Neutral Citation No: [2019] NICC 4	*Ref:* **COL10897**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **01/03/2019**

IN THE CROWN COURT FOR THE DIVISION OF CRAIGAVON SITTING IN BELFAST

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THE QUEEN

v

CAOLAN LAVERTY AND OTHERS

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APPLICATION FOR CHANGE OF VENUE PURSUANT TO SECTION 48(3) OF THE JUDICATURE (NORTHERN IRELAND) ACT 1978

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RULING

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COLTON J

Introduction

[1] The applicant, Caolan Laverty, is one of eight accused charged with various counts arising from the death of Christopher Meli in the Stewartstown Road/Glasvey area of West Belfast on 12 December 2015.

[2] He faces five counts on the indictment namely:

(i) That on 12 December 2015, he murdered Christopher Meli, contrary to Common Law.

(ii) That on 12 December 2015, he unlawfully fought and made an affray.

(iii) That on 12 December 2015, he attempted to commit grievous bodily harm to Ryan Morris with intent to do him grievous bodily harm.

(iv) That on 12 December 2015, he attempted to commit grievous bodily harm upon Steven Woods with intent to do him grievous bodily harm.

(v) That on 12 December 2015, other than at (ii) above he unlawfully fought and made an affray, contrary to Common Law.

[3] The applicant was returned for trial following a preliminary enquiry on 9 November 2018.

[4] He was arraigned on 11 January 2019 and pleaded not guilty to all the counts on the Bill of Indictment.

[5] The trial has been listed for an estimated 12 weeks commencing on 9 September 2019.

[6] The circumstances giving rise to Mr Meli's tragic death were the subject matter of contemporaneous and extensive postings and comments on social media sites including Facebook and Twitter. As is clear from the depositions and the interview notes in this case the PSNI referred to much of this material for the purposes of identifying and interviewing potential suspects and witnesses to the events giving rise to Mr Meli's death.

[7] Much of the social media commentary was focussed on sites associated with Belfast including "Turf Lodge Page", "Beechmount Residents" and "Crumlin Residents".

[8] The applicant and others were identified as "murderers" in social media postings. His bail address has been published. The entries include inappropriate, inaccurate and pejorative accounts of what allegedly took place on the night in question, something which is sadly all too familiar in these vehicles of communication involving highly emotive topics. On 14 December 2015 there is a report and an entry in a Facebook post from a local politician criticising Facebook postings commenting:

> "I understand that people are angry but this is not the way to deal with things and this could impact on this case down the line. I would ask people if they see this post to ask the people posting it to delete it."

This was a specific reference to a picture of two individuals said to be involved along with the word "murderers".

[9] In addition to social media understandably the incident has given rise to extensive media coverage in television broadcasts, radio broadcasts and mainstream written media.

[10] The vast majority of this coverage is, of course, contemporaneous to the events. The publications report the reactions of the grieving family of Mr Meli and

also commentary from local politicians. There was extensive coverage of a public vigil organised by the family of Mr Meli at which about 300 people attended.

[11] Some of the reported comments in relation to what took place were inaccurate. In particular, again in December 2015, it was reported that those involved in Mr Meli's death were "off their heads on Es" and that Mr Meli's pockets had been robbed as he lay deceased. Neither of these allegations feature as part of the prosecution case. Mr John Kearney QC, who appeared with Mr Declan Quinn on behalf of the applicant, is also critical of the reporting of comments from a local councillor at that time where the killing was referred to as "murder", something which is in issue in this trial.

[12] After the initial furore surrounding the death and the community reaction to it, media coverage abated. As one would expect there was coverage of subsequent court hearings and bail applications which accurately reported what had taken place in those proceedings. However, these publications on the internet do have the effect of providing links to previous reporting on the case and can reignite social media commentary.

The Application

[13] Section 48 of the Judicature Act (Northern Ireland) 1978 ("the 1978 Act")provides:

> "(1) A magistrates' court committing a person for trial shall specify the place at which he is to be tried, and in selecting that place shall have regard to—
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> (a) the convenience of the defence, the prosecution and the witnesses;
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> (b) the expediting of the trial; and
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> (c) any directions given by the Lord Chief Justice under section 47(2).
>
> (2) Without prejudice to the preceding provisions of this Act about the distribution of Crown Court business, the Crown Court may give directions or further directions altering the place of any trial on indictment, either by varying the decision of a magistrates' court under subsection (1) or … a previous direction of the Crown Court.
>
> (3) The defendant or the prosecutor, if dissatisfied with the place of trial as fixed … or as fixed by the Crown

> Court, may apply to the Crown Court for a direction or further direction varying the place of trial; and the court shall take the matter into consideration and may grant or refuse the application, or give such other direction as the court thinks fit."

[14] In fact the committal order in this case does not appear to have specified the place at which this trial is to take place and this court listed the trial venue as Laganside Court, subject to this application which was forewarned by Mr Kearney.

[15] The incidents forming the basis of the Bill of Indictment occurred in the County Court Division for Craigavon. The vast majority of the victim's family, the complainants, the accused, and the witnesses live in the Belfast area, particularly West Belfast.

[16] The applicant does not contend that it will not be possible to have a fair trial for all of the accused. Rather it is argued that the court should exercise its discretion under section 48(3) to either order that the case be tried at a venue outside Belfast/Craigavon/Antrim, (the defendant has been bailed to an address in this Division) or alternatively if the case is to be tried in Belfast a jury from outside these divisions should be sworn and arrangements made for them to attend at the trial. At this stage no other accused has made any application in relation to the trial venue.

[17] In his thoughtful and measured written and oral submissions Mr Kearney contended on behalf of the applicant that there was a well-grounded apprehension that members of a jury selected from the Craigavon/Belfast or Antrim Division would be prejudiced by exposure to the coverage to which he referred. There is therefore a risk that a jury or individual members of a jury sworn from those divisions might not be able to discharge their obligations impartially and independently.

[18] He points out that it would be quite wrong to direct that jurors should only be taken from particular areas of the Division which comprises the Crown Court in which the matter would be heard. He relies on the decisions in **R v Morgan and others** [1998] NIJB 52 and **R v John and Patrick McParland** [2002] NICA 22 in which the courts agreed to an application by the prosecution to vary the venue of a trial.

[19] In **Morgan** the trial judge agreed to an application by the prosecution to vary the place of trial from the Division of Armagh and South Down to Belfast Crown Court on the basis that since the defendant company was the county sponsor of Gaelic football league matches at various levels in the Division, there was a well-founded apprehension that jurors from the Division would be pre-disposed in favour of the defendants. As a result there was a material risk that jurors would not view the case impartially.

[20] In **McParland** one of the reasons put forward by the prosecution to vary the place of trial was that the defendant's, through their ownership of the Canal Court Hotel, were the main sponsors of Gaelic football in the Division and their logo "Canal Court" appeared on the jerseys of Down GAA Football team. This reason, taken together with other factors, was accepted by the court as justifying a transfer of venue from Newry and South Down to Coleraine.

[21] In making the application it was submitted that the dissemination of prejudicial information about the accused and/or his case is likely to diminish with increasing distance from the area within which the allegations relate, even where material has been shared on the internet.

[22] It was pointed out that the concentration of much of the coverage of this case, particularly in the social media context was within the general area and in any event would be of greater interest to those living in that area.

[23] Mr Murphy QC who appeared with Mr David Russell for the prosecution informed the court that the prosecution had considered the application and had concluded that there was no reason to exclude any particular venue for this trial.

[24] It is clear from the authorities to which Mr Kearney referred that the court's consideration of the matter is not confined to the factors set out in section 48(1) of the 1978 Act.

[25] However, the starting point for the selection of the venue must be the factors set out therein, namely the convenience of the defence, the prosecution and the witnesses and the expediting of the trial.

[26] In that regard there is no doubt that the appropriate venue for this trial is Laganside, Belfast. In addition to the convenience of the defence, the prosecution and the witnesses the multiplicity of defendants in this case and the projected length of the trial strongly favour Laganside as the appropriate venue given the size of court required and the length of time for which it is required.

[27] The issue is whether or not the coverage to which I have been referred is sufficient to justify the variation of the venue from Belfast in these circumstances.

[28] Of course the factual matrix is entirely different from that considered in the **Morgan** and **McParland** cases where the perceived material risk of pre-disposition in the defendant's favour was something ongoing and a permanent feature. In addition the factors were peculiarly local.

[29] In considering media coverage it must first be recognised that all of the matters to which the applicant has referred were published in the entirety of this jurisdiction and were accessible to everyone living in this jurisdiction.

[30] The question of media coverage is one which is frequently raised by defendants, although usually in the context of a stay application (see for example **R v Abu Hamza** [2006] EWCA Crim 2918 and **Montgomery v HM Advocate and Another** [2003] 1 AC).

[31] It is understandable and inevitable that a killing such as this will stir emotions and attract significant media coverage. The vast majority of that coverage was contemporaneous to the events which took place and will be close to 4 years' vintage at the time of the trial.

[32] In considering this matter I have had regard to the two decisions to which I have referred above. In **Abu Hamza** the Court of Appeal in England and Wales reviewed the authorities on the potential prejudice of pre-trial publicity and in paragraphs 89-102 comprehensively set out the basis for the courts' confidence in the ability of juries, properly directed, to bring impartial judgment to cases they hear.

[33] **Abu Hamza** followed on from the analysis in **Montgomery** which looked at the context of the right to a fair trial by an "independent and impartial tribunal as guaranteed by Article 6 of the ECHR". In its commentary on this case Archbold (2019) 4-84 says:

> "*It was said that the principal safeguards of the objective impartiality of a jury lie in the trial process itself and the conduct of the trial by the judge; first, there is the discipline of listening to and thinking about the evidence, which might be expected to have a far greater impact on their minds and such residual recollections as might exist about reports about the case in the media; secondly, the impact might be expected to be reinforced by such warnings and directions as the judge might think it appropriate to give; the system of trial by jury was based upon the assumption that the jury would follow the instructions which they received from the judge; and such considerations had to be borne in mind in applying the appropriate test where it was contended that a fair trial was impossible on account of adverse pre-trial publicity.*"

[34] The court has considered all the material that has been submitted in terms of media, including social media, coverage.

[35] The court has also carefully considered the submissions of the parties and the cases to which it has been referred.

[36] The court has no doubt that the appropriate venue for this case is Belfast having regard to the statutory factors identified in section 48(1) of 1978 Act.

[37] The court is not satisfied that the media coverage (including social media) to which it has been referred is such that the applicant cannot receive a fair trial from a jury sworn from a panel from the Division of Belfast.

[38] The court considers that there is what is referred to as a "fade factor" in relation to the coverage, the vast majority of which relates to 2015/2016.

[39] The jury selection and trial process is well equipped to deal with any potential prejudice. Prior to the swearing of the jury the trial judge can ensure by appropriate questioning that each juror is in a position to determine the case in accordance with his/her oath.

[40] In the course of the hearing any jury sworn in the case will receive appropriate and regular directions from the trial judge on the importance of dealing with the case solely and objectively on the evidence it hears. Members of the jury will be warned about taking into account extraneous sources of information such as internet or media publications.

[41] The court is well accustomed to conducting trials which attract significant social media coverage in the course of the trial. Any dangers arising from this, of course, will apply to any jury irrespective of the Division from which it is sworn.

[42] The court did consider the possibility of swearing a jury from outside the jurisdiction to hear this trial in Belfast but it does not consider this to be in any way attractive given the fact that the court has been told this trial will last for up to 12 weeks. In any event the court does not consider that such an approach is necessary or appropriate. In this regard the court also notes that in terms of numbers Belfast has the largest pool of potential jurors from which to swear a jury. Experience demonstrates that juries sworn from that extensive panel are well accustomed to determining cases in which there has been extensive, emotive and inaccurate media coverage.

[43] Reflecting the authorities to which I have been referred the experience and expectation of this court is that a jury properly selected and properly directed will be capable of deciding the case on the basis of the evidence and material presented to it in the course of the trial and not on any historic media reporting or reporting in the course of the trial itself.

[44] In all the circumstances therefore the court considers that the appropriate venue for this trial is Belfast and directs accordingly.