[2020] IEHC 206

THE HIGH COURT
IN THE MATTER OF A BAIL APPLICATION

[2020 592 SS
2020 593 SS
2020 594 SS]

BETWEEN

DENNIS HANNIFIN, THOMAS HANNIFIN AND WILLIE HANNIFIN

APPLICANTS

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Ms. Justice Mary Rose Gearty delivered on the 7th day of May, 2020

1. Introduction and Factual Background

1.1 Each Applicant is accused of committing violent disorder and the second and third-named Applicants also face assault charges, all arising out of the same incident. They are brothers and seek bail pending their trial. Since the date of the alleged offences, the complainant and members of his family have been the victims of shooting and petrol bomb attacks on their homes, all carried out by unknown assailants. The Respondent has objected to bail on the grounds that, if released (i) the Applicants will interfere with witnesses and (ii) there is a risk that they will commit further serious offences. The Applicants contend that no evidence links them, personally and directly, with these attacks and that they are entitled to bail. Each one offers to abide by any conditions that the Court considers it necessary to impose in order to ensure that he will not interfere with witnesses or commit any serious offences, if released.

1.2 The alleged incident which led to the charges in question occurred on the 2nd of June, 2019 in a filling station in Longford town and was described in evidence as follows: The first-named Applicant drove a group of four other males to the premises in his Skoda jeep. The second-named Applicant went into the filling station shop, where he had a physical altercation with the young complainant. Blows were exchanged. This row continued as both males moved onto the forecourt of the station. There, they were joined by a number of people, including the other two Applicants. The first-named Applicant drove the same group away when the incident ended. This group included two juveniles (neither of whom are before the Court) who are sons of the first two Applicants and who were armed; one with a hurl and the other with an axe. The third-named Applicant is alleged to have punched the complainant after the initial physical altercation began in the shop.

1.3 The prosecuting guard gave evidence that CCTV footage obtained gives a clear picture of the participation of the Applicants, who were identified both by reference to this footage and by the complainant, who knows all the Applicants. The complainant suffered wounds to his back, which was slashed with the axe, a black eye and a bump to his head during the incident.

1.4 These Applicants do not deny being at the scene or being involved in an argument but deny the commission of any criminal offence. The evidence was that the Applicants had

no previous convictions and that none of them had ever been the subject of a bench warrant. It was not contested that there was an ongoing feud between the family of the Applicants and the family of the complainant.

1.5 Evidence was given by the prosecuting guard that, since this incident, five separate attacks have occurred on the home of the complainant and members of his immediate family. At his own home, shots were fired outside the house on two separate dates in February of 2020; on both occasions a kitchen window was broken by the bullets fired. On the 12th of February, again shots were fired but this time at the home of the complainant's brother, who lives nearby. A very young child was in the house at the time. Later in February, petrol bombs were left at both homes on separate dates. The first caused a small fire but was quickly extinguished, the second bomb caused more extensive damage to the house of the complainant's brother. As a result, his brother has moved home. Formal complaints were made to an Garda Siochana in each case, there is CCTV footage of each incident and these investigations are ongoing.

1.6 The complainant gave evidence confirming the series of attacks and asserting that he was in fear of the Applicants. While he did not purport to identify those responsible for firing the shots or planting the bombs described, he attributed all incidents to the Applicants, collectively, and to people connected with them. He pointed out that he had been living at that house for over 3 years and had never suffered any violence or threat of violence at home in all that time until these incidents. He was cross-examined about his evidence that he was in fear, in circumstances where he accepted that he had made a video challenging any of the Applicants to a fist fight. His reply was to the effect that a fist fight with one of them – or "a box", as he put it - was a very different thing to being shot.

1.7 It was put to the complainant that there was another potential suspect for the attacks but he was adamant that the only family or persons with whom he had any argument was the Applicants' family. The complainant added that he had seen the Applicants, when driving around the town, making gestures towards him, which he indicated by drawing a line across his throat with his finger in a gesture widely known to indicate a threat, whether specifically of a slashing or a more general threat of death or violence. He was not cross-examined on this aspect of his evidence.

1.8 None of the Applicants gave evidence. Therefore, the uncontradicted evidence was that the chief witness in the case against the Applicants has recently been the subject of three separate attacks, and his brother of two attacks, in circumstances where neither he nor his family had suffered any such adverse attention before. It was suggested to the complainant that he had an issue with another named person, but he denied this and there was no other evidence which might have tended to explain the timing and targeted nature of these shooting and bombing events. He also gave specific and, again, uncontradicted evidence of threatening gestures, this time made by the Applicants themselves.

1.9 The first and second-named Applicants were in custody from 21st February until the 14th of March, 2020 pending a bail application in relation to separate violent disorder charges

connected with a funeral and arising out of another feud. The two petrol bomb incidents occurred during this period. The three Applicants were charged and went into custody in respect of the filling station allegation of violent disorder in April of 2020. The incident at the funeral is said to have occurred in January of 2020, after the incident the subject matter of this application. The first-named Applicant was on bail for a third, unrelated offence of assault causing harm, at the time of both violent disorder incidents, one at the filling station in June 2019 and the other at the funeral in January 2020. He remains on bail in that regard though that offence has since been re-charged as an offence of causing serious harm.

1.10 The Respondent opposes bail in each case on two grounds: (i) that it is likely that the Applicants will interfere with this witness and (ii) that there is a real risk that a serious offence will be committed, in the case of each Applicant. The evidential basis for both objections is the same: the evidence of shots and bombs, and the intimidation described by the complainant.

2. Bail: General Principles

2.1 Every applicant has a right to bail. This arises due to their constitutional right to personal liberty and to a fair trial. In the words of Mr. Justice Walsh in the seminal case of *People (Attorney-General) v O'Callaghan* [1966] IR 501 [at page 513] *"the presumption of innocence until conviction is a very real thing and is not simply a procedural rule taking effect only at the trial."* In order to give effect to these rights, it follows that bail must be granted in every case unless it is necessary, for stated reasons and on a sound legal and evidential basis, to refuse bail. An application may be successfully opposed in limited circumstances which include proof that the applicant is likely to interfere with a witness in the case against him. This was one of a series of potential grounds for objection to bail confirmed by Walsh J. in O'Callaghan. In 1997, this list was increased by the provisions of the 1997 Bail Act, under which the second ground herein arises, namely, that there is a real risk that each Applicant will commit a serious offence, if released.

2.2 In a case where an objection appears well-founded, a judge must also consider whether there are conditions which could be imposed which would allow the court to admit the applicant to bail notwithstanding the probability of interference with a witness, or the risk of serious offending, as the case may be.

3. Proofs: O'Callaghan and Section 2 of the Bail Act, 1997

3.1 The burden of proof in every bail application is on the prosecution, as set out by the Supreme Court in *People (A.G.) v. Gilliland [1985] I.R. 643,* at page 646. As set out above, every bail application starts from the position that the applicant is entitled to bail. The only relevant ground in this case is the possible interference with a prosecution witness but the nature of the anticipated interference is such that it also comprises a ground for refusal under section 2 of the 1997 Bail Act, namely, that there is a real risk that a serious offence will be committed if bail is granted. Both grounds are relied upon by the Respondent. It is arguable that many, if not all, objections under this particular limb of the O'Callaghan case will also comprise evidence of the offence of intimidation of a

potential witness under section 41 of the Criminal Justice Act of 1999, which carries a maximum sentence of 10 years' imprisonment.

3.2 In *O'Callaghan*, the Supreme Court held that the standard of proof required in a case such as this is proof that the applicant will probably interfere with a witness. Walsh J. concluded that the sole focus of any bail application was the likelihood of the accused attempting to evade justice. He referred to the likelihood of interference with a witness, a juror or evidence in the case as being "*all but different aspects of the evasion of justice and may be treated as being within the fundamental test already referred to*". This test can be summarised as follows: a court must consider the seriousness of the offence charged, the nature of the evidence supporting the charge, and the record of the accused. His record includes previous convictions and previous failures to answer bail. Finally, and most importantly in this case, evidence as to the likelihood of his interference with witnesses must be assessed also.

3.3 In *Vickers v. Director of Public Prosecutions [2010]* 1 I.R. 548, the Supreme Court confirmed [at page 557] that the standard of proof required under section 2 (namely, that the refusal of bail is "reasonably considered necessary") is not the same as the probability standard required under *O'Callaghan*. The section 2 objection, that there is a real risk that a serious offence may be committed, must be considered by reference to the likelihood of the commission of an offence, which can only be assessed by reference to the evidence. The decision must also refer to the gravity of the apprehended offence. Approached in this way, the decision will be reasonable and proportionate. In the words of Mr. Justice Kearns, as he then was: *"If of the view that a real risk of the commission of a further serious offence has been demonstrated, the decision of the court must be proportionate to the nature and gravity of the apprehended further offence*."

3.4 Finally, the section itself, under s.2(2), as amended by the Bail Act 2007, provides that the Court shall consider a list of factors in deciding whether or not to uphold an objection under section 2, namely:

> *"(a) the nature and degree of seriousness of the offence with which the accused person is charged and the sentence likely to be imposed on conviction,*
>
> *(b) the nature and degree of seriousness of the offence apprehended and the sentence likely to be imposed on conviction,*
>
> *(c) the nature and strength of the evidence in support of the charge,*
>
> *(d) any conviction of the accused person for an offence committed while he or she was on bail,*
>
> *(e) any previous convictions…*
>
> *(f) any other offence in respect of which the accused person is charged and is awaiting trial,*

And, where it has taken into account one or more of the foregoing, it may also take into account—: [(i) and (ii) which are not relevant in this case] and

(iii) the nature and likelihood of any danger to the life or personal safety of any person or danger to the community that may be presented by the release on bail of a person charged with an offence punishable by imprisonment for a term of 10 years or by a more severe penalty."

3.5 The distinctions between the two tests include the matters arising under sections 2(2)(f) and 2(2)(iii); the first obliges the court to consider outstanding charges and the second permits it to consider the danger to any person or to the community which may be presented if an applicant charged with a very serious offence is released.

3.6 While similar wording is used in both tests, and indeed the effect may be similar, the two objections are treated differently. The first, under O'Callaghan requires an assessment of the facts in order to reach a view as to probability, the second, under section 2, requires an assessment of the same facts but with additional factors as set out above, in order to decide if it is reasonably necessary to refuse bail in order to prevent the risk that a serious offence will be committed and, if so, the refusal of bail must be a proportionate response bearing in mind the severity of the apprehended offence. Section 2 thus obliges the court to consider a list factors, all of which arise under O'Callaghan save the last two. In respect of any other offence in respect of which the accused has been charged, it should be noted that this cannot be a weighty factor in all but unusual circumstances. Given that an applicant, by definition, has not yet been convicted of an offence with which he is merely charged, this must carry less weight as a factor than evidence of a previous conviction.

3.7 In all cases, no matter which test is under consideration, conditions should always be considered in an effort to avoid having to refuse bail, if that is possible. This is a necessary corollary of the constitutional rights which mitigate in favour of granting bail and the proofs required in the case of any objection. If a condition, such as a residence requirement or an undertaking as to alcohol consumption, would reduce the likelihood of interference with a witness such that it is no longer probable or constitutes a more remote risk, this alone might be sufficient to ensure that an applicant is released, notwithstanding evidence to suggest a probability or real risk, absent such condition or conditions. The reasoning is that the conditions reduce the probability, and hence the risk, that he will breach his bail and may permit release. Bail having been given and conditions not honoured, however, an applicant is not only likely to find that his bail is revoked but he is far more likely be refused bail on a later occasion, as any submission that he will abide by conditions will have become significantly less reliable.

4. Inferences and Evidence

4.1 The Court was referred to the case of *Director of Public Prosecutions v Mulvey* [2014] IESC 18, [2014] 1 IR 119, by all counsel in this application. The Court was invited to hold that the Respondent could not rely on the evidence adduced as it fell short of proof that the Applicants, personally and directly, took part in any act of intimidation. The facts of

the Mulvey case assist in assessing this submission. Mr. Mulvey was accused of several offences, including violent disorder and demanding money with menaces. Bail was refused when gardaí gave evidence that the main prosecution witnesses had withdrawn their statements. The garda evidence included that the applicant had previous convictions, previous bench warrants, and a previous drug problem. He offered no evidence in relation to intimidation but the trial judge commented to the effect that *clearly* they had been intimidated. Mr. Mulvey gave direct evidence denying any knowledge of intimidation and confirmed that he was now drug-free. He was not cross-examined by counsel for the prosecutor. Bail was nonetheless refused, the judge having concluded that the witnesses had been intimidated. That decision was overturned, but not because there was no evidence to support the conclusion. Ms. Justice Dunne specifically held that the inference was one that could be drawn in an appropriate case. Here, however, the judge had made no finding of fact as regards the probability of interference with the witnesses in question. Further, it was noted by Dunne J. that, without the evidence of the witnesses in question, who had withdrawn their statements, there was effectively no case against the Applicant. Most importantly, the evidence of the applicant specifically denied knowledge of any intimidation, he was not cross-examined on this evidence and there was no opposing evidence and thus no evidential foundation for a finding that the applicant had any part in intimidation leading to withdrawal of statements.

4.2 A differently constituted Supreme Court considered a similar objection in the case of *The People (Director of Public Prosecutions) v. McLoughlin* [2010] 1 I.R. 590. There, the applicant was charged with assault causing harm. The stated objection was under O'Callaghan on the basis that the applicant would interfere with witnesses. Mr. McLoughlin was refused bail when the Judge heard evidence from garda witnesses that his brother had stood trial on related charges and the guards received complaints from witnesses common to both cases that they had been threatened. Those witnesses were not called. The High Court ruled that the evidence was hearsay, but admissible, and refused bail on the basis that the fears expressed by the Gardaí may have been genuine. The Supreme Court overturned the refusal on the basis that there was no evidence that *the court itself* determined that it was probable that witnesses would be intimidated if the applicant was admitted to bail. Denham J. specifically noted the connection between the trials; the witnesses were the same and the two accused, albeit not co-accused, were brothers. However, she noted that there was no specific evidence relating to the possibility of interference with a witness in the applicant's case. Denham J. commented, at para. 14 of her judgment, that

> *"a finding that as a matter of probability, a person had or would, or someone on his direction had or would, intimidate or interfere with witnesses, should be made expressly by the court. The test is not whether the members of An Garda Síochána have fears or an apprehension for witnesses. The court itself should be satisfied of the probability of the risk of interference or intimidation and make that finding expressly." [Emphasis added]*

4.3 Mr. Justice Hardiman also delivered a judgment and the unanimous view of the Court (Geoghegan J. concurring with both) was that any objection must be established as a matter of probability, and any finding in respect of interference should be stated expressly as a finding of the court. In his judgment, Hardiman J. confirmed the importance of the O'Callaghan judgments, despite recent legislative amendments, referred to a quotation from Walsh J., at page 517 of O'Callaghan, and observed (at para. 59) as set out:

> *"58. [from Walsh J. in O'Callaghan]*
>
> > *"Where … there are objections they must be related to the grounds upon which bail may validly be refused. Furthermore they cannot be simply made in vacuo but when made must be supported by sufficient evidence to enable the court to arrive at a conclusion of probability and the objections made must be open to questioning on the part of the accused or his counsel. It is not sufficient for the opposing authority or witness to have a belief nor can the court simply act upon the belief of someone else. It must itself be satisfied that the objection is sufficient to enable the Court to arrive at the necessary conclusion of probability'.*
>
> *59. That passage seems to me to be absolutely central in our system of judicial control of liberty or custody of a person who has been charged with, but not convicted of, a criminal offence. It is authority for two central propositions, firstly that the prosecution must establish their objection to bail as a matter of probability and secondly, that the evidence supporting the objection must have the degree of cogency which satisfies the court itself that the objection has been made out as a probability. If the court could deprive a person of liberty simply by noting that the government, or the Director of Public Prosecutions, or one or more Gardaí sincerely believe that the objection is made out, then the court would be abdicating its duty in favour of those persons or bodies."*

4.4 Hardiman J. also referred, in introductory remarks to his judgment, to the argument that the evidence of threats relied upon by the respondent in that case was not only hearsay, it did not tend to implicate the applicant personally in any such conduct. This argument was not considered further by him given his views as to the necessity for express findings of fact by the court itself. The phrasing used by Denham J, above, was thus used without specific reference to her reasoning for so finding, but in circumstances where the Court's attention had been drawn to the issue of indirect interference in argument. There, as will be recalled, the factual matrix was that the (hearsay) evidence referred to threats made to witnesses in the context of the applicant's brother's case, not his own. There was no evidence as to who had made the alleged threats and no opportunity to cross-examine the witnesses or test the credibility of the evidence.

4.5 In *McDonagh v Governor of Cloverhill Prison* [2005] IESC 4, [2005] 1 IR 394, McGuinness J. delivered judgment in an Article 40 or *habeas corpus* case which arose out of a bail hearing in which hearsay evidence of an ongoing feud was adduced without notice to the applicants and the subsequent refusal of bail was overturned by the Supreme Court. There, as McGuinness J. pointed out, the respondent in the bail application sought to rely

on the probability that the applicants would interfere with witnesses but the judge at first instance concluded, without reference to that objection, that the applicants might shoot somebody and refused bail. There was no evidence to support the conclusion he appeared to have reached and no objection which related directly to it, according to McGuinness J., who held that this appeared to be a finding that there was a risk that the applicants would commit a serious offence under section 2(1) of the Bail Act.

4.6 This Court, therefore, must assess the weight of the evidence offered in respect of each objection and come to its own view as to whether there is any likelihood of interference with witnesses and, as a separate exercise, whether there is a real risk that a serious offence will be committed by any of these Applicants if he is admitted to bail. If either or both objection is established, the Court must then consider whether there are conditions which would reduce the probability or risk such as to justify admitting the applicant to bail notwithstanding its finding.

5. Inferences and Evidence in this Case

5.1 The prosecuting garda and the complainant both gave evidence and both were available for cross-examination by the Applicants. The evidence of the attacks is outlined above, as is the fact that the three Applicants are brothers. What was suggested to the witnesses was that, in at least two cases, the Applicants had been in custody for the latest two attacks and could not have carried them out personally. While this fact was accepted, neither witness accepted the proposition that this meant the Applicants had no involvement with the campaign of violence against the witness. When it was put to the complainant that one of the Applicants was not involved, reminding him that two Applicants had been in prison at the time of the last two incidents, the witness replied that the family was a big one and there were other brothers not before the courts, one of whom was named. In other words, the positive evidence was that the Applicants, whether in person or via members of their family, were conducting a campaign against the complainant and his family and the violence was directly related to this case. None of the Applicants gave evidence. It was specifically accepted that there was an ongoing feud between the family of the complainant and the family of the Applicants and it was implicitly accepted that the attacks had indeed taken place. The garda evidence of formal complaints having been made was not challenged either and, while hearsay as to the nature of the attacks, is admissible evidence that the complaints were made and evidence as to the identity of the complainants.

5.2 A court can make inferences, using established facts to reach conclusions of fact on the basis of the established evidence. In a bail application, the burden of proof is on the prosecution and the standard of proof is as set out above: the balance of probabilities and the likelihood of the commission of serious offences.

5.3 In terms of the objection that there will be interference with a witness, what must be proved is a probability of interference but it is not necessary that it be apprehended that this will be carried out by the applicant in person. In the one case in which it appears to have arisen directly, McLoughlin, while not specifically ruled upon, the same issue was argued by counsel and the wording of Denham J. appears to suggest that this is the

correct interpretation. This conclusion is also supported by the decision of the Supreme Court in Mulvey, considered further below. If it were otherwise, it would be a simple matter to ensure that only associates carried out threats or acts of intimidation and any applicant could easily claim his right to bail by establishing an alibi for the time of the threat carried out by his associate. Common sense must be applied in such cases. The ground of objection is the likelihood of interference with witnesses in connection with the case against the applicant, not the likelihood that the applicant himself will interfere directly with witnesses.

5.4 Dunne J. concluded in *Mulvey* that while the circumstances permitted an inference that there had been intimidation, the prosecution had not made that case and the evidence of the applicant, denying intimidation, was not challenged. The case of Mulvey, therefore, is not authority for the proposition that the Respondent must prove that an applicant has, personally, engaged in intimidation. It is in fact authority for the proposition that the courts may infer such intimidation or interference from the surrounding facts, even absent specific evidence implicating the applicant in person. It was not open to that court, on that evidence, to find that there had been intimidation but it is open to this Court.

5.5 Here, in marked contrast to the *Mulvey* case, the prosecution case was focused entirely on the likelihood of future interference and intimidation based on the evidence of such conduct in the past. The evidence of past interference and intimidation was not hearsay, it was direct evidence and it was not seriously challenged. Instead, in cross-examination it was suggested that it might have been somebody other than the individual applicants who carried out these acts of violence. The proposition that the perpetrators were wholly unconnected with these Applicants was not accepted by the witnesses and it appears to this Court, on the evidence, to be implausible.

5.6 There was cogent evidence that the complainant and his family had been the subject of five serious, sinister and cowardly attacks by persons unknown. There is an ongoing feud between the Applicants' family and that of the complainant and outstanding charges in respect of alleged assaults on the complainant. The three Applicants are not only brothers, their two co-accused who are not before the Court are also relations of theirs.

5.7 The Court was invited to treat these facts as a co-incidence. In circumstances where there is positive evidence that the complainant's family has never experienced any comparable difficulty in the past, it seems overwhelmingly likely that the timing of these events is no co-incidence. The targeted nature of these attacks makes it likely that they are related solely to these outstanding charges and that the attacks have been carried out in order to prevent the witness from testifying at trial, in other words, to interfere with his testimony against these Applicants. To date, these events have succeeded in frightening him and his family but not yet to the extent that he will not testify.

5.8 As a matter of fact, this Court accepts that the complainant was intimidated by the series of attacks that occurred, and that he associates these attacks with the Applicants and is in fear of the Applicants and their associates, specifically other family members, as a result. It is clear that, while apprehensive of his own person, the witness was particularly

affected by the potential threat to his wider family and had even sought to meet the Applicants to resolve the matter by way of fist fight. While this does not suggest that the Applicant is in fact intimidated, his evidence as to the distinction between a fist fight and a shooting incident was chilling and convincing as to his state of mind. The evidence, therefore, comprised an uncontradicted description of a campaign of violence orchestrated by the Applicants or others on their behalf which was intended to have, and has had, the effect of intimidating the complainant. The Court is satisfied as a matter of probability, by the timing and targeted nature of the attacks and the uncontested evidence of the complainant as to who is responsible in terms of motivation and opportunity, that the Applicants, directly or through their associates, are responsible for the attacks.

5.9 As a separate finding of fact, the Court also accepts that the Applicants, and each of them, has let the complainant know, by his gestures, that he, the witness, should be afraid of them. This was evidence given in a wholly unprompted and natural way and, again, it was not challenged by any of the Applicants. This evidence supports the finding that the Applicants themselves were responsible for the more violent campaign against this witness and his family.

5.10 This Court is satisfied that, due to the sustained campaign of serious violence, involving firearms and guns, that the likelihood is that the interference with, and intimidation of the complainant and his family will continue if the Applicants are released.

5.11 It is clear that two of the attacks occurred on a date after the Applicants had been remanded in custody, suggesting that such attacks may continue whether they are on bail or not. In those circumstances, the Court must consider if it should release the Applicants, despite the finding that they bear some responsibility for the attacks. As already noted, the attacks have been targeted and are very likely to have been carried out with a view to interfering with this witness. What is the duty of the Court if the attacks may continue even if the Applicants remain in custody? As a matter of fact, the campaign against the complainant is easier to conduct if on bail rather than if remanded in custody. The Court has a duty to protect the members of the public involved, specifically the complainant and his family, and also has a duty to protect its own processes. The function of the Court in a bail case is to consider whether the applicant will attempt to evade justice, to use the words of Walsh J. If released, each one of these Applicants is likely to attempt to evade justice by continuing to threaten the complainant and his family. Each one also poses a real risk to this potential witness and to his family and the Court cannot fail to mitigate that risk just because the Applicants have shown themselves capable of orchestrating or continuing a similar campaign when in custody. Insofar as it is possible, the Court's function in such a case is to deplore and prevent the continued use of violence, particularly when it has been proved that the violence is probably linked to a pending case and is probably intended to frustrate the administration of justice.

6. Decision in respect of Bail

6.1 In each case, the Court must also look at all factors which are relevant to any bail application. The alleged offence is a very serious one. A large group of males is said to have attacked a man, two of whom used weapons; an axe and a hurl. The complainant had slash wounds on his back as a result of the attack. Members of the group, most or all of whom are from the one family, have been charged with violent disorder. The evidence of violent disorder in this case is strong. It is contained in CCTV footage and in the statement of the complainant. Each of the Applicants is facing a potential custodial sentence, even though none of the three has previous convictions. While a first offence is usually treated more leniently than any other, this is not the case where it involves sustained violence, weapons and injuries, particularly if there is no plea of guilty. After a trial in a case such as this, the most significant argument in mitigation is no longer available to the accused. Therefore, the severity of the offences suggests that custodial sentences will be imposed.

6.2 The preceding factors are all relevant as regards both objections. In considering the objection under section 2, the risk of commission of serious offences, there are further factors. Under section 2(f), any other offence in respect of which the accused person is charged and is awaiting trial must be taken into account. This factor applies to the first and second-named Applicants. Such charges, it seems to me, would usually only be relevant in that there is a potentially larger penalty which will be imposed if the Applicants are convicted of both offences, so it is difficult to assign much weight to this factor without conducting a hearing devoted to the strength of the evidence in that separate allegation. It is a minimally significant fact, therefore. It would be otherwise had the two Applicants, who are eached charged with separate offences, been on bail for those offences, but that is not the case here. It is worth noting, however, that the evidence of the other charges was adduced without objection and included the salient fact that the other allegations arose out of an entirely separate feud with another family. So what significance it has comes from the similarity of the allegation rather than the fact of outstanding charges. This is relevant but is somewhat different to evidence of outstanding charges, simpliciter. The evidence of a separate feud involving two of the Applicants is relevant but not such a significant factor as it might otherwise be given the serious nature of the acts of intimidation already carried out, directly or otherwise, by the Applicants.

6.3 In respect of the second objection under the 1997 Act, the Court must also consider section 2(1)(b) the nature and degree of seriousness of the offence apprehended and the sentence likely to be imposed on conviction. Given the evidence of shots fired and petrol bombs planted, the apprehended offences are very serious and the potential sentences involved are lengthy custodial sentences, even for those who have no previous convictions. The apprehension, in this case, is based on evidence of offences which have taken place already, probably at the direction of these Applicants. That being so, it is a real risk that similar acts of intimidation will recur if the Applicants are released. The reason and motivation for the acts has not changed and, if anything, there is more incentive to threaten the complainant now that he has been courageous enough to attend in court and testify as to what has happened, who was responsible and how it has

affected himself and his family. The limited success achieved, in that their acts have produced some fear on his part, are likely to encourage further efforts on the part of the Applicants to achieve the objective of evading justice if they are released and at liberty to continue this campaign; it is hardly likely that their objective will change or that their efforts will become milder or less sinister. Thus, under section 2(1)(b), the apprehended risk is great indeed and is of offences at least as serious as those charged.

6.4 Finally, in respect of the section 2 objection, the Court may also take into account, under section 2(2)(iii), the nature and likelihood of any danger to the life or personal safety of any person or danger to the community that may be presented by the release on bail of a person charged with an offence punishable by imprisonment for a term of 10 years or by a more severe penalty. The offence of violent disorder carries a penalty of up to 10 years' imprisonment. The conclusions above make it clear that this Court has considered the safety of the complainant and his family in reaching its decision on bail in all three applications.

6.5 In the case of all Applicants, as set out above, the Court is satisfied that the prosecution has proved that there is a likelihood that the Applicants, and each of them, will interfere with and intimidate, the main witness for the prosecution if they are released on bail. The evidence on which that finding is based was clear, cogent and convincing. It was sufficient to satisfy the Court that they have already sought to do exactly that and it is therefore likely that they will continue to seek to evade justice by intimidating the witness into silence, if they can. There has been a campaign of violence which was directly related to these charges. The target has been the main witness against them and it has succeeded insofar as he is now in fear of all of the Applicants. The fact that the complainant was sufficiently confident to give evidence in this Application does not take from his credible evidence of being in fear and his reasonable conclusions as to who was responsible for the various attacks in February of 2020. There is no other plausible suspect for these attacks in terms of motivation or opportunity. The Respondent is not required to prove that the Applicants carried out every, or any, of the attacks in person. The overwhelming likelihood is that the various attacks were carried out with their knowledge and approval as it is only these three men who stand to benefit from intimidation of or interference with this complainant. This evidence alone is sufficient evidence to find that the objections made by the State are well-founded. This finding is supported, moreover, by the complainant's evidence that the Applicants have been making threatening gestures when he sees them in Longford town. This latter evidence is personal to the Applicants and, even if the evidence as to the attacks was not sufficient, which it is, this evidence supports the finding that it is likely, on the balance of probabilities that the Applicants will continue to interfere with this witness and it also supports the finding that it is likely that there is a real risk of their continuing to intimidate this witness, by similar acts, if released. Any repetition of such conduct would constitute a serious offence, as defined by the Bail Act of 1997, as it constitutes not only a potential offence of intimidation of a witness, but various firearms offences also, all of which carries potential maximum sentences of 5 years or more. As set out above, the apprehended offences are so serious

that the refusal of bail in respect of the offences charged is both reasonable and proportionate.

6.6 Turning to the specific evidence in respect of each Applicant in respect of the factors which the Court has considered: The positive evidence of the participation by all three in the incident the subject of these charges is extremely strong. The extent of participation is the sole matter at issue, it appears.

6.7 As regards the first-named Applicant, he has already enjoyed his constitutional entitlement to bail in respect of an unrelated assault charge and, despite agreeing to keep the peace and be of good behaviour as part of that bail bond, he finds himself the subject of not one, but two charges of violent disorder since then, together with related assault charges. While he is entitled to be presumed innocent at this stage, the strength of the evidence against him must be assessed on the basis that the stronger it is, the stronger the incentive he has to evade justice. This is a common tension in a bail application but an assessment of the strength of the evidence is a factor only and does not dispel the presumption of innocence, which remains intact.

6.8 As regards these charges, the evidence against the first-named Applicant is very strong. It was submitted that this Applicant was seen pulling at least one participant away from the scene of the filling station fracas and an argument was made that this tended to show that he was not involved in any joint enterprise with the other participants. If there is evidence of a joint enterprise (and there was strong evidence in this application of exactly that), to paraphrase the court in *R v Becerra and Cooper* (1975) 62 Cr App R 212, the Applicant would have to do something vastly more effective than pulling one of the participants away to withdraw from an apparent agreement to engage in such a fight, where he has been the one to drive the accused participants to the location of the fracas and has also apparently willingly driven them away, weapons and all.

6.9 In the case of the second-named Applicant, the positive evidence of his participation in the alleged violent disorder is very strong. The extent of his participation is the sole matter at issue, it appears. It was accepted that the complainant threw the first punch in this incident and the suggestion appears to be that the second-named Applicant might have been acting in self-defence. Given the evidence that he was then joined by his family who had driven to the scene, two of them armed with an axe and a hurl, any self-defence aspect of the case seems weak. He too has been charged with a second and similar incident of violent disorder which occurred since the date of this offence but before the charges were brought. Both incidents are accepted to have occurred in the context of separate family feuds. As explained above the presumption of innocence renders this evidence less significant. The Court's findings as to the nature of the attacks on the complainant and his family is decisive in his case also, therefore, and, given the nature of the offence charged and the evidence as a whole, the first two Applicants are refused bail on both grounds; they are not only likely to interfere with this witness, there is also a likelihood that they will commit a serious offence against the complainant and his family, if released.

6.10 The third-named Applicant is in a slightly different position. He has never been charged with any other offence. However, the evidence of interference and intimidation to date is equally damning in respect of all three Applicants. The evidence against him in respect of the charges is that he was seen to punch the complainant at one point during the incident. He is also alleged to have remained at the filling station with his family, as two of them wielded an axe and a hurl, respectively and left with them in the Skoda jeep. The advantage that he has not been charged with any, let alone any similar offence is of minimal significance, as explained above. This is insufficient, in my view, to put him into a different category to that of his co-accused. Finally, it should be recalled also that the uncontested evidence was that all three Applicants, by gestures described by the complainant, had personally engaged in threatening behaviour.

6.11 Having so found, the next question is whether there are any conditions that might reassure the Court that the Applicants can be safely remanded on bail. It is difficult to conceive of conditions which would reassure the Court that these Applicants will not interfere with this witness, or that they will not commit a serious offence in so doing, if released on bail. The nature of the charges, events which occurred during the day at a public place, taken together with the evidence of a campaign of violence against the main witness in the case and his family, which occurred at different times and at the homes of two branches of the same family, involve such a level of violence, spontaneous and calculated, that the combined evidence satisfies the Court that these Applicants cannot be released on bail. There is no curfew, contact or residence requirement which could prevent a similar attack, particularly where, as this Court has found, the Applicants are capable of directing others to carry out such attacks.

7. Conclusion

7.1 Bail is refused in all three cases.