

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

GERARD CONNORS

HART J

[1] Gerard Connors has pleaded guilty to the murder of James, better known as Seamus, Fox on 22 April 2010 and has been sentenced to life imprisonment. It remains for the court to impose the minimum term of imprisonment which Connors must serve before he can be considered for release by the Parole Commissioners. Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 prescribes that the minimum term must be the period the court considers appropriate –

“To satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or the combination of the offence and one or more offences associated with it”.

Before turning to consider that I am obliged by virtue of the provisions of paragraph 25 of sch. 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform Connors that the Independent Barring Board will include him in the barred list concerned for adults by virtue of his conviction.

[2] Seamus Fox frequently played darts in the Donegal Celtic Sports Club on Suffolk Road, Belfast and had been in the club on the night of his death. He was making his way home when he was accosted by the defendant who was looking for a cigarette. When Mr Fox and his companion Raymond Gilmore refused to give the defendant a cigarette the defendant became verbally abusive.

[3] Nothing happened at that stage and Mr Fox and Mr Gilmore walked on for some distance before they separated, and Mr Fox turned into Horn Drive. His body

was later found lying on waste ground near Woodburn PSNI station by Patrick Gillen and his girlfriend Bronagh Fegan as they made their way home. As it happened they had earlier been at a friend's house, and they described how Connors came into the house uninvited, saying that he was looking for drugs. He also behaved in a drunken fashion, but they were able to put him out.

[4] CCTV of the area at the rear of the police station was played in court. This shows that Connors followed Mr Fox and they disappear off the screen. The defendant reappears, and whilst the picture is limited to Connor's movements, it is apparent that he is repeatedly striking downwards at someone on the ground, or perhaps trying to get up, blows or punches that are being delivered with very considerable force and determination. A post mortem examination was carried out on Mr Fox by Dr Ingram, the Assistant State Pathologist for Northern Ireland. He found that Mr Fox had suffered serious injuries, as can be seen from the following extract from his post mortem report.

"Death was due to injuries he had sustained principally to his head, but also to his neck, in a serious assault. There were some trivial abrasions and lacerations mainly on the left side of the face as well as diffuse bruising over the left cheek and bruising of the left upper and lower eyelids, the right lower eyelid and on the bridge of the nose. These relatively minor external injuries were associated with severe internal injuries of the facial bones and skull. These included fractures of the lower jaw, which was broken in three places, comminuted fractures of the upper jaw, including both maxillae, fractures of the hard palate and both cheek bones, fractures of the nasal bones, fractures of the roofs of both orbits as well as a little further fracturing of the skull base on the left side. Furthermore there were a total of three fractures of the bones of the larynx, or voicebox. As a result of the fractures of the jaws, facial bones and nose there had been heavy bleeding into the nose and mouth which would have severely impaired his ability to breathe. This would have been further compounded by the fractures of the voicebox which are likely to have still further compromised the integrity of his upper airway. There was also evidence of blood in the larger airways of the lungs and it was this inhalation of blood and obstruction of the upper airways which ultimately caused his death.

The nature of these injuries would have required considerable force such as his having been stamped upon, probably at the very least a couple of times. An area of stippled abrasion on the right side of the scalp had been caused by counter pressure and indicates that the blows to the head were inflicted whilst he was lying on the ground.

In addition to these injuries there was bruising of both lips as well as three lacerations of the lower lip. These had probably been caused by a punch or punches but could also have been caused by a stamp. The presence of a few trivial abrasions on the back of the scalp would support the hypothesis that he had probably been punched and had fallen backwards striking his head before the injuries to the left side of the face were inflicted."

[5] From Dr Ingram's findings it can therefore be seen that Mr Fox was struck repeatedly with considerable force on the head and neck whilst he lay on the ground, and these blows caused severe internal injuries to his face, jaw and voicebox, and the injuries caused by these blows led to the inhalation of blood, and in turn caused his death. From the CCTV it is not possible to say whether Connors stamped on Mr Fox, although from the passage quoted above it is clear that Dr Ingram considered that at least some of the injuries were consistent with having been caused by stamping. However, when the court pointed this out to Mr McCartney QC (who appears for the defendant with Mr Browne), he then produced a report from Dr Cassidy, the State Pathologist in the Republic. Dr Cassidy's opinion was that

"The injuries to this man's face could have been caused by several forceful blows, at least one to the nose, one to the jaw and one to the side of the face, as well as one to the mouth area"... "While all of the injuries could have resulted from a series of punches, a kick to the face, particularly once he was on the ground, cannot be excluded."

This report had not hitherto been relied upon by the defence, and had not been disclosed to the prosecution or the court by the defence as it should have been if the defence were taking issue to the references to stamping by Dr Ingram. Indeed the defendant's solicitors wrote to the court on 24 May 2011 confirming that Dr Cassidy's report was not being relied upon. I have considered whether I should conduct a *Newton* hearing to determine if Mr Fox was stamped upon. However, taking into account that Dr Ingram's view that Mr Fox was stamped upon appears somewhat tentative, and in view of Dr Cassidy's concession that a kick to the face cannot be

excluded, I have decided that such a hearing is unnecessary, because on any showing all the medical evidence shows that Connors struck Mr Fox repeatedly and with considerable force, and, as will become apparent, Connors admitted to the police that he kicked Mr Fox to the chest. Whether the kick connected with Mr Fox's face or not, Connors was prepared to kick him when he was down, a particularly dangerous and cowardly action.

[6] Connors came to the police next day, and when he was examined by a forensic medical officer he was found to have a swollen jaw. When he was interviewed after caution he accepted that it had been he who asked Mr Fox and his companion for cigarettes, and that he had later caught up with Mr Fox at the area of waste ground where Mr Fox's body was found. He maintained that Mr Fox hit him first and that he hit back in self defence. It may be that at some stage of the altercation between them Mr Fox did try to defend himself and may have struck the accused, because that would account for the swollen jaw found by the forensic medical officer. The accused said that he hit Mr Fox a couple of times, and then kicked him as Mr Fox was on his way down to the ground. He said that he kicked him on the chest with his right foot. It appears from his description that Mr Fox was in a position as if he was sitting up prior to getting back on his feet, Connors said that he grabbed Mr Fox, hit him a couple of times and then ran.

[7] When asked how often he had hit Mr Fox Connors said that he hit him at most four times on the face. He maintained that Mr Fox just hit him out of the blue just behind the left jaw, whereupon Connors responded by way of a reflex response. However, he accepted that the kick which he described to the upper body of Mr Fox could have been to the head. He was unable to remember how many punches in all he had delivered, saying that there could have been about four. When Connors was informed that Mr Fox was 57 years of age, he professed to have thought that he was about 30, and was emphatic that he would never stamp on anyone.

[8] He accepted that he had knocked on Paul Irvine's door, that is the door of the house in which Patrick Gillen and Bronagh Fegan had been earlier that night when they describe the accused entering the house. He denied that he had come in looking for drugs, saying that he just wanted cigarettes. He maintained he had not taken drugs for some considerable time, although a report prepared on his behalf by Dr Trinick, a consultant chemical pathologist, concluded that Connors -

"Appears to have taken cannabis and so long as he was within the time for cannabis effects this could have had a significant effect on his thought processes and general mentation. The combination of increased anxiety, inability to fully comprehend while drunk and altered perceptions due to cannabis in a setting that would enhance a misunderstanding of surrounding circumstances would greatly increase

the possibility of unpredictable reactions from Mr Connors”.

Dr Trinick described how Connors had drunk over 10 pints between 6.00 pm and midnight and therefore would have been intoxicated. I therefore proceed on the basis that the accused had been consuming alcohol, and that it is probable that he had taken cannabis on the day in question.

[9] In R v McCandless [2004] NI 269 the Court of Appeal directed courts in this jurisdiction to adopt the approach prescribed by Lord Woolf CJ in the *Practice Statement* issued in 2002 when fixing the minimum term to be served by a defendant convicted of murder. As can be seen from the relevant passages set out below the *Practice Statement* provides for two starting points, the first being a normal starting point of 12 years with a second, higher, starting point of 15 to 16 years. The higher starting point applies to cases where the offender’s culpability was exceptionally high or the victim was in a particularly vulnerable position.

“The normal starting point of 12 years

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender’s culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender’s culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was ‘professional’

or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty."

[10] I do not regard this as a true case of overreaction whilst acting in self-defence in any meaningful way, and I am satisfied that this is a case where the court should adopt a higher starting point of 16 years because, as Mr Murphy QC for the prosecution ultimately accepted, there are two factors in this case which place it in

the higher category. The first is that Mr Fox was struck as he lay on the ground, or as he tried to raise himself from the ground. He was therefore in an exceptionally vulnerable position when he was struck repeatedly and kicked. Secondly, as Dr Ingram's report makes clear, extensive injuries were inflicted on Mr Fox, and the minimum term should also reflect the severity of the injuries inflicted upon Mr Fox as he lay on the ground.

[11] I have received victim impact statements from Mr Fox's widow Mrs Phyllis Fox, from four of her sons, from her four daughters, and from a niece who describes the effect upon her father, a brother of Seamus Fox. It is impossible to fully convey the depths of the grief, and the continuing sense of loss, that each has described in simple and moving terms without setting out in full their accounts, and I do not wish to inflict further distress upon them by repeating everything each has said. What is evident from their accounts is the devastating effect the murder of Seamus Fox has had in different ways upon his extensive family circle, a circle that extends over several generations. In particular Mrs Fox describes the added pain that wells up within her when she looks out from her house and can see the spot where her husband was found. She and other members of her family describe how they feel that their personalities have changed as a result of his murder. Their words serve to remind us all of the effect of violent death on the families who have to carry the pain of their loss long after the proceedings have come to an end.

[12] I have been provided with two reports on the defendant from Dr Helen Harbinson, a consultant psychiatrist, and one from Dr Bownes, also a consultant psychiatrist, although Dr Bownes' report was not made available until the plea in mitigation, despite the court's direction that any reports or documents relied upon be lodged in advance of the hearing. Dr Harbinson records that the defendant began drinking at the age of fifteen, and that he was drinking heavily three times a week before his arrest. He had also been using cannabis most days from the age of fourteen or fifteen, as well as other illicit drugs. She concluded that his behaviour on this occasion "would appear to be the result of low intelligence, impulsivity and excess alcohol". Dr Bownes records an alcohol intake of up to 60 units a week, and the use of various illicit substances. I have also been provided with a report from Dr J Craig, a consultant neurologist, relating to an assault on 5 October 2009.

[13] I have also received a pre-sentence report upon Connors. This concludes that he poses a significant danger to the public because of the violence and lack of self-control he displayed, together with his limited insight into why he committed this offence.

[14] I have also received a number of character references on behalf of the defendant from members of his family and from other responsible members of the community. Whilst these show that there were many good sides to his character before the events of that night, such matters count for little in a case of this gravity, and are offset by his persistent heavy drinking and drug taking for several years

before these events. A number of the references refer to Connors's remorse at what happened, and whilst he may well regret what happened, there are other factors which bear upon his remorse to which I shall shortly refer.

[15] Whilst there are a number of factors which make this an appropriate case for a higher starting point of 16 years, there are a number of mitigating factors which I must also take into account. The first is that the defendant handed himself in to the police the day after the attack upon Mr Fox, and gave a detailed account of his actions during interview. However, as his subsequent plea demonstrates, this was not a wholly truthful account because he plainly was not acting in self-defence when he struck Mr Fox as he lay in a vulnerable position on the ground. The injury to his jaw suggests that Mr Fox may have struck Connors at some stage during the altercation which took place between them. Nevertheless, that altercation was provoked by Connors' aggressive importuning or pestering of Mr Fox for cigarettes. A further mitigating factor is that Connors was only just 18 at the time and he is now 19. He has a clear record, although the reports refer to his having been referred for diversion in the past, but I propose to leave this out of account.

[16] The final mitigating factor is the plea of guilty entered by the accused. He is entitled to credit for this, but the credit must be reduced to take account of the fact that the plea was only entered on the morning of the hearing when the jury was about to be sworn. Mr McCartney relied upon dicta by Judge LJ in R v Peters [2005] EWCA Crim 605 at [18] and [19] in support of his submission that a plea of guilty could not be entered until all the necessary inquiries had been completed. Whilst that may be so as a general proposition, Judge LJ also pointed out that

"In relation to the allowance for pleas of guilty, even if there is a delay in obtaining the advice of leading counsel, the defendant should not normally expect to obtain the maximum discount unless a very early indication is given that as a matter of fact he accepts responsibility for the fatal injuries, or involvement in death."

In the present case the defendant's defence statement asserted that he acted in self-defence and used "what he believed in the circumstances to be reasonable force to defend his person". As his plea belatedly accepted, that was an unsustainable proposition. When the case eventually came on for trial an application for a further adjournment on the morning the jury was to be sworn, inter alia on the wholly unjustified basis that there was evidence that the defendant was suggestible, was rejected. I do not believe that Judge LJ's dicta have any bearing on the circumstances of this case.

[17] Had the defendant been convicted after contesting the charges I consider the appropriate sentence would have been one of 16 years imprisonment. Taking into account his plea of guilty and the other mitigating factors to which I have referred I

sentence him to a minimum term of 13 years imprisonment. This will include the period spent on remand in custody.