

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

Delivered: 25/02/05

IN BELFAST CROWN COURT

THE QUEEN

v

BARTHOLOMEW FISHER

DEENY J

The court today has the duty of sentencing the defendant for the manslaughter of James Joseph McGinley.

We are not here to assess the life of Mr McGinley. His life will not be measured by his death, or by this court, but by those who knew him. The jury acquitted the defendant of murder; ie they concluded that he did not intend to kill or cause serious injury to James McGinley, but they also rejected his defence of self-defence (which would have applied to both the murder and the manslaughter) ie they were satisfied beyond reasonable doubt that it was not reasonable, in the circumstances, to leave his flat and go downstairs with this dagger and put himself in the situation that then occurred. They did convict him (in my view) properly of the offence of manslaughter that was left to them, on the basis that he caused or contributed to the death of James McGinley, while engaged in an unlawful act.

It must be borne in mind that the defendant here was (on the evidence) minding his own business, close to the door of the apartment block in which he lived, when the deceased and Ciaran Breslin accosted him. There was an exchange between them which (on the evidence) was clearly initiated by Breslin. The defendant retreated to his apartment block, and was assaulted as he tried to get in the door. The downstairs door of the apartments did not close very well, and there was a scuffle at the door. The defendant retreated upstairs with Breslin and the deceased following him into the building, but staying on the ground floor. It appears from the video footage (to which reference has been made) that they left the building but tragically re-entered it and hid in the dark, under the stairs, on the ground floor.

The defendant legitimately (in the light of the evidence) was apprehensive that the downstairs door was not secured, and says that he went downstairs to secure it. I observe that if he had remained in his flat and the two younger men had followed him up, it is unlikely that he would have faced any criminal charges, even if a fatality had occurred - there's legitimate public concern about people defending themselves in their own homes - but it must also be said that if he'd gone downstairs with something less lethal than this 12 inch dagger no fatality would have occurred. He did go back downstairs. CCTV footage is available, which makes it likely that the whole fatal exchange with the deceased took place in less than a second; that is that the deceased jumped out from under the stairs, striking the defendant with a bottle or can, over the defendant's right eye, which as Miss McDermott reminds me, caused a laceration to the defendant which is visible on the subsequent police film.

The defendant turned with the knife in his hand, towards the deceased, and the combined force of his turning motion towards the deceased (rather than stepping back) combined with the deceased's own assault on the defendant, caused the knife to penetrate his heart and caused the death, a little time later, of Mr McGinley. This was the view of Professor Crane, the State Pathologist.

These are most unusual circumstances and (like counsel) I have not found any reported case on the same facts. The Court of Appeal in England have said that the sentence in each case of manslaughter, by stabbing, depends on its particular facts. Miss McDermott referred me to one authority in particular, where a suspended sentence was imposed for a blow with a fist, and argued by analogy, that it had relevance to this case. It may have relevance, but there are a considerable number of other cases relating to death by knife wounds where varying periods of imprisonment have been imposed by the courts, and upheld, either on appeal or in references by the Attorney General.

The circumstances of the case were tragically complicated, indeed, largely caused by intoxication. The post-mortem on Mr McGinley showed that he was heavily intoxicated, with a combination of drink, cannabis and ecstasy. The defendant himself said - plausibly on the evidence - that he had had a considerable amount of alcohol on the night in question, and this clouded his judgment, but one would have hoped that a man of his age might have been expected to show more control and good sense.

I have considered the criminal record of the defendant. On one view it is quite extensive, but counsel has pointed out that it consists almost entirely of offences of riotous behaviour or disorderly behaviour or related matters, arising out of civil disturbances in his native city.

Only one offence attracted a sentence of three months imprisonment and that was a very considerable time ago; although several others attracted suspended sentences. The trial was told (and the Crown did not dispute this) that the defendant (himself) had brought several successful claims arising out of some of these confrontations. Furthermore, the last offence (apart from a minor driving matter) took place fully 10 years ago and attracted a modest fine. The defendant, therefore, cannot claim a clear record, but there's no conviction for any offence of the gravity or of the precise nature of the one before the court. In addition, the defendant did not plead guilty to the charge. If he had done so that would normally attract some reduction in sentence, although there are (once more) particular facts in this particular case.

Bartholomew Bernard Fisher, I have taken all these matters into account, and all the matters drawn to my attention by counsel (particularly defence counsel) in their helpful submissions. Balancing the different factors in mind, I have concluded that this is a case at the lower end of the range of gravity for manslaughter, but one that nevertheless must attract a custodial sentence, and I impose a sentence of three years imprisonment. Given the defendant's age and the absence of any criminal record in the last ten years, and the circumstances of the case, it does not seem an appropriate case for a Custody/Probation Order, and I make no such order.

Anything further? No, nothing further.