts to his face and neck and, while in hospital, three heart attacks.

McCartney's friend Ed Gowdy, who had been drinking with him in Magennis's bar near the city centre on Sunday, January 31st, told the court there was "a lot of blood and mayhem" after a row broke out when a woman mistakenly thought a rude gesture, made by McCartney, was aimed at her.

The woman's partner, Terence Davison, stood accused of murder and causing an affray. James McCormick and Joseph Fitzpatrick were also charged with affray. Fitzpatrick was additionally charged with assaulting Mr Gowdy.

All charges were denied.

Also injured that night was Brendan Devine. Attacked in the same incident that cost McCartney his life, Devine had tried to calm the row that

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erupted in the bar and which was to spill outside and along Market Street.

The next thing he knew he had been struck on the head with a bottle and later suffered serious injuries to his upper body and his throat was cut.

Devine was a key witness for the prosecution, who told the court during the month-long trial he had seen Davison "gouging" at McCartney "in a really evil way".

Devine said he had gone outside the bar with McCartney but they were followed by up to six men and chased into Market Street where the fatal attack took place. He told the court the man attacking McCartney was an "older man" whom he described as "more respectable" looking.

Davison was later picked out from a police line-up by Devine as "the older man".

His evidence, along with that of "Witness C", were key to the prosecution case. Speaking from behind a screen in the court, Witness C, who was unconnected to the incident, claimed to have witnessed the killing as she drove close to the scene.

"I'll remember it till the day I die," she told Mr Justice Gillen.

One of the attackers, she said, was well dressed and had white hair. He was "not the type you'd expect to see brawling on the street", she added.

Detailing the attack on McCartney, Witness C said his killer had made deliberate swipes at the victim and kicked him repeatedly in the lower back at least half a dozen times.

She alleged that McCartney was deliberately kicked in the head as he tried to lift himself off the ground. This kick was aimed and executed with as much power as possible, she added.

"When I was sitting in the car that night I couldn't do anything to stop what was happening or help," she said. "So I tried to remember as much as I could about the person."

She also picked out Davison from a police identity parade. "I am convinced the man I picked out of the ID parade was the man I saw," she said.

However, the defence made considerable efforts to question the reliability of the evidence of the key prosecution witnesses.

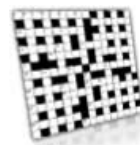
Devine was accused of altering his evidence to "dovetail" with what he expected Witness C to say when she took the stand, an allegation he denied. Asked by the defence why, in his initial statement, he had not referred to Davison, Devine claimed he thought IRA members were involved in the murder and he was afraid as a result.

"All I can do is tell it the way I remember it and the way I seen it," he told the court. "In my mind I had to be careful what I said because of the nature of these people and where they came from. If I didn't say anything crystal clear it was because at that time I was afraid."

Similarly Gowdy admitted to the court that he had lied to police because he was afraid of the IRA. He said he "didn't know the situation at the time, what I could say or what I couldn't say".

Gowdy was also asked why he had failed to go to his friend's aid outside the pub in Market Street and was forced to admit he could not

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remember much of what happened on the night of the killing as he had been very drunk.

Witness C was confronted with images taken from a video camera showing her description of the man whom she identified at McCartney's killer was at odds with reality. Davison was caught on camera at the hospital, where he was with his nephew who had been hurt in the row in the pub, wearing different trousers and with shorter hair than she described.

Witness C said that despite the differences, she remained convinced her identification of him was right. "I'm absolutely sure it was him," she said. "He looked the same and he walked the same. It was definitely the same man, but he had his hair cut different," she said.

Orlando Pownall QC, for the defence, told the judge the "extraordinarily diverse" witness accounts had "exposed the shortcomings" of the prosecution.

None of the three accused took the stand, allowing Mr Justice Gillen to draw what inferences he deemed appropriate from this.

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