

IN THE CROWN COURT IN NORTHERN IRELAND

CRAIGAVON CROWN COURT
(SITTING AT BELFAST)

THE QUEEN

v

MARTIN LEO McNALLY

HART 1

[1] The defendant has pleaded guilty to the manslaughter of Francis Gerard Lyttle who died on 23 January 2008 never having regained consciousness following severe injuries inflicted by the defendant in a completely unprovoked assault on 1 November 2007.

[2] The defendant, who was born on 19 November 1989 and who is now 20, was therefore just short of his 18th birthday on 1 November 2007. He had been on a prolonged drinking spree which started when he was celebrating Hallowe'en on the night of Wednesday 31 October. It appears from his account, and the evidence of a number of young people who had been drinking with him at various times, that he had been drinking throughout the night and for most of the following day, Thursday 1 November. On Thursday he contacted his girlfriend, Nichola Flack, by mobile 4 or 5 times during the day, and during those calls told her he had taken Ecstasy tablets the night before. In interview he admitted that he had also taken Cocaine, and a urine sample taken at 11.30pm that night, that is more than 6 hours after the events, showed that not only was his blood alcohol reading at that time 189mgs per 100ml of blood, but there were traces of MDMA (Ecstasy), cocaine and cannabis in his blood. The cannabis could however have been there for quite some time.

[3] The defendant came to Nicola Flack's house about 4.00pm on 1 November and at that time he was carrying two bottles of Buckfast wine and a litre bottle of Vodka. He was seen by Martin Quinn, a self-employed

painter and decorator working in the area, at about 3.30pm. The attention of Mr Quinn and his workmates was drawn to the defendant because of his drunken and foolish behaviour. However, he saw the defendant suddenly develop a more aggressive attitude when the defendant ran towards Mr Quinn and his companions and stopped about 10 yards away and challenged them to come to fight him. The defendant said "I'll stab the fuck out of the three of you" and put his hand in his pocket but did not produce any knife.

[4] Mr Lyttle was a 71 year old single man who lived alone in the town, and appears to have been known to many in this area from walking his dog and going to the various shops in the vicinity. Although he had a number of medical problems in the past he was still able to get about and looked after himself. It appears that he visited a nearby shop and purchased some items and then started to make his way home. His route took him along an alleyway, and it appears that the defendant attacked him in the alleyway although the reason why he did so is unknown. Mr Lyttle was found lying in the alleyway by Martin McCann who was making his way through the alley, and an ambulance was alerted at approximately 5 pm.

[5] Suspicion immediately fell upon the defendant when the police were informed by people in the area that he was believed to have attacked Mr Lyttle. They arrested the accused at 17.05 at his home and seized his clothing and the trainers he had been wearing that night. A forensic examination of the clothes established that bloodstains on the defendant's clothing matched the blood of Francis Lyttle.

[6] When he was questioned the defendant described how he had been drinking, and he claimed not to remember anything at all about the events surrounding Mr Lyttle's death. He said that he had been drinking all night until about 11 o'clock that morning and then continued drinking. He said that he was in the habit of taking drugs, and had been doing so every weekend for some 2½ years, as well as cannabis every day. He said that he had taken Ecstasy and Cocaine on the Wednesday night.

[7] Mr Lyttle was taken to Craigavon Hospital and then to the Intensive Care Unit at the Royal Hospital in Belfast, and after his condition stabilised was returned to Craigavon. However he never regained consciousness but developed pneumonia, and as a result of that he died on 23 January 2008. The post mortem report prepared by Dr James Lucas, a pathologist, contains a very detailed neuropathological report, and whilst the immediate cause of death was pneumonia and its effects upon his respiratory function, Mr Lucas explains in the following passages from his report how the facial injuries which Mr Lyttle sustained indicate that he was struck on the head. It is significant that Laurence Brian Marshall, a forensic scientist at Forensic Science Northern Ireland, who went to the scene of the attack and examined the distribution of the bloodstains which he found on the ground and on the

wall of the alleyway, concluded that the distribution of blood was consistent with a person's bleeding head being struck while on the ground and touching the base of the wall.

[8] In his report Dr Lucas considered the complex medical history of Mr Lyttle's pre-existing condition, and the nature of the injuries he suffered in this attack, in the following passages.

"4. Interpretation of the neuropathology was hampered in this case due to the interval between admission to hospital and his death almost three months later, as well as the presence of co-existing natural disease which included multiple old strokes and features indicative of neurodegenerative disease. Nevertheless, taking all of the clinical, radiological and pathological evidence into account, there can be little doubt that he had sustained a severe head injury and it is my view that the resulting neurological disability had led to the development of the pneumonia and thus, his death. For this reason, the head injury should be regarded as the underlying cause of death in this particular case.

5. The finding of facial scarring and a healing fracture of one of the left facial bones at autopsy would substantiate the history of facial trauma. The clinical history of extensive bruising on the right side of the scalp with bruising and abrasions (grazes) involving the right ear, right face and left forehead, in addition to radiological evidence of extensive facial fractures, would suggest that he had received multiple blows, such as from kicks, to his head. It is conceivable that the shearing forces thus generated had led to the development of nerve fibre injury and this might explain both his persistent neurological impairment and the neuropathological findings."

[9] It is accepted that the accused got into an argument with, or accosted, Mr Lyttle, as a result of which Mr Lyttle ended up on the ground and suffered fractures to one of the left facial bones. Ms Orr QC (who appears for the prosecution with Miss Christine Smith) stated that it was agreed by the prosecution and the defence that the defendant unlawfully assaulted Mr Lyttle by kicking him on the head. Miss Orr explained that the pathologist had said in consultation that there was either one very severe kick or else

multiple kicks, but it was difficult to say which. In any event it is undisputed that the head injuries were such as to give rise to what Dr Lucas describes as the “resulting neurological disability” which led to Mr Lyttle developing pneumonia and therefore to his death. Dr Lucas states that “For this reason, the head injury should be regarded as the underlying cause of death in this particular case”.

[10] Both Miss Orr QC and Mr Harvey QC (who appears for the defendant with Mr Taggart) agree that the present case is one which falls within the Magee guidelines because Mr Lyttle was kicked to the head as he lay on the ground. To kick someone as they lie defenceless on the ground is a very serious matter for the reasons explained in R v Magee [2007] NICA 21, [2008] NIJB 203 by Sir Brian Kerr LCJ. At [23] he said that

“It is the experience of this court that offences of wanton violence among young males (while by no means a new problem in our society) are becoming even more prevalent in recent years. Unfortunately, the use of a weapon – often a knife, sometimes a bottle or baseball bat – is all too frequently a feature of these cases. Shocking instances of gratuitous violence by kicking defenceless victims while they are on the ground are also common in the criminal courts. These offences are typically committed when the perpetrator is under the influence of drink or drugs or both. The level of violence meted out goes well beyond that which might have been prompted by the initial dispute. Those who inflict the violence display a chilling indifference to the severity of the injury that their victims will suffer. “

[11] The present case is a graphic instance of the “gratuitous violence by kicking defenceless victims while they are on the ground” by a defendant who was grossly intoxicated by a combination of alcohol and illicit drugs.

[12] I have received a victim impact statement prepared by Desmond Lyttle, a brother of the deceased. Desmond Lyttle lives in Kent and came back to Northern Ireland to visit his brother when he was moved back to Craigavon Hospital. In dignified and measured terms he poignantly explains how hard it is for him to describe how difficult he finds it to describe his feelings as he saw his brother blind, deaf and dumb and paralysed, saying that by the time of his brother’s death his brother had deteriorated so much and did not look like him.

[13] The defendant has a modest record and I do not regard this as being an aggravating factor, although it means that he cannot claim the credit which is normally allowed for having a clear record. I have been provided with a pre-

sentence report upon the defendant which refers to the defendant's habitual and heavy drinking and drug abuse for a substantial period prior to this dreadful event, and it is an aggravating factor that he was under the influence of drugs and illicit drugs at the time of this offence. Other aggravating factors are that the attack on Mr Lyttle was unprovoked, that he was a vulnerable person because he was an elderly man in poor health who was clearly unable to defend himself, and who was kicked with considerable force as he lay on the ground.

[14] The pre-sentence report and a report from Dr Carol Weir, a consultant psychologist, confirm that the defendant had been drinking heavily since the age of 13. After taking solvents he took Cannabis from the age of 12, and later on added Ecstasy and Cocaine to his habits, and as I have stated traces of each of these drugs were found in his blood after his arrest. Dr Weir comments that to consume these drugs and alcohol at the same time creates a "dangerous combination", the effect which is poorly understood in the scientific and medical world, but which gives rise to the unpredictable behaviour observed in this case. Dr Weir states that the defendant's "substance abuse was in my opinion out of control and he never thought where it might lead".

[15] Mr Harvey submitted that there are the following mitigating factors.

(1) That the defendant was very young, but in circumstances such as these his youth cannot carry much weight.

(2) That he has been drug and alcohol free for two and a half years.

(3) That when interviewed the defendant admitted that he must have attacked Mr Lyttle, and expressed revulsion and disgust at his behaviour.

(4) He pleaded guilty to manslaughter in advance of the trial, and Miss Orr accepted that the defence had indicated a willingness to do so some time before.

(5) Because of the complex medical issues in the case and the delay that has caused in bringing the case to trial the defendant had the matter hanging over him for several years.

I accept that these are mitigating factors, and in particular that the defendant has shown genuine remorse and is entitled to credit for his plea of guilty.

[16] In R v Magee the Court of Appeal said that in manslaughter cases where deliberate substantial injury has been inflicted, the range of sentence after a not guilty plea should be between 8 and 15 years imprisonment. I consider that the gravity of this case is such that had he been convicted after a plea of not guilty a sentence of 13 years imprisonment would have been appropriate. This offence was committed at a time when the law requires me to consider whether a custody probation order should be imposed. Given his history of serious alcohol and drug abuse, notwithstanding his professed abstinence from drink and drugs for some years I consider that a period of probation supervision after his release is desirable, during which he will also

be subject to the following condition "The defendant shall address his alcohol and drug use as directed by his supervising Probation Officer" as recommended in the pre-sentence report. Provided that the defendant consents to a custody probation order I sentence him to 9 years imprisonment to be followed by one year's probation subject to the above condition. The sentence would otherwise have been one of 10 years' imprisonment.