

Neutral Citation No: [2023] NICC 25

Ref: OHA12264

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

ICOS No: 20/076746

Delivered: 15/09/2023

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

RULING ON APPLICATION BY NEIL OGLE FOR A NO BILL

O'HARA J

Introduction

[1] This defendant is charged with failing to give information within a reasonable time, without reasonable excuse, in connection with a murder, the murder having been committed on 27 January 2019. The murder to which the charge refers was that of Ian Ogle who was beaten and stabbed to death on the street in East Belfast at approximately 9:20pm on 27 January. Approximately 35 minutes earlier Ian Ogle and Ryan Johnston had got out of a car in East Belfast and subjected Neil Ogle to a vicious beating as he walked along the street. Ian Ogle was Neil Ogle's uncle and Ryan Johnston was his cousin.

[2] Perhaps not surprisingly the police formed a suspicion that there was a direct connection between the attack on Neil Ogle and the murder of Ian Ogle a short time later in the same area. Neil Ogle was arrested on suspicion of murder on 4 February 2019 and questioned at length that day. He repeatedly denied involvement in the

murder and further denied knowing anything about it. What was suggested to him by the police was that he was trying to distance himself from the murder but that he was himself one of the gang who went to Cluan Place in East Belfast where the murder was committed.

[3] This defendant was released on police bail and then arrested again for further questioning on 9 May 2019. On that occasion his suspected involvement was in relation to withholding information about the murder. He was questioned primarily about phone calls between various people, whether he made or knew about those calls, about taxis and who was in them and about certain CCTV footage.

[4] The precise charge against this defendant is of withholding information between 26 January and 5 February. The nature of the information which was withheld is not specified.

[5] In this application for a No Bill, Ms Walsh for the prosecution with Mr McDowell KC clarified that the prosecution only alleges that the offence was committed up to the time that he was arrested on 4 February, not during or after his questioning on 4 February. She further clarified that the information allegedly withheld was that immediately after he himself was attacked he told the defendant Brown in a phone call of the fact of the attack, who had assaulted him and further that he knew at some point prior to his arrest on 4 February that Brown had been involved in the fatal attack on Ian Ogle. For the defendant, Mr Murphy KC with Mr McAleer, raised a number of factual issues but effectively acknowledged that they were more properly for the trial, if there is to be a trial. He focused the No Bill application on the proposition that in light of the arrest for murder on 4 February and the suspicions about this defendant's involvement, which were put to him during questioning, he had a reasonable excuse for not giving the police any information before his arrest, that excuse being that he has an absolute right not to incriminate himself in any offence which he is suspected of having committed.

[6] In essence, Mr Murphy's submission was that:

- The police believed and alleged that this defendant made a call to Brown which triggered or precipitated the murder of Ian Ogle.
- The police did not just suspect this defendant of withholding information – they suspected his deeper involvement was in the murder itself, at least as a secondary party.
- The police alleged during questioning that this defendant was actually present at the scene of the murder but now accept, apparently, that there is no evidence to support that allegation.
- This defendant told the police during questioning on 4 February that Ian Ogle and Ryan Johnston assaulted him. He had not disclosed that information

previously but there was no legal obligation for him to do so and that is not the substance of the charge against him.

- This defendant denies speaking to Brown at all by phone but, even if that denial is not credible, there is no evidence that he told Brown anything more than he had been assaulted. There is no evidence that he encouraged or directed Brown to retaliate or that Brown said he would do so, or that the defendant knew that Brown was involved in the murder.

[7] In these circumstances Mr Murphy submits that there is no answer to the defence of reasonable excuse within section 5. He made the further point that the legal authorities do not indicate that the right against self-incrimination has to be asserted at any point during interviews. As a matter of fact, no such assertion was made by Neil Ogle, either personally or through his solicitor.

[8] For the prosecution, Ms Walsh, submitted:

- All of this is an issue which is properly to be decided at trial when the evidence has been given in its totality and the full case is before the court, not at this stage on a No Bill application.
- The fact that this defendant was suspected of, and arrested for, murder is neither here nor there. Any number of people are arrested for serious offences and ultimately face lesser charges.
- It is significant and striking that the right not to incriminate himself was never invoked by this defendant.

[9] The authorities to which I was referred, primarily *R v Browne & Others* [1993] NI 323 and *R v Donnelly & Others* [1986] NI 54 establish that the risk of incrimination gives a good defence to a charge of withholding information contrary to section 5 but only where there is a genuine risk that the information would incriminate a person. A fanciful or artificial risk is not sufficient to form the basis of a defence.

[10] It is apparent to me from the prosecution summary of the case against all of the defendants, including those in relation to whom I have previously refused No Bill applications, that the police drew a direct link between the attack on Neil Ogle, a phone call to Brown and the almost immediate murder of Ian Ogle, who had been part of the attack on Neil Ogle. I infer that a view has now been taken by the police or by the PPS or by both, that a murder charge against Neil Ogle is not likely to succeed. Instead, he has been charged with withholding information in that between the murder and his arrest a week later he did not tell the police that he had been attacked and had then spoken to Brown. It is suggested that he should have done so because he must be taken to have known, within that week, that Brown was involved in the murder.

[11] The fundamental difficulty, about that proposition is that it also exactly the basis for the suspicion that Neil Ogle is himself guilty of murder. In these circumstances the risk of self-incrimination is neither fanciful nor artificial. The risk is genuine.

[12] Whatever this defendant may have been guilty of on 27 January 2019, and the police cannot be criticised for their suspicions, he cannot be charged with withholding information in these circumstances. I therefore grant the application for a No Bill on the basis that a jury properly directed on the law could not find the defendant guilty because he had a reasonable excuse for withholding information.