

Judicial Communications Office

27 February 2026

COURT DISMISSES APPLICATIONS OF “NO CASE TO ANSWER” IN LYRA MCKEE MURDER TRIAL

Summary of Judgment

Mrs Justice Smyth, sitting today at Belfast Crown Court without a jury, dismissed an application of no case to answer made on behalf of the defendants charged with the murder of Lyra McKee and rioting which took place in the Creggan on 16 and 18 April 2019.

Background

Lyra McKee, a journalist, was shot and fatally injured during rioting in the Creggan area of Derry on 18 April 2019. The defendants are charged in relation to civil disturbances which took place in Derry on that date and also on 16 April 2019:

- 18 April 2019 offences: The defendants can be divided into two groups:
 - Masked individuals alleged to have been directly involved in the riot (Paul McIntyre, Peter Cavanagh, Jordan Devine, Christopher Gillen and Joe Campbell).
 - Three of the masked defendants are also charged with murder (McIntyre, Cavanagh and Devine). They are not alleged to have fired the gun used to kill Lyra McKee but with intentionally encouraging or assisting the gunman on a joint enterprise basis¹.
 - Unmasked individuals alleged to have intentionally assisted or encouraged the masked individuals to commit those offences (Patrick Gallagher, Jude McCrory, Joe Barr and Keiran McCool).
- 16 April 2019 offences: The individuals were all masked and four of the above-named defendants are alleged to have been directly involved (McIntyre, Devine, Gillen and Campbell).

Applications of No Case to Answer

The applications, made by the defence at the conclusion of the prosecution case, were that none of the defendants have a case to answer based on insufficiency of evidence. The question for the court, which was sitting without a jury, was whether it is convinced that there are no circumstances in which it could properly convict on the evidence.

Evidence

¹ The prosecution case is based on joint enterprise. Responsibility for a criminal offence may be incurred either as a principal offender or as an accessory. A principal offender is the actual perpetrator of the offence, the person whose individual conduct satisfies the definition of the particular offence in question, whilst an accessory is one who aids, abets, counsels or procures the commission of the offence.

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The prosecution case was based on circumstantial evidence comprising a number of strands:

- Identification evidence in the form of commercial footage from MTV (who were making a documentary about Saoradh and filmed events on 18 April 2019) and Pangaia (a French TV company who captured the disorder on 16 April 2019);
- Identification/recognition evidence from PSNI officers at controlled viewings where footage and stills of both masked and unmasked suspects was played;
- Evidence from expert imagery analysts including clothing comparisons;
- DNA evidence from a zip pull of a jacket;
- Cell site evidence for mobile phones;
- gait analysis; and
- Bad character evidence and evidence of association.

The defence objected to the court admitting the evidence from the commercial footage on the ground that it had not been proved to be authentic and that it had been unlawfully obtained. The judge concluded that the evidence was prima facie authentic and therefore admissible and that it had not been unlawfully obtained.

The defence also objected to the court admitting the evidence of identification/recognition evidence from police officers of masked individuals at controlled viewings on the ground that it was inadmissible because it was obtained in breach of Code D of the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE"), which governs the admissibility of police identifications in criminal cases. In the alternative, the defence argued that even if it was admissible, the circumstances in which the evidence had been obtained were so unfair that it ought to be excluded under Article 76 of PACE. In either event, the defence argued that the proceedings should be stayed as an abuse of the court's process because of the way in which the evidence had been obtained.

The grounds of objection included the fact that a member of the PSNI Major Investigation Team ("MIT") had shown footage, which included masked rioters, to a group of police officers in advance of the formal controlled viewing procedure for the purposes of making identifications/recognitions, without disclosing these facts ("the Waterside viewing"). This breached Code D in a number of respects. Some of those officers then purported to identify masked defendants at controlled viewings. While it was unclear who exactly had attended "the Waterside viewing" there was evidence that names of defendants were mentioned and that confirmatory nods were given.

The court noted that the purpose of Code D was to avoid the mischief that a police officer may merely assert that he recognises someone without any objective means of testing the accuracy of such an assertion. For that reason, where there is a breach of any provision, its impact on the fairness of the admission of the evidence must be carefully assessed.

The judge was satisfied that the reason the member of MIT decided to show the footage to the group of officers in Waterside District Support Unit (DSU) was because those officers had specialist knowledge of dissident Republicans suspected of the disorder and the killing of Lyra McKee. The judge did not accept that the evidence established bad faith or that the purpose of showing the footage was to falsely identify any individual. However, the judge said:

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“That does not in any way justify what can only be regarded as deeply disturbing behaviour by an experienced police officer who displayed an unhealthy desire to identify the perpetrators at any cost. The requirements of code D are not technical. They are important safeguards in an evidence type that is recognised as particularly prone to error.”

The judge was also satisfied that all of the officers present at “the Waterside viewing” knew at the time that it was in breach of Code D and that it ought not to have occurred. The viewing did not come to light until two years after the purported identifications of masked individuals had been made, as a result of a direction from the Senior Investigating Officer to clarify the reasons for the identifications, following receipt of a query from the Public Prosecution Service. As well as “the Waterside viewing”, the judge was satisfied that there was widespread access of the NICHE police computer system for the purposes of obtaining identification details which is in breach of the police internal direction that the system is only to be accessed for operational reasons.

In determining whether to admit the evidence of the identifications/recognitions from the controlled viewings a number of factors had to be balanced. Having considered those factors the judge determined that the evidence was not admissible because the egregious breaches rendered the recognitions of masked individuals unreliable. Even if it had been admissible the judge would have excluded it because its admission in evidence would be so unfairly prejudicial to the defendants. In any event she stated that she would not have attached any weight to the evidence, had it been admitted.

However, the judge refused an application to stay the proceedings as an abuse of process because she was satisfied that the defendants could still receive a fair trial. The trial process was equipped to deal with breaches of Code D and any impact on the reliability of the evidence.

The judge also considered that the trial should proceed because:

“of the important public interest that those charged with grave crimes should be tried when weighed against the competing consideration that the court should not convey the impression that the end justifies the means.”

The judge also noted that there was no evidence that the Senior Investigating Officer was aware of “the Waterside viewing” prior to Crown counsel raising the query and she was satisfied that proper inquiries were put in place immediately the query was raised. No fault whatsoever was attributable to the Public Prosecution Service.

The defence also objected to the court admitting expert evidence from two imagery analysts, Mr Wooller and Mr Stephens, relating to identification by comparison of features on clothing and personal features. This is the main strand of the prosecution case against Mr Devine, Mr Gillen, Mr McIntyre and Mr Campbell. It is also an important strand in the case against Mr Cavanagh. The objection was based on a submission that neither were experts and that their evidence was irrelevant or of no probative value.

The judge accepted the prosecution submission that both imagery analysts were experts and any weakness in their analyses was a question of weight to be determined at the end of the trial. However, in respect of Mr Stephens the judge concluded that there were a number of concerns

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arising from his evidence, in particular that the content of reports may have been influenced by communications with senior police officers. She concluded that the independence of his evidence had been undermined by the failure of the PSNI or his employer (Diligence) to retain important material relating to repeated contact between senior police and Mr Stephens. This resulted in the court's inability to properly assess the extent to which Mr Stephens may have been exposed to biasing information along with his apparent willingness to comply with requests to "look again" at his conclusion and make significant amendments without disclosing either the fact or the rationale in subsequent reports.

The court noted the obligations of expert witnesses, in particular that:

"Expert evidence presented to the court should be and seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation".

The judge concluded that Mr Stephens' evidence could not be seen to comply with that obligation and excluded his evidence under Article 76 of PACE because of its unreliability and that its admission would have such an adverse effect on the fairness of the proceedings that it ought not to be admitted.

The defence also objected to evidence of bad character and evidence of association of the defendants and of those who are not before the court being admitted in evidence on the grounds that it is irrelevant, of no probative value and its admission would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. The prosecution sought to adduce six categories of evidence which they alleged demonstrated bad character and evidence of association.

- Involvement in Easter and other Republican parades, funerals, commemorations or protests, usually whilst dressed in paramilitary clothing;
- Convictions;
- Attacking, assaulting, resisting, abusing, insulting, demonstrating hostility towards or seeking to threaten or intimidate police, or attending/ interfering with police operations concerned with other persons;
- Other evidence (including that on social media) showing animosity towards the police and support for the IRA/violent Irish Republicanism and/or its aims and principles;
- Evidence demonstrating unity, solidarity or support for a grouping, gang or organisation who exhibit such a disposition; and
- Association between the various persons, defendants and non-defendants.

In broad terms the prosecution wished to adduce evidence to support the case that the defendants had a motive to engage in the offences namely hostility towards the police and support for Irish Republican violence. The prosecution relied on authorities where evidence of gang membership was admitted to assist the jury in determining whether a defendant had been correctly identified. It contended that gang related violence aptly describes what occurred on 16 and 18 April 2019.

The court accepted that such evidence of hostility and support for violence is relevant to an important issue between the prosecution and the defence:

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“In respect of the masked group, it relevant to motive and identification. In respect of the unmasked group alleged to have intentionally provided encouragement or assistance, it is relevant to the question of whether or not they were innocently present at the disorder.”

The judge did not accept that all of the evidence the prosecution sought to adduce as bad character was sufficiently relevant to the issues in this trial to be admitted. However, she was satisfied that association with Saoradh, a group that supports violent attacks on police, previous convictions or previous incidents connected to terrorism were sufficiently relevant to be admitted and she found no good reason to exclude them:

- Convictions with a clear link to terrorism such as those under section 13(1) of the Terrorism Act 2000 are clearly relevant although the description of the offence attributed by the prosecution is incorrect: the offence is committed when a person wears an item of clothing ... in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation;
- Attendance at marches and gatherings, including funerals whilst dressed in paramilitary clothes or walking in a colour party;
- Facebook material on Joe Campbell’s phone, in particular posts containing appeals and messages from Oglai na hEireann, along with one depicting a masked individual with a weapon and the words: “IRA Volunteer on active service photographed minutes before engaging Crown forces” with an account of the individual firing upon an armored Land Rover from a distance of around 18 metres penetrating it in the process: “it cut through the armour, like a knife through butter”;
- Photos of murals on his phone along with messages of support for masked terrorists and internet searches for “New IRA sophistication” and a named police officer who was the subject of an attempted murder. The judge considered these relevant because they could be considered to demonstrate support for the kind of attack that occurred in this case;
- Messages on Cavanagh’s Instagram account: “Happy Easter ... Easter 1916 ... *Easter 2019 Unfinished Revolution*” dated 20 April 2019 (two days after the shooting of Lyra McKee) and “those who held and hold the cause of Irish Freedom higher than any peak or summit on Earth. Those men and women who fought with rifle and grenade and died for liberty and fraternity. Easter 1916, Irish Republican Army, Tiochfaidh Ar La”. These posts are relevant because they may be considered to represent current and not merely historical views that attacks are justified.

The judge also admitted Mr McIntyre’s previous convictions for riot on the grounds that they demonstrated a propensity to commit offences of that nature.

The judge was also satisfied that the terrorist convictions and connection with Saoradh of those who are not before the court but who are alleged to have been present during the riot and/or in communications before, during and after the riot were relevant and admissible because the question of whether public disorder was orchestrated by those involved in a terrorist organisation in the course of which Lyra McKee was shot dead is at the heart of this case. The prosecution submission is that the fact of communications between the defendants and mostly older men with terrorist convictions is of substantial probative value in relation to that core issue.

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In respect of the bad character and association evidence admitted, the judge explained that at the end of the trial she will have to decide whether she is sure that the bad character evidence is capable of supporting the prosecution case and if so, to what extent. But none of the defendants can be convicted wholly or mainly because of it. The judge then turned to the question of whether or not each defendant had a case to answer.

Is there a case to answer?

The judge explained that in a case depending on circumstantial evidence, the evidence must be considered as a whole because it is the overall strength or weakness of the complete case rather than the frailties or potency of individual elements by which it must be judged. A globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case.

At the direction stage, the Crown case must be taken at its height and where there is evidence against each defendant, the only basis on which the court can stop the trial is where it has concluded that the evidence is so discredited or so intrinsically weak that it could not properly support a conviction. That means the court must ask itself whether this is one of those exceptional cases where there is no possibility of each defendant being convicted to the requisite standard by the evidence given for the prosecution. In considering that question, it bore in mind that the test is whether *a jury not all reasonable juries could, on one possible view of the evidence, be entitled to find each defendant guilty of each charge.*

The case against each of the unmasked group (Gallagher, McCrory, Barr and McCool)

The identification of the unmasked defendants was not challenged. The court outlined the evidence against the unmasked defendants. Counsel on their behalf submitted that the Crown case, which is that the riot was a “show “put on for the MTV cameras, is based on a false premise. The defence submitted that the riot was not orchestrated by Saoradh and the defendants but that it was a spontaneous reaction by members of the public to the arrival of police, accompanied by the British army into the Creggan.

The question for the court was whether, on one possible view of the evidence, a jury would be entitled to conclude that the unmasked defendants intentionally encouraged or assisted those directly involved in riotous offences. As this is a non-jury case, the judge has to determine this based on the evidence. Final conclusions about weight cannot be determined at this stage of the trial.

In respect of McCrory and Gallagher, the court was satisfied that their presence, as representatives of Saoradh, facilitating an MTV camera crew filming the riot and observing at close quarters those possessing and throwing petrol bombs, could be considered as capable of intentionally encouraging or assisting those directly involved:

“They describe themselves and Barr as community leaders, to whom people look up. Both of them make their political views clear, including their hostility to police and to those whom they perceive as supporting police, including Sinn Fein. They describe acts of criminality and violence in terms of “acts of resistance” and use other terminology consistent with supporting violence for political ends. “

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In respect of Barr, the court said the same points can be made. He was introduced to the MTV presenter, Reggie Yates, as a senior member of Saoradh and he is the person to whom McCrory and Gallagher deferred if unsure of how to answer a question. The court considered the evidence in Barr's case is capable of amounting to intentional encouragement or assistance. The question of whether the words encouraging actual violence towards the police officers present can be proved to the criminal standard to be attributable to him is a matter ultimately, to be determined at the end of the trial.

Taking the prosecution evidence at its height, the judge was not convinced that there are no circumstances in which she could properly convict based on the evidence she heard.

In relation to McCool, the major plank of the prosecution case was his aggressive treatment of Mr Mallett, a community worker, preventing his attempts to stop the rioting. The court said that in doing so he is said to have been involved in "policing" the rioting and thereby encouraging or assisting it on a joint enterprise basis. The prosecution submit that taken together with his involvement in the conversations both physically and by telephone with relevant others and his continued non-coincidental presence in the area, there is a case to answer. The judge considered the case against him to be weaker than the others because he does not appear to play a leadership role, unlike Barr, nor was he involved to the same extent as McCrory and Mellon.

Nevertheless, the judge was not convinced that there are no circumstances in which a court could properly convict based on the evidence she heard.

The case against each of the masked group (McIntyre, Cavanagh and Devine)

McIntyre, Cavanagh and Devine are each charged with murder on a joint enterprise basis by intentionally assisting or encouraging the gunman who shot Lyra McKee and possession of a firearm and ammunition, as secondary offenders. It is alleged that they are the masked individuals accompanying the gunman from where the shots were fired. As well as accompanying him, which is alleged to be an act of encouragement, McIntyre and Devine are alleged to have assisted him by picking up bullets which misfired and fell on the ground. The prosecution submits that the evidence of intention can be readily inferred from the actions of the individuals as seen on the footage. The masked men can be seen accompanying the gunman to the position from which the shots were fired and removing incriminating evidence in the form of discharged bullets, which the prosecution contends can only have been done with a view to encouraging or assisting the gunman.

The prosecution also contend that Cavanagh can be seen walking purposefully towards the corner at the same time as the gunman and others. He positions himself closer to the middle of the road from where he watches the shooting. On two brief occasions he can be seen facing the crowd as if 'stewarding' them in an 'official' capacity. After the final shot, he makes his way directly to where the gunman was standing as if to assist but McIntyre and Devine are already picking what must be the misfired cartridges from the ground. He then walks off in the same direction as the gunman. The prosecution submit that the actions of McIntyre, Devine and Cavanagh are demonstrative of their involvement in the joint enterprise to possess and fire the weapon with the requisite intent for murder. That is, they offer intentional encouragement or assistance to the possession and use of the weapon with that intent.

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Leaving aside the deficiencies in the poor-quality mobile phone evidence, which is the core identification for the murder charge, the defence submit that neither the relevant intention can be proved to the criminal standard, nor can the alleged acts of encouragement or assistance. The height of the evidence is a gunman firing at armoured police vehicles with a low calibre handgun. No particular person has been identified as a target, and the intention of the gunman is unclear since it is unlikely that a police officer would leave the safety of his armoured vehicle in circumstances of attack by petrol bombs. The defence contend that even if the gunman can be inferred to have the relevant intent, there is no evidence that it was shared by any of those charged with murder as secondary offenders.

They say that, as well as proof of identification, the prosecution must prove knowledge by the defendants that the gunman was in possession of a gun and intended, by walking bedside him and picking up evidence by way of misfired rounds, to encourage or assist him to cause really serious harm or death. The defence submit that if the act of assistance is alleged to be a “clean-up operation” that cannot be established because it could not have been foreseen that the gun would jam or misfire.

The Crown case in relation to identification of the defendants charged with murder is based on the imagery analysis evidence of Mr Wooller. It is accepted that the starting point for his analysis is poor quality mobile phone footage where no identifying clothing features or facial features can be seen. Whilst this was the starting point for Mr Wooller, he then worked backwards, studying better quality imagery, identifying emerging features from commercial quality MTV footage and comparing them with daytime images showing matching clothing or parts of clothing. The court noted this is best practice, a technique designed to eliminate the risk of cognitive bias. He then prepared his report for the court on the basis of all of the features he was able to identify, applying his technical expertise.

In relation to technical issues affecting mobile telephones, Mr Wooller accepted that any form of capture of video recording normally results in some degree of compression and certainly in the case of mobile phones, the issue of compression is an important issue when dealing with image analysis for comparative purposes as compression allows the video to be captured in as small a file size as is practicable. This will affect ultimately the level of detail that can be captured. The defence submit that where the other identification evidence is wholly inadequate, and the court is asked by the prosecution to perform its own identification exercise based on the video footage, it is not appropriate for the court to do so in this case, because the quality of the footage is poor and it does not comply with the requirement for the footage to be “sufficiently clear.”

In detailed submissions, the defence highlighted the specific weaknesses in the identification evidence, Mr Wooller’s acceptance that cognitive bias cannot be excluded from the analysis, areas of dissimilarity that were not highlighted and errors corrected by his peer reviewer. In particular, when asked by the prosecution to provide further clarification, Mr Wooller accepted that his second report, in which he was able to identify additional features, could have been influenced by his full knowledge of the images at that stage. The court commented:

“Clearly, the weight that should be attached to the imagery analysis evidence, considered with all of the other evidence as a whole, is a matter that can only be determined at the conclusion of the trial and adopting the approach endorsed by the Court of Appeal in *Courtney* it is not appropriate at this stage to go into detail about those matters. At this stage of the trial, I have to decide whether the evidence is so

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tenuous that there are no circumstances in which I could find the defendants guilty of the charge of murder.”

McIntyre, Devine, and Cavanagh, are also charged with riot and possessing, throwing or making petrol bombs on 18 April along with Gillen and Campbell. All except Cavanagh are charged with riotous behaviour and associated offences on 16 April. McIntyre is also charged with robbery, arson, belonging to proscribed organisation, perpetrating a bomb hoax, hijacking and common assault. Cavanagh is charged with robbery and arson along with Gillen. There is no dispute that the offences of riot and associated offences were committed. For the purposes of this application, it is unnecessary therefore to set out the ingredients of each of those offences. The issue is the identification of the offenders.

The primary evidence against Cavanagh relates to the DNA evidence from a zipper and zip toggle on a garment found amidst burnt clothing which is said to match that found on the bomber jacket worn by the person who is said to be Cavanagh. Cell site evidence is also relied on. The defence dispute that the evidence supports the prosecution case and make the point that the facial features of the individual are entirely disguised and similar shoes and clothing were not found in Cavanagh’s home, nor has the prosecution been able to point to any other occasion, including the day in question, on which he has been seen wearing similar clothing.

Conclusion whether there is a case to answer in respect of the masked group

In relation to the defendants charged with murder, the judge said

“With regard to the murder charge, the actus reus alleged by the Crown is based on what can be seen on poor quality mobile phone footage, the inferences that should properly be drawn and whether the prosecution can persuade me, so that I am sure, that the alleged acts constituted encouragement or assistance. That is a matter to be determined at the end of the trial.

With regard to the mens rea of the gunman, which must be shared by the defendants charged as secondary offenders, in order to find them guilty, again, that is a matter of appropriate inferences and ultimately whether the prosecution can prove that the gunman possessed and fired the gun with the intention to kill or cause grievous bodily harm, and whether that intention was also held by the defendants.

Having considered all of the evidence I do not consider that there are no circumstances in which I could properly convict any of the defendants charged with murder.

With regard to the remaining defendants and the remaining charges, the weaknesses in the identification evidence are apparent and ultimately the weight that should be attached to it, taking into account any supporting evidence is a matter to be determined at the end of the trial. Having considered the evidence as a whole, I do not consider that there are no circumstances in which I could properly convict any of the defendants charged with the remaining offences.”

NOTES TO EDITORS

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1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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