SUPREME COURT OF QUEENSLAND

CITATION:	*R v Wills* [2016] QSC 316
PARTIES:	**R** (respondent) **v** **DEAN MARK WILLS** (applicant)
FILE NO/S:	Indictment No 575 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application for a separate trial
DELIVERED ON:	25 August 2016
DELIVERED AT:	Brisbane
HEARING DATE:	17 August 2016
JUDGE:	Mullins J
ORDER:	**The application by Mr Wills to be tried separately from Mr Hansen is refused.**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – INFORMATION, INDICTMENT OR PRESENTMENT – JOINDER – JOINT OR SEPARATE TRIAL – EMBARRASSMENT OR PREJUDICE – where co-defendants are charged with murder and the prosecution case is circumstantial – where one defendant applies to be tried separately – where co-defendant made statements admissible against him alone that could be treated as implicating the other defendant in the murder – where there is a danger a jury would use evidence inadmissible against the defendant to bolster the case against him or in an impermissible way – whether potential prejudice can be addressed by appropriate directions that avoid positive injustice to the defendant seeking the separate trial *Criminal Code* (Qld), s 7, s 8, s 597B *Director of Public Prosecutions v Mwamba* [2015] VSCA 338, cited *Madubuko v The Queen* (2011) 210 A Crim R 249; [2011] NSWCCA 135, considered *R v Belford & Bound* [2011] QCA 43, considered *R v Roughan & Jones* [2007] QCA 443, cited *R v Swan* [2013] QCA 217, considered *R v Vecchio & Tredrea* [2016] QCA 71, considered *Webb v The Queen* (1994) 181 CLR 41; [1994] HCA 30, followed

COUNSEL:	A J Edwards for the applicant C W Heaton QC for the respondent
SOLICITORS:	Peter Shields Lawyers for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] Mr Wills and Mr Hansen are charged on the same indictment that on or about 23 March 2001 at Southport they murdered Mr Britza. Before Mr Hansen was joined on the same indictment as Mr Wills, the trial of Mr Wills for the charge of murder took place before Burns J between 11 and 25 February 2015. It was a hung jury. The second trial of both Mr Wills and Mr Hansen took place before me between 1 and 14 March 2016. It was a hung jury in respect of both defendants. Both defendants are listed for another trial to commence before me on 28 November 2016. Mr Wills applies pursuant to s 597B of the *Criminal Code* (Qld) to be tried separately from Mr Hansen.

Summary of relevant facts

[2] On 2 March 2008 Mr Britza's remains were found in a shallow grave under the Canungra Creek Bridge partially covered in a blue tarpaulin. The prosecution case is that Mr Britza was murdered some seven years earlier on 23 March 2001 at an industrial shed in Minnie Street, Southport which was a "bikie chop shop" where cars were re-identified, stolen property was bought and sold and methylamphetamine supplied.

[3] There were four witnesses who gave evidence as to Mr Britza being at the shed on that day. Each witness has given multiple and conflicting accounts, but generally they allege that in the daylight hours (apart from one who says at night time) two or three men arrived with a woman in a white station wagon. (There is also some conflict in the evidence about the colour of the car.) The gist of the evidence is that the men assaulted Mr Britza with an iron bar, before wrapping him in the tarpaulin from the shed and possibly stabbing him several times through the tarpaulin, and then threw him into the back of the station wagon and drove away.

[4] The woman was identified as Ms Clarke who was Mr Wills' then partner. She was charged with murder. Her trial proceeded separately and she was convicted.

[5] None of the witnesses in the shed recognised the men or chose photographs of either Mr Wills or Mr Hansen from photoboards. The witnesses gave variable and inconsistent versions of what the men looked like. There is no forensic evidence to link either Mr Wills or Mr Hansen to the murder.

[6] Apart from the evidence of witnesses at the shed at the time of the assault, there was evidence of witnesses who were present at the Arundel house rented by Mr Hansen on 23 March 2001. These witnesses included the woman with whom Mr Hansen was then in a relationship (to whom I will refer as "Mr Hansen's girlfriend"), Mr Crisp who was another

tenant of the house, and Mr Taylor (who claimed to be a good friend of Mr Hansen's brother, but that was denied by Mr Hansen's brother). (It is also of note that no one else recalled Mr Taylor being at the house on 23 March 2001.) They all gave evidence to the effect that in the evening Mr Hansen left the house with Mr Wills. Each of Mr Crisp and Mr Taylor gave evidence that Mr Hansen then returned and each saw him collect a couple of sheets or a sheet or a blanket. Mr Taylor gave evidence of what he heard Mr Hansen say to his brother. Mr Crisp had a conversation with Mr Hansen the next day or the day after in which he recalled that Mr Hansen said that "him and Dean had bashed someone and it had gotten a bit out of hand". Mr Hansen's girlfriend did not say in her evidence that she had given a sheet or blanket to Mr Hansen, but she did give evidence of what Mr Hansen had said to her before he went out and what he looked like and what he said when he returned home when she was in bed.

The prosecution case

[7] At the joint trial the prosecution framed its case in terms that the defendants were the two men who and attacked and killed Mr Britza. The prosecution's primary case based on s 7 of the *Code* was that either or both of the two defendants did the act or acts that caused Mr Britza's death and, if it was only one of them who did the acts, then the other encouraged or aided the defendant who did the acts by joining in the physical assault on Mt Britza or encouraging the other by his physical presence. The prosecution's alternative case based on s 8 of the *Code* was that the defendants had a common intention to prosecute an unlawful purpose of assaulting Mr Britza, the murder was committed in carrying out the unlawful purpose, and the offence of murder was of such a nature that its commission was a probable consequence of the prosecution of that common unlawful purpose.

[8] There is evidence in the prosecution case that is difficult to reconcile and which was no doubt attributable in some part to the fact that witnesses were not interviewed about the events on or around 23 March 2001 until more than eight years after the alleged murder occurred. For example, the preponderance of evidence from witnesses who identify the timing of events at the shed is that the assault occurred in daylight hours. This is consistent with the fact that the last call that was made to Mr Britza's mobile telephone that was answered was at 12:15:15 pm on 23 March 2001 which was the call that brought Mr Britza to the shed. The prosecution notes the unreliability of witnesses at the shed, as they were consuming drugs that day, but the one Southgate brother at the shed who said the attack occurred in the night time did not take drugs that day.

[9] The evidence of the shed witnesses that Mr Britza was killed during the day does not fit easily with the evidence of the witnesses at Mr Hansen's home that had him at his home after work finished at 3 pm or 4 pm and not leaving the home with Mr Wills until early in the night time or the evening. There was evidence that at 8:20 pm on 23 March 2001 Mr Hansen was booked for a noisy exhaust by a police officer at Labrador.

[10] The prosecution case is entirely circumstantial as to the identification of Mr Wills as one of the men who attacked Mr Britza in the shed. The prosecution relies on the following evidence to support the circumstantial case against Mr Wills.

[11] The movements and conversations involving Mr Wills shortly prior to Mr Britza being killed (including Mr Taylor's evidence that he said to Mr Wills that Mr Britza had told him the Minnie Street shed was a "Finks chop shop" and that Mr Wills' reaction was he was annoyed and made a telephone call in which he asked if a guy named Darren went there and asked them to keep him there until he got there, as well as evidence that Mr Wills left the Arundel home with Mr Hansen in the white Holden station wagon).

[12] Mr Hansen's white station wagon which was arguably the same as or matched the station wagon into which Mr Britza was loaded at the shed was found burned out the morning after the murder.

[13] Ms Clarke arrived at the shed with the men who committed the murder.

[14] After the finding of Mr Britza's body was made public on 30 October 2009, telephone conversations between Ms Clarke and Mr Wills on 30 and 31 October 2009 were recorded. It is conceded by Mr Wills' counsel that the conversations amount to strong circumstantial evidence that Mr Wills was involved in the disposal of the body. (It is arguable that the conversations are consistent with Mr Wills' having some knowledge of Ms Clarke's involvement in the killing of Mr Britza, even if he was not involved in the killing. The prosecution relies on the conversations, however, as pointing to Mr Wills' involvement in the murder.)

[15] Although the witnesses at the shed were not always consistent with the description of the attackers, there was evidence that one man was taller and the other was shorter and stockier which is a description that generally fits Mr Hansen and Mr Wills respectively.

[16] Mr Crisp gave evidence that after Mr Hansen and Mr Wills left the house, Mr Hansen returned to the house and retrieved a sheet or blanket. Although the prosecution does not rely in its case against Mr Wills on Mr Crisp's observations about Mr Hansen's demeanour on his return to the home or the conversation he had with Mr Hansen at that time, the prosecution does rely on Mr Crisp's evidence that Mr Hansen retrieved a sheet or blanket that he took away with him as admissible in the case against Mr Wills on the basis of the *Tripodi* principle, as an act in furtherance of the common purpose of assaulting Mr Britza, as Mr Britza's body was found wrapped in a pink sheet. During the hearing of this application, counsel on behalf of Mr Wills conceded that the evidence from Mr Crisp (and Mr Taylor) about seeing Mr Hansen with the blanket or sheet would be admissible against Mr Wills.

Evidence admissible only against Mr Hansen

[17] There is evidence that is admissible in the prosecution's case against Mr Hansen which could not be used in any way by the jury in assessing the prosecution case against Mr Wills. That evidence is from Mr Hansen's girlfriend as to what Mr Hansen said to her before he went out that evening that "we're going to go shut someone up" and her observations of Mr Hansen when he returned to the house later that night that he was shaking and had mud all over him. She said that Mr Hansen said to her "we shut him up". Mr Crisp gave evidence of the conversation he subsequently had with Mr Hansen about what had happened that evening and he said that Mr Hansen said "him and Dean

had bashed someone, and it had gotten a bit out of hand". There is also the evidence from Mr Taylor of what he overheard on Mr Hansen's return to the house. Mr Taylor said that Mr Hansen yelled at his brother telling him this was all his fault and asked his girlfriend to get some sheets which she handed to him and he left again. Mr Taylor said that Mr Hansen came back again and spoke to another man in the house saying that he had lost the keys and he needed help to hotwire the car and that Mr Hansen told his brother that they had to burn his car. Mr Taylor said that Mr Hansen returned again later and he heard him say to his brother "I fucked up. He's gone".

Prejudice claimed by Mr Wills from a joint trial

[18] Whereas there is no direct evidence against Mr Wills that he was present at the time of the murder, there is direct evidence against Mr Hansen which, if accepted by a jury as an admission by Mr Hansen that he "bashed" Mr Britza, is capable of proving that he was present when Mr Britza was attacked in the shed. This is the evidence of his behaviour and statements made after the attack on Britza is alleged to have occurred which includes statements that also implicate Mr Wills in the attack at a time when, on the prosecution case, there is admissible evidence against Mr Wills that Mr Wills was with Mr Hansen. It is therefore argued on behalf of Mr Wills there is a danger that a jury would use this evidence of admissions by Mr Hansen which is inadmissible against Mr Wills to bolster the weaker circumstantial identification evidence against Mr Wills. It is also submitted that any direction to the jury that the evidence admissible in the case against Mr Hansen alone is not admissible against Mr Wills (including for the purpose of assessing the credibility of witnesses such as Mr Taylor in respect of evidence which is admissible against Mr Wills alone) would not be sufficient to put Mr Hansen's statements and behaviour out of their minds when considering the prosecution case against Mr Wills.

[19] The potential prejudice is also explained in this way. Because of the evidence that is admissible only against Mr Hansen, the jury may be satisfied beyond reasonable doubt that the prosecution has proved Mr Hansen was one of the two men who killed Mr Britza in the shed and use that conclusion to infer impermissibly that Mr Wills had to be the other man, because of his build being shorter and stockier than the taller Mr Hansen.

[20] Another aspect of prejudice which flows from a joint trial is that Mr Taylor is an important witness against both defendants, but his credibility is in issue, and the jury may impermissibly use the evidence of admissions attributed to Mr Hansen to bolster the evidence of Mr Taylor that is admissible in the case against Mr Wills.

Relevant law

[21] There is no dispute about the relevant legal principles to be applied on an application for a separate trial.

[22] The starting point is that when defendants are charged with committing a crime jointly, prima facie there should be a joint trial, as was explained by Toohey J (with whom Mason CJ and McHugh J agreed) in *Webb v The Queen* (1994) 181 CLR 41, 88-89:

> "King C.J. dealt with this ground by pointing out that there are 'strong reasons of principle and policy why persons charged with committing an offence

> jointly ought to be tried together. That is particularly so where each seeks to cast the blame on the other.' What King C.J. referred to as 'strong reasons of principle and policy' were discussed by his Honour in *Reg. v. Collie*. I respectfully agree with that discussion which emphasizes that when accused are charged with committing a crime jointly, prima facie there should be a joint trial. There are administrative factors pointing in that direction but, more importantly, consideration by the same jury at the same trial is likely to avoid inconsistent verdicts, particularly when each accused tries to cast the blame on the other or others. There are of course dangers for an accused in a joint trial by reason of the admission of evidence which would not be admitted at the trial of one accused. That risk must be obviated by express and careful directions to the jury as to the use they may make of the evidence so far as it concerns each accused.
>
> In the end the critical question before an appellate court in these circumstances is whether, by reason of the joint trial, there has been a substantial miscarriage of justice or, put another way, whether improper prejudice has been created against an accused." (*footnotes omitted*)

[23] The applicable principles and authorities were summarised by Fraser JA in *R v Belford & Bound* [2011] QCA 43 at [104]. It is not sufficient that evidence admissible against one defendant, but inadmissible against the other, will be put before the jury. If the question of prejudice can be addressed by directions, the general rule is that juries understand and follow the directions they are given by trial judges. It becomes a question of whether it is "impossible or at least extremely difficult to disentangle" the evidence that would not be admitted at the trial of one defendant and "the evidence against one is highly prejudicial against the other". The expression used in the authorities to decide whether it is a case for a separate trial is whether the directions that would need to be given by the trial judge to avoid prejudice require "remarkable mental feats" on the part of the jury.

[24] The appellant in *Madubuko v The Queen* (2011) 210 A Crim R 249 appealed unsuccessfully on the ground that he should have been granted a separate trial from the co-accused. One of the co-accused participated in a record of interview and that record of interview was admitted in the trial as evidence against her. During the course of the trial the other co-accused consented to that record of interview being admitted against him. The appellant then applied unsuccessfully for a separate trial from his co-accused. Hodgson JA (with whom the other members of the court agreed) canvassed the relevant authorities and at [32] expressed the determinative question in that case, on whether there should have been be separate trials, as whether there was a significant risk that prejudicial material in the record of interview which was not admissible against the appellant could have turned a potential acquittal into a conviction, resulting in positive injustice from a joint trial.

[25] The appeal in *R v Swan* [2013] QCA 217 succeeded on the basis that the appellant Swan should have had a separate trial. Swan and his co-accused Smith were charged with murder. Smith had given three statements and an interview to police and provided a version of events which implicated Swan and another person Mondientz in the assault of the victim. All the persons were travelling together with a vehicle and after Mondientz had been dropped off, Swan took the victim and Smith back to the house where they all resided and Smith said she could hear Swan punching or kicking the victim and the victim

died. Swan was interviewed by police and gave a version that had Smith and Mondientz punching the victim whilst they were travelling the vehicle.

[26] Mondientz gave evidence at the trial for the prosecution against both Swan and Smith. Smith's evidence contained significant support for parts of what Mondientz had said. Holmes JA (as her Honour then was) considered at [47] it was not possible for a trial judge to give adequate directions to ensure the jury undertook the assessment of Mondientz' credit by reference to the two separate sets of evidence admissible respectively against Swan and Smith and then stated:

> "Given that Swan's conviction depended on Mondientz' evidence; given the many causes for concern about her credibility; and given that her credit is likely to have been bolstered by evidence inadmissible against him; one must conclude that Swan has been denied a real chance of acquittal by the failure to grant him a separate trial."

[27] One of the appellants in *R v Vecchio & Tredrea* [2016] QCA 71 appealed on the basis that there was a miscarriage of justice from the trial judge's refusal to order a separate trial of the charge against him. Vecchio was convicted of one count of rape and Tredrea was convicted of one count of rape and one count of indecent assault. Both appellants had participated in records of interview which were played in the joint trial. The complainant had travelled with the appellants after leaving a hotel and ended up at a house with the appellants. She was intoxicated and ill on the night in question and did not have a good memory of events and her credibility was in issue. Tredrea in his police interview gave evidence of the complainant spending time in the bathroom and vomiting. At the joint trial neither appellant called or gave evidence and in each case the issue in respect of the sexual intercourse (or attempted sexual intercourse in Tredea's case) was whether the complainant consented and, if not, whether each appellant did not honestly and reasonably believe that the complainant consented. It was argued by Vecchio that there was a risk that the content of Tredrea's interview would have had the effect of bolstering the complainant's credibility before the jury, as the admissions made by Tredrea were more closely aligned with the complainant's evidence of her intoxication and illness than the admissions made by Vecchio. In the summing up, the trial judge gave the usual directions about considering the case against one defendant on the basis of the evidence admitted in relation to that defendant and in particular the recorded interview with each defendant was only admitted in the trial of that defendant. The trial judge then stated:

> "To be clear about it, it is not permissible to use anything said by one defendant as proof of or as tending to prove any fact or for that matter in any way when considering the case of the other defendant."

[28] Fraser JA (with whom the other members of the court agreed) concluded at [77] that the directions about giving separate consideration to the case against each defendant, including the direction quoted above, guarded against the risk that the jury would use Tredrea's admissions to bolster the complainant's credit or otherwise against Vecchio and stated at [78]:

> "It would unduly erode the strong policy reasons which favour joint trials in cases of the present kind if it were too readily assumed that a jury was unwilling or incapable of following a trial judge's directions. Even so, I accept that in some such cases of this general nature it might prove difficult

> – in particular cases it might even be unrealistic – for a jury to disregard admissions by one defendant which bolster a critical witness's credibility in a case against another defendant. But I do not accept that it was too difficult for the jury in this case. The trial judge's directions comprehended the relevant risk. They were readily comprehensible, emphatic and repeated. Those directions were strengthened by the compelling explanation of the unfairness involved in not following them. It should be assumed that the jury complied with those directions, with the result that no miscarriage of justice resulted from the appellants' trials being heard together."

The prosecution's submissions

[29] It is submitted by the prosecution that the evidence admissible against Mr Hansen places Mr Wills in the same position at a joint trial, as if Mr Hansen had made a confession implicating himself and/or Mr Wills and that would not ordinarily justify separate trials. The fact that Mr Hansen and Mr Wills are charged with an offence which is alleged to have been committed in carrying out the common purpose of assaulting Mr Britza brings in the policy considerations that favour a joint trial.

[30] It is anticipated that the evidence of witnesses would take six or seven days to put before the jury, whether there was a joint trial or a separate trial against each of the defendants, as almost all the evidence that was led in the last joint trial would have to be led in the separate trial against each defendant.

[31] The convenience of witnesses is a relevant consideration. One of the eyewitnesses at the shed, Mr Ireland, behaved belligerently during the last trial. It would be preferable to minimise the number of times this witness is required to give evidence again. Of greater significance is the predicament of Mr Hansen's girlfriend who the prosecution was granted leave to call by video-link for the reasons disclosed by the prosecution to the lawyers for the defendants and the court in the application to call her by video-link. Her personal circumstances are such that she would be at a great disadvantage, if it became public knowledge that she was giving evidence. It appears that she has given evidence so far on four occasions, but the prosecution's concern is that the prospect of two further trials increases the risks associated with her personal circumstances, more than one further trial. There are therefore significant public policy and administrative reasons that favour the trial of both defendants proceeding as a joint trial.

[32] Mr Heaton of Queen's Counsel on behalf of the prosecution acknowledged that there could be a case where the prejudice was of such a nature or to such a degree that it would be unrealistic to expect the jury to follow the directions of the trial judge given to ameliorate the prejudice (referring to the o*biter dicta* in *Director of Public Prosecutions v Mwamba* [2015] VSCA 338 at [45]), but submitted this was not such a case, as appropriate directions could be given to overcome the prejudice which therefore did not warrant not applying the general rule that juries follow the directions given by the trial judge.

Whether the prejudice to Mr Wills from a joint trial warrants a separate trial

[33] The weight of the public policy and administrative reasons in favour of a joint trial of Mr Wills and Mr Hansen has to be balanced against the prejudice to Mr Wills from a joint trial and whether it is feasible or will avoid positive injustice to Mr Wills for that prejudice to be addressed in a joint trial by the giving of appropriate directions.

[34] It was submitted in favour of separate trials that there was no real risk of cut-throat defences. This submission is sourced in statements in the authorities, such as by Keane JA in *R v Roughan & Jones* [2007] QCA 443 at [50] that "The 'strong reasons' for a joint trial are strengthened rather than weakened where each of two accused deploy the 'cut-throat' defence". It does not follow from the fact that cut-throat defences by co-defendants favour a joint trial that the fact that there are not cut-throat defences favours separate trials. It must be neutral.

[35] There are weaknesses in the prosecution's case against each of Mr Wills and Mr Hansen, because of the timing issue as to when the attack on Mr Britza occurred and many inconsistencies in the various witness accounts. Taking into account the evidence that is admissible against each defendant alone in conjunction with the evidence that is admissible against both defendants, the circumstantial case against each defendant is different, but it overstates the position to treat the circumstantial case against Mr Wills as demonstrably weaker than the case against Mr Hansen. The submissions on behalf of Mr Wills focussed on the "weaker circumstantial identification evidence" against Mr Wills compared to Mr Hansen. When it comes to considering any positive injustice caused to Mr Wills by a joint trial, the assessment is made in the light of the comparative circumstantial cases against each of the defendants, rather than focusing on the identification evidence.

[36] Mr Edwards of counsel on behalf of Mr Wills conceded it was possible to disentangle the evidence that was admissible solely against Mr Wills and the evidence that was admissible solely against Mr Hansen, but that it would not be possible to give directions that would overcome the immense prejudice caused to Mr Wills, if the statements made by Mr Hansen to his girlfriend and Mr Crisp about what happened on the night of 23 March 2001 or the statements Mr Taylor said he heard Mr Hansen say to his brother were acted on by the jury as admissions by Mr Hansen that he was involved in the fatal attack on Mr Britza.

[37] As it is accepted that the evidence admissible against Mr Hansen alone and the evidence against Mr Wills alone can be identified with precision, consideration must be given to whether directions can be formulated that emphasise the requirement that the jury consider the case against Mr Wills only on the evidence admissible against him. It could be pointed out to the jury that if they were assessing the evidence to see if the prosecution had proved beyond reasonable doubt its case that Mr Wills and Mr Hansen were the two men who attacked Mr Britza, when it came to considering the case against Mr Wills, the jury could only act on the basis that Mr Hansen was one of the attackers, if they were satisfied of that beyond reasonable doubt on the basis of evidence admissible in the case against Mr Wills alone. This direction would circumvent the impermissible reasoning that is of concern to Mr Wills that the jury could conclude on the evidence admissible in the case against Mr Hansen that he was one of the attackers and use that to conclude that

Mr Wills must have been the other attacker without highlighting the impermissible reasoning.

[38] In relation to Mr Wills' concern that the evidence of Mr Taylor against him alone would be bolstered by the evidence admissible against Mr Hansen alone of his statements and behaviour on the evening of 23 March 2001, it should be noted that some aspects of Mr Taylor's evidence admissible against Mr Wills are supported by the evidence of the other witnesses at the house in relation to Mr Wills leaving with Mr Hansen and the collection of the sheet or blanket by Mr Hansen on his return. Mr Taylor's evidence is not in the same category of Mondientz' crucial evidence in *Swan* where the conviction of Swan depended on Mondientz' evidence being accepted, so that the bolstering of her evidence by the interview of the co-accused that was inadmissible against Swan was highly significant in the context of that case. In any case, the form of direction that was approved in *Vecchio & Tredrea* that makes it clear that only evidence admissible against a defendant can be used for assessment in any way of any evidence against that defendant would be apposite for the purpose of directing the jury to assess the credibility and reliability of Mr Taylor's evidence admissible against Mr Wills only by reference to other evidence that was admissible in the case against Mr Wills (which would include the evidence of Mr Taylor and other witnesses that was admissible against both defendants).

[39] The possible directions referred to in the preceding paragraph are not out of the ordinary and would not require the jury to undertake "remarkable mental feats" that defy logic or understanding in the context of a trial where they will be repeatedly reminded to undertake their consideration of the case against each defendant on the basis of the evidence admissible in the case against that defendant.

[40] I am satisfied that the nature and degree of the prejudice likely to be caused to Mr Wills by proceeding to trial jointly with Mr Hansen can be sufficiently addressed by appropriate directions such that Mr Wills cannot succeed in his application for a separate trial. I therefore refuse the application by Mr Wills to be tried separately from Mr Hansen.