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

Delivered: 4/10/2019

IN THE CROWN COURT OF NORTHERN IRELAND

SITTING IN BELFAST

THE QUEEN

v

SHANNON McILWAINÉ

DEFENCE SEVERANCE APPLICATION

COLTON J

Introduction

[1] The defendant is one of 8 persons facing various counts on an indictment arising from the alleged murder of Christopher Meli and alleged assaults on Ryan Morris and Steven Woods on 12 December 2015.

[2] She is charged with an affray contrary to common law with the particulars of the offence being that on 12 December 2015 she unlawfully displayed force and made an affray.

Factual Background

[3] On 12 December 2015 Christopher Meli was killed on a lane known as “Doc’s Path” which is an open grass area adjacent to the Stewartstown Road. He is believed to have been subject to an assault by multiple persons. Two friends of the deceased, Ryan Morris and Steven Woods were also assaulted in the same vicinity.

[4] In broad terms the prosecution case is that there was an altercation between the deceased and other youths in the vicinity of a take away restaurant on the Stewartstown Road, Belfast. He was in the company of Ryan Morris, Sarah Morris and Steven Woods. The deceased and the others moved away from the location and travelled along Doc’s Path.

[5] At this stage two of the defendants, Caolan Lavery and Daniel McGrath and a number of other people in the vicinity claim that they were “jumped” by Meli and others. At this stage a group of between 15 to 20 persons assemble and make their way to Doc’s Path where a fight and the alleged attack occurs.

[6] Christopher Meli was allegedly punched and kicked to the ground and was repeatedly punched and kicked to the head in the course of the attack that occurred in Doc’s Path. Ryan Morris and Steven Woods managed to run off from the scene of the assault where they were subsequently caught by members of the other group and assaulted.

[7] The prosecution say that each of the 8 defendants was part of the group which followed Meli, Morris and Woods to Doc’s Path and face various charges including murder and attempted grievous bodily harm arising from the incidents.

[8] McIlwaine is charged with an affray contrary to common law as was Daniel McManus. Daniel McManus has since pleaded guilty to that offence.

The evidence relied on by the prosecution

[9] Before considering the evidence concerning the defendant’s role it is necessary to consider some of the evidence in the case relating to the alleged assaults, the group which made its way to Doc’s Path and which was allegedly involved in the assault on Mr Meli and the subsequent alleged assaults on Morris and Woods.

[10] The following extracts in particular are relied upon by the prosecution.

[11] Ryan Morris, one of the alleged victims of the assaults says in his deposition when he describes the first assault in the Doc’s Path area:

“Those ones they just came running down and it was just bottles flinging over the top of our heads and they just came out to do damage basically. They came from across the main road. There is a place Woodside and it is a big field with a big grass bank. Crowds of younger people stay on that big bank because it is like out of the way of the main road and away from the houses and they have a fire usually and they sit there drinking to all hours of the morning and taking drugs to all hours of the morning. So by the time we got down to the bottom of that path they had come from the direction of Woodside fery and were all running across the main road to the top of the path. We were at the bottom of the path they were at the top running towards us.”

[12] Describing the same incident Steven Woods says in his deposition:

“Me, Ryan, ‘Cricky’ and Sarah had walked about a quarter way down the Doctor’s path which took about 2 minutes from leaving the Indian. I heard shouting. I looked about to see where the shouting was come from. I looked behind me I could see loads of people coming running at us from the direction of the Stewartstown Road. I believe there was 15-20 people coming for us. I thought Jesus Christ. I was nervous. I said ‘Don’t be running’. The crowd came for us. There were at least 5 people around me at any time. I recognised some people’s faces from the local area but don’t know their names. I recognised Lavo Laverty.”

[13] He goes on to identify other people allegedly involved in the assault, neither of whom was McIlwaine.

[14] The depositions include a statement from Finton Hitchen who is an independent witness and who came upon the scene. He describes what he saw in the following way:

“I walked along the path for about 100 yards where it joins another path which runs from the side of Glasvey Court and leads in the Glasvey Close. As I left Gerard’s house I could see a crowd of teenagers running after another crowd of teenagers. They were running down a steep path that comes from the Stewartstown Road to what is called ‘Doc’s Path’. I could tell that both groups contained males and females and that the group being chased was the smaller group of people. I think the smaller group had about 6 or 7 people in it and the larger group had 10 to 12 people in it. There were more males than females in each group but I can’t give exact numbers. At this stage I was 80-100 feet away. I didn’t want to get involved and continued walking towards home along the path. I noticed as I started walking along the path that the crowd that was being chased had stopped and turned round and the groups had started fighting. This was at the bottom of the slope of the bank where the new path meets with Doc’s Path. I could see that the groups were punching and kicking each other, males fighting with males and females fighting with females. I could also hear lots of screaming from female voices and the noise of the thumps as they hit and kicked each other.”

[15] A Mr Gary Hughes has made a statement of what he was able to see from his bedroom window on the night in question. He says as follows:

“And I see a crowd move through the street and down past the houses. When I first see it, they are down at the bottom of my street when it turns there at that turn. I’m not too sure how far it would be. I could see straight down. I could see figures. I then seen them all running about. First thing was I pat my head, right there wasn’t a fight because I didn’t see no punches or kicks then I just thought they were all drinking. When I first seen this I think nothing of it. I’m just looking down but I’m still watching. I look down the other side because they all headed down past the houses that I can’t see behind. I see all the crowd just moving and when they move into a place I was blind, down a wee pathway. They went down some sort of like a row at both sides but at the bottom where I can see that’s when I see a commotion. And I they looked out and I heard right there must be a fight or something. Once I looked on down I seen a wee lad get thrown into the corner onto the ground. I can’t describe what he looks like or what he was wearing. It was just like a figure going in towards the ground. I didn’t see him. I only seen him once he was thrown onto the ground and then I seen the crowd round him, I could see punches come across and sort of like punches moving and kicks moving towards that point, towards the person on the ground. The crowd were swinging their arms and their kicks and punches were only going one way, towards the person on the ground. I just literally seen him hit the ground sort of like a sideways way. The crowd were focusing on that point where he fell. It was a bit like a crowd fighting but only going one way one direction.”

[16] A Mr Henry McConville who lives in the vicinity heard a disturbance outside in the street on the night in question. He describes going to his front door to see what was happening. His statement records:

“I could see a large crowd shouting and brawling. I’m not sure of the distance they would have been but they were about 7 houses and a street away from my own house. The crowd was made up of both males and females. I couldn’t describe anyone but they all would have been between 16 and 25 years of age. I have lived all my life in around upper Glasvey which takes in Galsvey Gardens, the drive, the park and the walk and I didn’t recognise anyone in the crowd. They weren’t wearing anything unusual that stood out. It seemed as if the crowd consisted of two groups of people, a main group and a smaller group. In the main group there would have been about 30 people and the

smaller group had less than 5 individuals. The main group seems that they were picking on the smaller group and because this smaller group was backing off the main group were following them. Visually it appeared like the main group were accusing the smaller group of something and they were responding to what the smaller group had done. The general gist of the crowd seemed as if the larger group were holding the smaller group responsible for something. The larger group seemed to be attacking the smaller group and the smaller group seemed to be retreating from them. I remember pitying the individuals that were being chased. Everyone threw punches and were all pushing each other. They were scuffling all the way up the road. I can't recall what they were saying but they were shouting and screaming at each other. They all seemed angry and there was lots of swearing and profanities being used like fuckers and bastards. I think the small group were all young men by the tone of their voices but I'm not sure if there were any females with them. The whole thing was a bit of a melee. I can't describe anyone specifically it was all a general blur. The crowd then splits into two and part of it goes round into the rear of Glasvey Walk which is behind Glasvey Drive at the other side of the road. The other part of the crowd comes on up Glasvey Drive and is directly outside my house. At this point they would have been about 30 feet away. It all happened very fast and only lasted a few minutes in total. The groups were constantly moving, they were running up the road then stopping then running again then stopping. The larger group were running after the smaller group. The whole crowd then merges together on the road at the rear of Glasvey Walk. The fight makes it way towards St Luke's Chapel. I could only hear the commotion I couldn't see anything because there is no lighting around the chapel. As soon as the crowd were out of my view some of the people seemed to peel off and get lifts in cars."

[17] It is the prosecution case that taking the evidence at its height it can be established that Shannon McIlwaine was a member of the larger group which was involved in the chasing and attacking of initially Christopher Meli and subsequently Morris and Woods. Essentially this evidence arises from statements made by her to the police.

Shannon McIlwaine's Interviews

[18] She was interviewed on a number of occasions. I have read the transcripts of the interviews. This material was considered in a "No Bill" Application on behalf of

this defendant. In particular Mr McCreanor QC, who appears for the defendant, was anxious that the answers given by her are seen in context and in their entirety. Specifically he suggests that the prosecution have misinterpreted the answer she gave in the interviews in relation to her potential role in the group engaged in the subsequent assault on Morris and Woods.

[19] I do not propose to set out the detail of the answers she gave in the interview. For the purposes of the "No Bill" Application I was satisfied that taking the prosecution case at its height her admissions are sufficient to establish that she was a member of the group which followed the smaller group to the point of the initial assault. I agree with Mr McCreanor that the interview does not suggest she was a member of the group involved in the second assault but rather that she separated herself from that group.

[20] In her interviews she accepts that she was drinking with her co-accused Laverty, Smith and McManus when another co-accused Daniel McGrath ran up to them alleging that he had been "jumped".

[21] She accepts that she was in the group that made its way to Doc's Path. It is right to say that she seeks to underplay her role in that group in terms of any fighting and also is reluctant to accept that the group ran but says that the group merely walked.

[22] She admits to being in the presence of her two accused Gary Lewis and Aaron Stilges throughout the night. She accepts that at one stage she confronted one of the other group (Woods) when he took out a knife.

[23] When she was pressed as to why everyone went down the path she says she went "*obviously to like to try it stop it or something*". There then follows:

"Q. And how would you have tried that?"

A. Break it up.

Q. Deepsie has come back, he's got help and he's taking a crowd down across to Doc's Path and he wants revenge because he was quite beaten up hasn't he?"

No response.

Q. Isn't that right?"

A. Yeah."

[24] At one stage in the interview she accepts it was obvious there was going to be a fight. She said that she herself was not going down to fight but she would expect

her friends were. She accepts she knew the crowd were going down to fight and seek revenge. She further accepts going down with the others and being involved in a confrontation with a person with a knife (Woods). She witnessed the fighting.

[25] In addition to these interviews forensic evidence links her to the blood of Steven Woods and Christopher Meli. At the very least it suggests that she was close to the source of a transfer source of the blood of these alleged victims. As Mr McCreanor points out it may well be that this blood was transferred at a later stage when she came into contact with one of the co-accused who is charged with the murder of Christopher Meli and the attempted grievous bodily harm of Steven Woods.

The Severance Application

[26] The trial is listed for hearing to commence on 14 October. The defendant has made an application for her count to be severed from the indictment and that she should be tried separately from all of the other defendants named on the indictment.

[27] I am obliged to Mr Charles McCreanor QC who appeared with Mr Sean O'Hare for his focused oral and written submissions in support of the application.

[28] He points to the following matters which he submits support his application:

- The case as it stands with multiple defendants and counts will be a long and complex trial.
- Dealing separately with Shannon McIlwaine permits of a fairer more efficient disposal of her case and, indeed, that of the other defendants.
- Her case can be separated from the other cases. The substantial evidence against her rests on her interviews which are to be challenged. Thus, he says that the evidence of the prosecution against her is discrete from the other defendants.
- The challenge to her interviews is of no moment or import to the other co-accused.
- He argues that this was not a case in which the court would have to be concerned about duplication of evidence at any material level.
- She is not on a joint count with any other defendant.
- She is being tried as part of a group which has allegedly murdered and attempted to cause GBH, yet there is no allegation against her that she was

involved in any assault, engaged in any fighting, violence or encouragement to violence.

- Other evidence against co-defendants in the trial will be inadmissible against her.
- There is a real risk of being prejudiced by being tried with the “group” charged.
- Her trial could be dealt with within a week. A short and separate trial is the best and most efficient way of ensuring she has a fair trial.
- There are personal circumstances relating to the defendant which would favour severance. She is a young mother of two children, the youngest being born in April 2019. She is helped with the full-time care of the children by her mother, and after her mother finishes her own work. She lives at her mother’s home. She will have great difficulty in coping with the care of her children over a trial which may last many weeks in these circumstances.
- Overall, he suggests that severance would ensure fairness in the trial process to the defendant and the co-defendants.

[29] The prosecution who were ably represented by Mr Neil Connor QC and Mr David McNeil oppose the application.

[30] In general terms, he says the circumstances of this case are such that there must be a presumption in favour of a joint trial. It would be very difficult, if not impossible, for the jury to consider the defendant’s role in isolation from all of the surrounding circumstances which have given rise to the charges against each of the defendants. He suggests that contrary to the submission on behalf of the defendant if she would be separately tried there would indeed be a significant amount of duplication. The prosecution would be required to call a significant number of witnesses to give evidence about the conduct of the group of which it is alleged the defendant was a part. I have already referred to some of this evidence above. The jury will only be able to consider her alleged conduct if it is aware of the full context of the events on the night in question.

The Applicable Law

[31] An application for severance is governed by Section 5(3) of the Indictments Act (Northern Ireland) 1945:

“5(3) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same

indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment.”

[32] The principles to be applied in considering such an application are well-established. The decision whether to grant severance is one within the discretion of the trial judge. The decisions should be in favour of a joint trial unless the risk of prejudice is unusually great.

[33] In considering this application it seems to me that any jury determining the matter will need to hear the evidence about the alleged conduct of the group which allegedly included the defendant. Some of the witnesses could be described as vulnerable and, indeed, there is a special measures application in respect of an important witness, Ryan Morris. Whilst the defendant’s interviews are a crucial part of the prosecution case a jury could not determine the count against her in the event that the interviews were admitted without hearing other evidence in the case. Thus, if an application were successful there would be significant duplication involving the calling of witnesses for a second occasion to give evidence in this distressing case which apart from being unfair to those witnesses would result in added length of proceedings in court.

[34] I have taken into account that this will be a relatively lengthy trial involving numerous witnesses and numerous accused. I also take into account the fact that the defendant is not jointly charged with any of the other defendants. However, I do not consider that permitting the case to continue against her would be an example of “overloading” an indictment.

[35] The most important issue it seems to me is one of potential prejudice to the defendant if she is to face trial along with all the other defendants. This is not a case where the prosecution will be adducing prejudicial evidence which would normally be inadmissible against the defendant but will be adduced against other co-defendants. The alleged prejudice appears to relate to the suggestion that she has been tried with a “group” some of whom have been charged with murder. I am not convinced that there is a risk of any real prejudice in this context. Even if there was, it seems to me that it can be adequately dealt with in the course of the trial. Ultimately, the jury determining the matter can be carefully directed in relation to the evidence which is relevant against this defendant and can be directed as to how that evidence should be considered in the context of the specific charge against her.

[36] It would be artificial to suggest that the charge against her could be considered in isolation from the surrounding circumstances. As was pointed out by Mr Connor aside from what the defendant has said in interview issues for the jury to consider would include:

- What had Daniel McGrath told the group about the assault on him?
- How the group reacted to what he told them?
- Did the group run or walk to Doc's Path?
- As the group moved to Doc's Path how were its members behaving?
- What was being said by members of the group?
- What would the defendant have been able to see and hear?
- What was the group's demeanour as it arrived at Doc's Path?
- Where did the defendant go after the incident on Doc's Path? Did she walk away or join those chasing Ryan Morris and/or Steven Woods? (I am conscious that the defendant's interview does not suggest she was a member of the group involved in the second assault but rather that she separated herself from that group.)
- What opportunities were there for the defendant to withdraw from what was going on?

[37] Thus, any alleged conduct of the defendant will have to be seen in the context of the overall evidence in this case. In my view a jury which has heard all of the evidence about what was said and done on the night in question and, in particular, how the group behaved will be in the best position to form a view on the charge against the defendant.

[38] There clearly is a sufficient link between all of the offences on the indictment for them to be put in the one indictment, notwithstanding that this defendant faces a discrete count.

[39] I do bear in mind that there are personal circumstances which will make this a difficult trial for the defendant. It seems to me these can be met in a number of ways. Firstly, the trial could be scheduled in such way as to hear the "voir dire" in relation to her interviews at an early stage as this may have the effect of terminating the proceedings against her. Secondly, the court will be willing to facilitate her absence from certain parts of the trial with the consent of her and her legal advisers with a full explanation provided to the jury.

[40] In all the circumstances I am not persuaded that it is appropriate to sever the indictment and order a separate trial for this defendant. The application is therefore refused.

