

ATTORNEY GENERAL

R v ATKINSON, ATKINSON AND HANVEY

The Director has now written to you – FLAG 1 – stating that he is minded to end this prosecution tomorrow. He attaches a detailed summary prepared by the case officer, Ivor Morrison – at FLAG 2. At FLAG 3 is a copy of Senior Counsel's advice and at FLAG 4 is a further minute from Ivor.

I do not repeat the facts here. MCKEE failed to attend committal proceedings on 22nd December. The defence agreed to an adjournment providing the prosecution, on the next occasion, provided evidence to back the explanation given for MCKEE non-attendance. Having made the investigations set out in the summary, it is clear that MCKEE explanation for non-attendance could not be believed. It is possible that the RM would then end the committal proceedings tomorrow. Judging by the sensitivity of this case and its history, I think it more than likely that he would. However, the Director accepts that he also has to bear in mind whether, in the light of this evidence, he could call MCKEE as a witness capable of belief in the main trial. He has concluded that he cannot and so intends to pull the prosecution tomorrow.

The key issue is whether, just because MCKEE has lied about why she didn't turn up on 22nd December, she may still be telling the truth about the main issue at trial. I accept that one untruth does not necessarily mean that a jury, properly directed, may not believe her evidence – particularly since she has already pleaded guilty to her part in the conspiracy. Of course, when it comes to "properly directed" there is little that can be said by way of direction about credibility. MCKEE is the key witness – not only of what happened but the very fact that it happened at all. She is an accomplice and her evidence will have to be given subject to a warning about the dangers of convicting on her evidence without other corroboration. There is no other corroboration. This puts her in a rather different position from the usual run of witnesses.

I think the decision also has to be seen against the background of great concern about the use of accomplice evidence that is the result of the collapse of the supergrass trials in Northern Ireland in the 80s. Further, as you are aware, in Northern Ireland prosecuting counsel meet witnesses in consultation specifically to assess credibility. Senior Counsel in this case, Gerry Simpson QC, is very experienced. He is very strongly of the view that he would not call her as a witness of truth. He offered her a way out of her story in conference but she maintains the lie. That assessment is another factor that is crucial to the decision. (It may surprise you, but I would expect Simpson to decline to appear in the case if it went ahead.)

I believe the witness would be torn to bits by defence counsel about these issues. They would also raise the letter issue, which although not part of the prosecution's decision, will no doubt be closely examined by the defence.

I expect you to have concerns about this case and dropping it solely because of an excuse given as to why Jones failed to turn up at committal but I think the factors set out justify the decision to end the case. If you disagree, you may want to express your disagreement in forceful terms but I would advise you against taking the decision yourself. Your involvement in Hamill and Cory would be liable to be misinterpreted as an attempt to put off an inquiry.

One result of the dropping of the case would be to allow the Cory Report on Hamill to be published in full and a public inquiry held sooner rather than later. This would no doubt assist the Prime Minister in keeping his Weston Park commitment on Inquiries and reduce to some extent criticism about delay in deciding on an Inquiry on Finucane.

On a practical note, the Director will need to inform the Hamill family this evening.


18th December 2004

Errol - Sh. read MAREM