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COURT SENTENCES FOR MANSLAUGHTER OF CHRISTOPHER MELI

Summary of Judgment

Mr Justice Colton, sitting today in Belfast Crown Court, sentenced eight defendants for offences arising from the death of Christopher Meli in west Belfast on 12 December 2015 and from assaults on Ryan Morris and Steven Woods on the same date.

Christopher Meli died as a result of altercations and fights between two groups in the early hours of 12 December 2015. Mr Justice Colton acknowledged that the nature of the evidence in this case was such that it was not possible to set out with clarity and certainty what actually happened on that night. He said that many of those directly involved in the incidents were under the influence of drink and drugs. Witnesses interviewed by the police were attempting to describe chaotic and fast moving scenarios with many participants however many of the statements were "contradictory and in many cases self-serving". The court noted the following incidents:

- Incident 1: Christopher Meli ("the deceased") and his friends Ryan Morris, Steven Woods and Sarah Morris (referred to as "Group 1") had an altercation with at least two members of "Group 2", namely Nicole Curran and Daniel McGrath at an area known as "Doc's Path" in Twinbrook, Belfast.
- Incident 2: The owner of the Surma Indian takeaway reported seeing three males kicking Daniel McGrath on the floor of his premises. McGrath declined an offer to call the police or an ambulance and left the shop.
- Incident 3: Group 2, now made up of 15-20 males and females gathered in the Stewartstown Road area and ran towards Group 1 who were returning home from an off-licence. In the course of the attack the deceased was knocked to the ground and surrounded by a crowd which repeatedly kicked him. Ryan Morris and Steven Woods also describe being assaulted at this stage. Members of the public phoned the emergency services but Christopher Meli had died by the time they arrived.
- Incident 4: Some members of Group 2 chased Morris and Woods and further assaults were inflicted on them in the vicinity of St Luke's Church.

The post-mortem found that the deceased died as a result of upper airways obstruction and inhalation of blood caused by facial injuries as a result of blows to the head. He also suffered a subarachnoid haemorrhage and cerebral oedema in association with alcohol intoxication. These injuries were not fatal but they would have caused unconsciousness which in turn contributed to the choking and inhalation of blood. A report prepared by another pathologist said the punch to the deceased's nasal bones need not have been of more than moderate force. This opinion was accepted by the prosecution.

Victim Impact Statements

Mr Justice Colton referred to victim impact statements from the parents of the deceased and his girlfriend. He said they convey the "utter despair" that the death has caused to his family and that he would take the statements fully into account in determining the appropriate sentences. The judge also recognised that the trial process has been difficult for the deceased's loved ones:

> "The investigation into his death was complex and involved detailed and comprehensive police work. As a result the matter did not come before the Crown Court until 11 January 2019. I am also conscious that the evidence in this case was insufficient to establish a charge of murder against any of the defendants and that this will come as a disappointment to them. At the end of the day there is no sentence that I can impose that will cure the tragic loss suffered by Christopher's family. His death cannot be measured in terms of the years of any prison sentence I impose. It is also essential to understand that the defendants must now be sentenced on the basis of their role in the incident as established by the evidence in this case and the agreed basis of pleas."

Sentencing for Manslaughter

The offence of manslaughter covers a wide factual spectrum and it is not therefore easy to prescribe a meaningful sentencing range. In the guideline case of *R v Magee* [2017] NICA 21 the Court of Appeal noted that offences of wanton violence among young males were becoming more prevalent. The use of a weapon is all too frequently a feature of these cases. The cases often display shocking instances of gratuitous violence by kicking defenceless victims while they were on the ground. The offences are typically committed when the perpetrator is under the influence of drink or drugs or both and that those who inflict the violence display a chilling indifference to the severity of the injury that their victims will suffer. The Court of Appeal said that courts must react in these circumstances by the imposition of sentences that sufficiently mark society's utter rejection of such offences and send a clear signal to those who might engage in this type of violence that the consequence of conviction will be condign punishment:

> "In the case of manslaughter where … a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required. Indeed, in some cases an indeterminate sentence will be appropriate. … Aggravating and mitigating features will be instrumental in fixing the chosen sentence within, or in exceptional cases, beyond this range."

Lee Smyth

Lee Smyth pleaded guilty to the manslaughter of the deceased. His plea was on the basis that he joined in the attack on the deceased and delivered punches and kicks, none of which were with more than moderate force, and he did not intend really serious harm. He returned to punch the deceased several times when he was on the ground. Smyth also pleaded guilty to an affray which related to fighting involving the attacks on Ryan Morris and Steven Woods; assault occasioning actual bodily

harm in relation to the attack on Morris; and assault occasioning actual bodily harm in relation to the assault on Woods.

Mr Justice Colton said there was no doubt that Smyth played a leading role in the attack on the deceased and was directly involved in the group violence against him. He said the offence was aggravated by the fact that Smyth evinced an indifference to the seriousness of the likely injury to the deceased that the sustained blows would have. During his police interview, Smyth said the deceased had been armed with a knife and had used it to attack him but he withdrew this account during his plea. The Court noted that Smyth had expressed remorse in a letter to the Meli family which was accepted as genuine. Smyth had one minor conviction prior to the commission of these offences and has been convicted of a number of offences since then. Smyth has spent most of his time in custody since the commission of these offences. The judge noted that the incident has had an effect on his mental health and he has been misusing non-prescribed medications in custody:

> "I have no doubt that when you set out drinking on the night in question you never imagined that you would end up in a fight that would result in such a tragic death. I accept as is the basis of your plea that when you involved yourself in this unjustified attack on Mr Meli you did not intend to cause him really serious harm. Of course this is why you face a charge of manslaughter and not murder."

Mr Justice Colton considered that the appropriate sentence following a contest would have been one of 11 years custody. He said Smyth's plea was entered at a time when it was made clear that it could be acceptable to the prosecution who recognised that it could not sustain the original count of murder:

> "The plea has brought certainty and finality to the matter and reinforces the remorse you have expressed. It has led to a significant saving of time and public expense which is in the public interest. It has convenienced witnesses who would otherwise have to attend court, some of whom were vulnerable. I therefore propose to reduce the sentence I would have imposed of 11 years to one of nine years to reflect your plea which is marginally short of a 20% reduction."

Mr Justice Colton noted that under the provisions of Article 8(3) of the Criminal Justice (NI) Order 2008 a custodial period shall not exceed one half of the term of the sentence. He therefore specified that Smyth will serve half of the sentence in custody (four and a half years) and the other half on licence. He imposed concurrent sentences of six months custody in respect of the counts of affray and assault occasioning actual bodily harm.

Caolan Laverty

Caolan Laverty pleaded guilty to the manslaughter of the deceased. His plea was on the basis that the violence unexpectedly escalated; he was present during the assault on the deceased by had no physical contact with him; he did not intend to encourage or assist the intentional infliction of serious bodily injury or death on anyone in Group 1; he accepted that he kicked the deceased when he was lying on the ground but it was agreed that this did not cause or contribute to the death of the deceased. Laverty also pleaded guilty to assaulting Steven Woods by punching him once to the head. It was stated that Steven Woods was still on his feet at this stage and armed with a knife.

Mr Justice Colton said that Laverty's role could be distinguished from that of Smyth as his plea was on the agreed basis that he was a secondary participator in a joint enterprise. He did not punch or kick the deceased in the incident that gave rise to his death but, by his presence and his conduct, he encouraged or assisted the others to inflict some harm short of serious bodily harm upon the deceased. That said, the judge said that Smyth evinced an indifference to the seriousness of the injuries. He too made an initial allegation that the deceased had used a knife but volunteered at an early stage that this was not true:

> "Particularly shameful was your conduct when you kicked the deceased when he lay on the ground after he had been attacked, although it is accepted that this did not cause or contribute to his death, not does it technically form the basis of an actual offence. Nonetheless it clearly demonstrates your indifference to Mr Meli's plight at the time of the incident. Although you did not strike any blows to Christopher Meli the role your presence played in the attack should not be underestimated. The mob or pack mentality that takes over in such situations is all too often fuelled and sustained by the support given to the actual attackers by supporters who stand by or join in."

Mr Justice Colton accepted that Laverty's participation was as a result of peer pressure and immaturity. He was impressed by the fact that Laverty appears to have changed his life around in the four years since the offences were committed (he was 16 years and nine months at the time). He is in full time employment and a steady relationship with a two year old son. The judge referred to character references from Laverty's employer, family and neighbours and his regret and remorse for his involvement. He also noted that Laverty has complied with strict bail conditions. Mr Justice Colton said he was slow to send young people to prison in circumstances where they have obtained full time employment and are valued by their employer but that the authorities make it clear that he is compelled to impose a custodial sentence:

> "However, I do take the view that your situation both in terms of your culpability and your personal circumstances are significantly different from that of your co-accused in relation to the manslaughter charge and that as a result I can take a much more lenient course."

Mr Justice Colton considered that the appropriate sentence following a contest would have been one of six years custody. He reduced this to five years as a result of Laverty's plea which represents a discount of close to 20%. As already noted, a custodial period shall not exceed one half of the term of the sentence. The judge specified that Laverty will serve half of the sentence in custody (two and a half years) and the other half on licence. He imposed a concurrent sentence of six months custody in respect of the count of assault occasioning actual bodily harm.

Stephen McCann

Stephen McCann pleaded guilty to one count of affray. He was initially charged with the murder of the deceased but the prosecution accepted his plea to the lesser offence on the basis that he was one of Group 2, his presence encouraged the others in the group to fight and make affray with the members of Group 1 but he did not personally assault the deceased or anyone else. After the incident he voluntarily attended the police station with his mother and was prepared to speak to the police without a solicitor but sought the services of one on the advice of the custody officer. Because of a lack of disclosure he was advised not to answer questions during the first two interviews but by the time of the third interview he provided a statement setting out his involvement.

McCann claimed his involvement was to attempt to break up the fight which had broken out in response to an earlier assault on Daniel McGrath. While doing this he fell and was kicked and dragged away. He was not involved in any further incidents.

Mr Justice Colton said it is difficult to formulate any helpful sentencing framework for the offence of affray as the facts constituting that offence and the possible degrees of participation cover such a wide area of behaviour. He referred to the case of the *Attorney General's Reference (No.1 of 2006)* [2006] NICA 4 in which the Court of Appeal said that certain general principles can be recognised:

> "Active, central participation will normally attract more condign punishment than peripheral or passive support for the affray. The use of weapons will generally merit the imposition of greater penalties. The extent to which members of the public have been put in fear will also be a factor that will influence the level of sentence and a distinction should be drawn between an affray that has ignited spontaneously and one which has been planned. Heavier sentences should in general be passed where the affray consists of a number of incidents rather than a single self-contained episode."

Mr Justice Colton assessed McCann's role in the affray as somewhere between peripheral and central. He was not personally involved in the infliction of any violence and did not encourage others but his presence nonetheless did encourage the fight to take place and he was involved in serious public disorder. The judge accepted, however, that this was something that ignited spontaneously and was not a case of pre-planned violence or something organised between gangs. He said that many of the people involved in the incident knew each other and the matter escalated quickly.

McCann was 18 years old at the time of the offence and apart from a restorative caution had no criminal convictions. As a result of public reaction to his perceived involvement in the offence he received threats and had to move home. The pre-sentence report noted that McCann demonstrated a high level of victim awareness and was also aware of the impact his involvement has had on his own family and his mother's health. The judge accepted McCann's expressions of remorse as genuine. In the period since the offences were committed, McCann has achieved a joinery qualification but has been unable to secure a work placement because of the notoriety following his involvement in this offence. Mr Justice Colton considered the nature of the public disorder was of a sufficient degree that he must consider imposing a custodial sentence but that he had come to the conclusion that there would be no merit in this given McCann's personal circumstances and his degree of culpability. He imposed a Community Service Order of 150 hours.

Aaron Stilges

Aaron Stilges pleaded guilty to one count of affray concerning fighting and the attack on Morris and Woods and one count of assault occasioning actual bodily harm on Woods (he admitted punching Woods once in the face and kicking him once in the face). Mr Justice Colton said it was difficult if not impossible to have a clear understanding of his role but he was not involved in any of the initial altercations or in any offence relating to the death of the deceased. He also noted that Stilges had sustained a hand injury as a result of a knife being used by Morris.

Mr Justice Colton noted that Stilges' personal background was troubling and problematic. He was the victim of a paramilitary style shooting and was involved in a road accident when his friend was

killed. He said these issues have resulted in a chaotic lifestyle and that Stilges has a history of substance misuse and offending behaviour since his late teens. He has 25 previous convictions including one for possessing an offensive weapon. Since the commission of the offences in this case, he has been involved in offences involving burglary, theft of motor vehicles and aggravated vehicle taking. His last conviction relates to offences committed in August 2018. Stilges is the father to three children with whom he has regular contact.

Mr Justice Colton said that determining the appropriate disposal in his case was not easy. There was an abundance of evidence that Stilges suffers from significant mental health issues and that he requires supervision and assistance if he is to recover from those and have a positive life. The Probation Service argued that a probation disposal could be beneficial and assist him maintain his current stability and motivate him to engage in services to enhance his employability skills. It was suggested that he had abstained from drug misuse since 2018. The judge said his concern was that Stilges had failed in the past to engage with probation and mental health services. He concluded, however that it would be appropriate in this case to impose a probation order with strict conditions. Any breach of these would result in him being returned to court and a custodial sentence would almost certainly follow.

Mr Justice Colton imposed a probation order for two years in respect of both counts to run concurrently. During this time Stilges must participate at any assessment/treatment deemed appropriate by his supervising officer. In addition he must actively participate in any programmes of work designed to reduce any risk he may present.

Gary Lewis

Gary Lewis pleaded guilty to affray and assault occasioning actual bodily harm relating to the assault on Ryan Morris. He was not involved in any assault or affray which resulted in the death of the deceased. Mr Justice Colton said it was clear that Lewis was part of Group 2. In his statement, Morris alleged that someone clipped his feet when he was running away and looked up and saw Lewis kicking him in the face.

Lewis was aged just over 17 years at the time of the incident. Prior to this offence he had already been convicted of riotous behaviour on two previous occasions. Subsequent to the commission of this offence he has been convicted of two disorderly behaviours and causing death by dangerous driving. This latter offence took place in July 2016 when a member of the public was killed in the course of his dangerous driving of a scrambler motorbike. He received a determinate custodial sentence of 18 months' imprisonment for that offence.

Mr Justice Colton noted that Lewis has experienced adverse traumatic episodes in his life. When he was eight years old he discovered the body of his father who had committed suicide. Prior to this he had been diagnosed with ADHD and dyslexia. His adolescence was characterised by the misuse of alcohol and substances. The judge noted that Lewis had worked well during the licence period imposed for the dangerous driving conviction and had not come to the attention of the police since that time. Psychiatric reports demonstrate that Lewis is an extremely vulnerable individual who suffers from a significant impairment of intelligence and social functioning.

Mr Justice Colton noted the period of four years which have elapsed since these offences were committed which he said could have a significant impact on a young person. He noted however that significant trauma and intellectual impairment does not automatically lead to criminal offending and

the court must therefore mark criminal conduct with punishment and ensure that the public are protected.

The pre-sentence report suggested that probation supervision would be of assistance to Lewis as he would benefit from a period of supervision. Mr Justice Colton considered that the appropriate disposal was the imposition of a combination order in respect of both counts. This comprises two years on probation with attached requirements and the completion of 40 hours community service. This disposal will permit Lewis to make some reparation to the community for his offending while giving him probation supervision to address the risk of re-offending in the future. The judge said this was not an easy option and would require Lewis to undertake significant work. Any failure to comply would result in him being returned to court and highly likely that he would be sent to prison.

Daniel McGrath

Daniel McGrath pleaded guilty to one offence of affray. This was based on the fact that he was involved in the fighting which resulted in the attack on Morris and Woods. McGrath was not charged with the offence of assault or encouraging others to do so. He was not charged with any offence relating to the death of the deceased. Mr Justice Colton said it was clear from the evidence that McGrath was the victim of an assault in the Surma takeaway when he was kicked on the ground and sustained an injury to his nose. He said it was this assault which tragically triggered the subsequent events which lead to the death of the deceased and McGrath's conviction for affray.

Mr Justice Colton said that McGrath's culpability was at the lower end of the offence of affray. He did not use any actual violence and the offence related to his participation in a group of people engaged in serious disorder, some of who were involved in assaults. At the time of the offence, McGrath was just over 17 years of age. He had one previous conviction for assault at that time which took place in 2015 and was dealt with by way of a Youth Conference Order. As a result of public disquiet surrounding the death of Christopher Meli, McGrath was subjected to unjustified intimidation because of his perceived role and his family had to move home. In this time, Lewis has qualified as a vehicle technician. The court received very positive references from employers and a local priest. Mr Justice Colton said it was clear that McGrath had used the time since this offence purposefully. He took the view that McGrath's culpability is low and said there is very strong personal mitigation in terms of his youth and the efforts he has made to become a useful member of society.

Mr Justice Colton said that disorder of this type will normally require the imposition of a custodial sentence but that it was appropriate in this case to impose a Community Service Order of 100 hours. He said this would give McGrath the opportunity to engage in reparation for his misconduct.

Daniel McManus

Daniel McManus pleaded guilty to one offence of affray. Like McGrath, there was no evidence that he engaged in violence and was on the periphery of events. He was originally interviewed as a witness but was charged on the basis of admissions he made in the course of that interview when he accepted that he was part of the initial group. He said that Morris is his cousin and that he sought to intervene on his behalf, something that Morris acknowledged. Mr Justice Colton took the view that his culpability was at the lower end.

McManus was 16 years of age at the time. He had no previous convictions. He had started misusing alcohol and drugs after the death of his father. Mr Justice Colton said that regrettably McManus had continued with his chaotic lifestyle after this event which has resulted in the commission of primarily road traffic offences for which he was sentenced to a probation order. Since then he appears to have changed his lifestyle and is about to become a father in the context of a longstanding relationships More importantly he is now in full time employment and has not come to the attention of the courts in the last two years. McManus was the first to plead guilty in this trial. Mr Justice Colton imposed a probation order of one year.

Shannon McIlwaine

Shannon McIlwaine pleaded guilty to the offence of affray. It was not alleged that McIlwaine engaged in any violence and there was no evidence to establish whether she encouraged the attack on the victims. She accepted that she was a member of the group which initially went to confront Group 1 and that her group was moving and acting in a fashion which amounted to a display of force. McIlwaine was not involved in the assaults on Woods and Morris and she separated herself from the group prior to that phase of events.

Mr Justice Colton was satisfied that her culpability was very much at the lower end of what constitutes an affray. He noted that she initially went to the police voluntarily as a witness. Since the offences were committed she has given birth to two young children and is a single parent. The judge noted that McIlwaine has a history of mental health problems which have been significant since the commission of the offences. She also has moderate learning difficulties. The judge did not consider her culpability or personal circumstances would justify the imposition of a custodial sentence. Mr Justice Colton said he had given serious consideration to the possibility of the imposition of a community based order but determined that this would not be appropriate and that she should continue to care for her children. He imposed a conditional discharge for one year which he said would put the onus on McIlwaine to avoid any further offending. If she commits a further offence during this year she will be liable to be sentence to this offence as well as the subsequent offence.

NOTES TO EDITORS

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 on the Judiciary NI website (https://judiciaryni.uk).

ENDS

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