

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

DANIEL MARTIN HARGAN

Bill No 07/091590

WEIR J

[1] Mr Hargan, you have pleaded guilty to the manslaughter of Edward Kelly on 15 June 2006. You were initially charged with his murder but your plea of guilty to manslaughter was ultimately accepted by the Prosecution and I sentence you on that basis.

[2] On the afternoon of the day of the killing the deceased was in his bedroom at his lodgings at Central Avenue, Bangor. He had consumed a good deal of alcohol and was considerably intoxicated. In all probability he had either retired to or was resting upon his bed. Sometime after 5.20 pm you went to the lodgings with a woman called Tammy McDowell who has since died and a man named Zalweski whom the Police wish to interview in connection with this death but who is believed to have left the country.

[3] It seems that the three of you went upstairs to Mr Kelly's bedroom. What exactly transpired there is far from clear, as is your own part in the events, but by the time you and your two companions had left the house again some 30 minutes later Mr Kelly had suffered very serious injuries. He was later found by his landlady grievously wounded. He died as a result of his injuries having been unconscious for some time.

[4] The deceased had received a vicious and sustained beating mainly to the head and an implement, described as "rod-like" from the pattern of the wounds it inflicted but which has not been recovered, was used in the attack.

There was also some bruising to the chest. There was a high level of alcohol in the deceased's blood confirming that he was heavily intoxicated at the time.

[5] The Pathologist concluded that the injuries indicated multiple blows to the head, many with the linear weapon, and also injuries consistent with kicking or stamping. The photographs taken at the scene indicate a violent and sustained attack upon a small, lightly built person of 58 years who can have been no match for his assailants. The cause of his death was due to brain haemorrhage.

[6] You have given the Police a very inadequate account of the extent of your involvement in this dreadful attack or the reasons for it. You have sought to distance yourself from what happened and have taken refuge in claimed amnesia due to your own intoxication. In an account to the Probation Officer you appear to have recalled, two years after the events, more than you could recall when interviewed by the Police two days after the death and that seems surprising. You told the Probation Officer that you went to Mr Kelly's home looking for £20 which you claim he had been supposed to return to you. You told her that on arrival at his lodgings Ms McDowell went up Mr Kelly's room but that she called down that she could not waken him and that you then went up and pulled him off the bed. You admitted that you may have jumped on the deceased's body or head but claimed your memory was unclear due to alcohol. You were unable to recall whether or not Mr Zalweski took part in the assault. After it ended you and your companions went downstairs and drank alcohol before leaving a short time later. No effort was made to summon medical assistance until the landlady found Mr Kelly on returning home from work and raised the alarm - by then it was too late.

[7] Mr Hopley QC has submitted that I should ignore this account because of the considerable passage of time between the events and the giving of the account. He also submitted, rather surprisingly, that it is not the job of a Probation Officer to record an accused's account of the crime. I do not intend to rely upon this belated and patchy account to your disadvantage but I cannot avoid observing that it seems most odd that an account given more than two years after the event should contain much more detail than one given two days after it. It is the all too common experience of the Courts that those accused of dreadful crimes unconvincingly assert afterwards that they have no memory of the events due to their intoxication.

[8] It is therefore impossible to know the truth of what happened in that bedroom. A pair of shoes found in Zalweski's flat has been linked to you by DNA testing and on those shoes the blood of Mr Kelly was found although it cannot be shown that those shoes were used to inflict injury. The extent of your involvement in the assault cannot be established nor who caused any of the specific injuries.

[9] Mr Murphy QC for the Prosecution accepts that you offered to plead guilty to manslaughter at an early opportunity and that any delay in your being re-arraigned on that basis was due to the need for the Prosecution to fully evaluate the matter before being able to decide whether to accept the plea.

[10] Mr Murphy explained to the Court that the Crown accepted the plea to the reduced charge upon the basis that, having regard to all the evidence, it is not satisfied that the requisite intent for murder can be proved beyond a reasonable doubt having regard to the following particular circumstances:

- (a) None of the individual injuries was capable of causing death.
- (b) Death was not immediate and occurred some time after the infliction of the injuries.
- (c) Death was caused by brain haemorrhage as a result of the combination of injuries.
- (d) A T-shaped laceration sustained by the deceased may have resulted from a fall against an object.
- (e) Other persons not presently before the Court may have had an involvement in this offence.
- (f) The forensic evidence against you is limited.

[11] You were born on 9 November 1959 so are now almost 49 years of age. Your father appears to have been addicted to alcohol during your childhood years leading to domestic disharmony in your home. You appear to have followed doggedly in his footsteps having, by your own account to Dr Davies, Consultant Clinical Psychologist, begun drinking at the age of 17 and, with the exception of short periods of abstinence, continued to drink virtually every day since. You have been a patient in Alcohol Treatment Units on a number of occasions but, as you candidly admit, you didn't really want to give up, having been drinking "24/7" and knowing nothing else. Apart from a very few years before the age of 20 when you had a serious motor accident you have never had a full time job. Your marriage was stormy and characterised by numerous separations ending in a final parting some time before these events. You have a criminal record which, while extensive, is not, as the Prosecution concedes, of the most serious character. Rather it consists of the petty dishonesty and damage and driving offences and minor violence often involving the Police that is typical of committed drinkers such as yourself who steal in order to be able to drink and then misbehave when they have consumed it. On testing by

Dr Davies you were found to have a low IQ placing you in the bottom 3% of the population and on the borderline of mental handicap. The reports of Dr Bownes, Consultant Forensic Psychiatrist, confirm the finding of Dr Davies.

[12] I find it impossible to comprehend how a disagreement over £20 could result in the brutal attack upon and the death of Mr Kelly. The willingness of people to settle minor disagreements by the use of extreme violence is a highly disquieting feature of modern life upon which the Court of Appeal has had occasion to comment in R v. Stephen Magee; R v. Daniel McArdle; and R v. Ryan Quinn. In deciding what sentence to pass upon you I have sought to apply the principles set out in those cases, bearing in mind the observations of that Court that the guidelines provided in R v. Stephen Magee can only be of a general description because of the potentially limitless variety of factual situations where manslaughter is committed.

[13] I have paid close attention to the factors identified by Mr Murphy that I have earlier set out and to the submissions of your Counsel, Mr Hopley, about your unfortunate addiction to alcohol, your low intelligence and the fact that you did at an early stage express a readiness to plead guilty of manslaughter. All that said, however, this was a dreadful crime that has removed from his family a father and grandfather who, whatever his own problems, held an important place in their lives. The moving letters written to the Court by his son and daughters show the lasting consequences for them of this senseless, brutal attack.

[14] Ms Bartlett, the Probation Officer, has assessed you as a person who is highly likely to re-offend upon your release from prison. She therefore recommends that in order to minimise the risk that you pose within the community you should be made subject to statutory supervision upon your release from prison with an obligation to attend a drug and alcohol treatment programme. I accept her assessment and therefore consider that you meet the qualifying conditions prescribed by the Court of Appeal for the imposition of a custody/probation order.

[15] Accordingly, I propose to offer you the opportunity to have a custody/probation order made in your case. Such an order would require you to serve the immediate custodial sentence which I am satisfied is not only required but well merited in your case and then, upon your release from custody, to be under the supervision of a probation officer for a further period with the obligation to attend for drug and alcohol treatment during that period.

[16] I want to make it clear to you that a probation order of this kind is not an easy option. If you agree to accept such an order you will have to follow any directions that the probation officer may give you and attend any counselling, courses or other appointments that may be arranged for you. If you fail to do

so you will be in breach of the order and will be liable to be punished accordingly.

[17] If you do not wish to accept a custody/probation order I shall impose a sentence of 8 years imprisonment upon you. If you are willing to accept custody/probation the sentence will be 7 years' imprisonment together with 12 months probation supervision to commence upon your release from prison. Do you agree to the making of a custody/probation order?

[18] Very well, as you do agree I sentence you to 7 years' imprisonment together with 1 year's probation supervision to commence upon your release from prison. It will be a condition of the probation order that you shall present yourself in accordance with instructions given by the Probation Officer to participate in any drug and alcohol treatment programme to which you may be directed and comply with all instructions given to you by or under the authority of the person in charge of the treatment programme.