

**Neutral Citation No: [2020] NIQB 32**

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

**Ref: KEE11239**

**Delivered: 6/3/2020**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**IN THE MATTER OF A BAIL APPLICATION BY PAUL McINTYRE**

**KEEGAN J**

[1] This is an appeal by the prosecution against the grant of bail by District Judge McElholm sitting at Londonderry Magistrates' Court on 27 February of this year. The case relates to events on 18 April 2019 when Lyra McKee was killed during public disorder in Creggan. The responsibility for that is said to be with terrorist elements.

[2] The appeal is brought under Section 10(1) of the Justice (Northern Ireland) Act 2004. There are no procedural issues. It is a re-hearing and the court may refuse bail or grant bail subject to conditions. I heard submissions over two days on 2 and 3 March and I received written submissions on 4 and 5 March which I have considered in full. At the outset I bear in mind that Article 5 of the European Convention on Human Rights applies and that the applicant is entitled to the presumption of innocence pursuant to Article 6(2) of the Convention.

[3] I will not recite the history of this case in detail but I do record that the applicant was originally charged on 9 May 2019 with rioting, throwing petrol bombs and arson on the night in question. He was refused bail before the Magistrates' Court on 11 May 2019 and granted High Court bail subsequently on 5 November 2019. A variation of bail was granted on 13 December 2019 in relation to the address and visitation of the applicant's mother and again the address was varied on 10 February 2020. There have been no reported breaches of bail. The complexion of the case changed on 11 February 2020 when the applicant was arrested and then on 12 February 2020 charged with the murder of Lyra McKee, possession of a firearm and belonging to or professing to belong to a proscribed organisation, the IRA.

[4] The first question in this bail analysis is whether there is a prima facie case or what has been described in law as a reasonable suspicion based upon sufficient facts that the applicant has committed the offences in question. If no such reasonable suspicion exists then the applicant should be released otherwise the detention is arbitrary. Reasonable suspicion is not the same as the test for prosecution i.e. that it would be likely than not that the accused would be convicted. Also, after a certain lapse of time reasonable suspicion ceases to be a justification for detention.

Obviously that does not arise here where the charges are new and this issue has not formed part of the argument. Rather Mr Mulholland QC, on behalf of the applicant, contends that there is insufficient evidence to found a reasonable suspicion at all that the applicant may have committed the offences.

[5] The evidence that I have been referred to as grounding the charges is MTV and other footage from the night, a report of Mr Stephens, senior forensic officer and what has been described as civilian and police statements. I have read the forensic report and I am told that the other evidence is available and presumably has been or will be served. But I have been told of the broad content of the statements. In summary, the applicant is said to have been involved in carrying petrol bombs to the scene, throwing them at police, hijacking and burning a tipper van during the riot. He is now also said to have escorted the gunman who fired the fatal shot and he is said to have picked up four bullet casings afterwards. Clearly this is an evolving case given that the charge is recent. I make no criticism in relation to that reality. The prosecution contend that the applicant can be identified by police from the footage and specifically because of 17 points of clothing. The applicant is also alleged to have said to an ex-partner, "it wasn't me it was one of our members' son's." I was told that his phone has been examined and it has two hours of no activity when the riot was occurring after which contact happens with a co-accused Christopher Gillen.

[6] Mr Mulholland argues that there are evidential difficulties with the prosecution case including reliance on Mr Stephens as an opinion witness although he accepts that Mr Stephens can give evidence of fact. Mr Mulholland also stresses that this is a joint enterprise case which faces legal difficulties. I have considered these arguments. I bear in mind and Mr Mulholland accepted that a low threshold applies to satisfy the reasonable suspicion requirement. In my view, while valid questions can be asked, I consider at this stage and I repeat it is an early stage, that the test is met due to a combination of sources of evidence I have been referred to.

[7] The applicant can of course challenge the evidence thoroughly at the preliminary inquiry. That is the legal vehicle available to test witnesses and make submissions as to whether the applicant should be returned for trial. It is imperative that this process takes place without undue delay. I am told that a preliminary inquiry is listed for 2 April of this year and that the prosecution will be ready to proceed. I will return to this issue in a moment.

[8] Having decided there is a prima facie case the next question is whether any of the established grounds for refusal of bail are made out. The prosecution do not rely on the risk of flight and so I cannot utilise that ground which is often a factor in this type of case. The burden of proof is upon the prosecution to establish the other grounds now relied on. In this regard Mr Steer BL argues that bail should be refused because of risk of re-offending and risk of interference with witnesses. The court must undertake an evaluative process assessing possible future risks to the public in the prevention of crime and administration of justice taking into account all relevant

factors. The court does this bearing in mind that the applicant is presumed innocent of the charges. There has to be evidence to found the objections now raised by the prosecution and the court as I have said must balance all factors.

[9] The prosecution have raised interference with witnesses but this ground, in my view, is not proven by the nature of the evidence I have seen. There is evidence of sickening graffiti about this event and an alleged set of threats about witnesses coming forward. This is absolutely contemptible, but I cannot see that it can be specifically levelled against the applicant. I also bear in mind that the evidence against him has already been collected. So I do not rely on this ground.

[10] Of more moment in my view is the risk of re-offending. Mr Steer sets out six points in his written argument which I will simply summarise. They include the seriousness of the offences; the terrorist element as the applicant is charged with professing to or belonging to a proscribed organisation; the threat posed by dissident terrorists in Northern Ireland; the nature of the public disorder and the fact that the applicant has a conviction and a pending matter for public order offences linked to dissident Republican activity. The applicant was also on bail at the time of these offences and Mr Steer points out that the applicant faces a Crown Court trial on 23 March of this year for intentionally encouraging and assisting a riot in Londonderry on 28 May 2018 when police were attacked.

[11] Against that Mr Mulholland says that the applicant has been granted bail on the first set of offences, he has not breached bail, the criminal sanctions he received for previous activity were minor, he is a man with four young children, a mother who is ill, he has no passport, has depression and anxiety and the District Judge who granted bail to him is familiar to him.

[12] I have considered all of the above and balanced the factors in this case and I have concluded that the factors outlined by the prosecution are relevant, sufficient and plausible reasons to outweigh the other factors and to justify detention. I should also say that this argument was not made in the same detail at all to the District Judge as far as I can tell and he certainly did not have the benefit of the detailed submissions I have had.

[13] I have also considered whether bail conditions could meet the risks that I have identified. However, given the applicant now faces the serious charges of murder and the linked charges in relation to firearms and belonging or professing to belong to a proscribed organisation I cannot say that the current conditions could suffice particularly given the fact that the recent charges raise obvious issues of threat to the State and the public at large. These charges have clearly changed the complexion of the case from the previously determined applications before the High Court.

[14] All of that said I appreciate Mr Mulholland's well made points in relation to the first question which I have answered. While I am satisfied that the reasonable

suspicion test is met it seems to me right that Mr Mulholland has raised a point about potential delay. Mr Steer has specifically said that the preliminary inquiry is ready to proceed on 2 April of this year. Mr Mulholland is sceptical about that timeframe and it remains to be seen if he is correct. But I can indicate that if there is any unreasonable delay doing forward the applicant may mount a fresh challenge to detention and re-apply for bail. For the purposes of this application the appeal is allowed and bail is refused.