

Neutral Citation No: [2012] NICC 30

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

Delivered: 14/9/12

IN THE CROWN COURT IN NORTHERN IRELAND
(Bill Number 11/62487)

ENNISKILLEN CROWN COURT
(sitting at BELFAST)

THE QUEEN

-v-

GARY PHILIP MOANE

His Honour Judge McFarland
14th September 2012

- [1] The defendant was arraigned on the 25th November 2011 and he entered the following pleas -
Count 1. - murder of Ciaran Woods - not guilty but guilty of manslaughter by reason of diminished responsibility
Count 2. - attempted murder of Kathleen McQuaid - not guilty
Count 3. - wounding of Kathleen McQuaid with intent to do her grievous bodily harm - not guilty but guilty to malicious wounding
Count 4. - making a threat to kill - not guilty
Count 5. - hijacking a motor vehicle - guilty
Count 6. - driving with excess alcohol - guilty
- [2] A jury was sworn on the 30th April 2012, but were not put in charge of the defendant. On the 1st May 2012, the defendant applied to be re-arraigned on Count 4 and pleaded guilty. The Crown then accepted the pleas that had been entered to Counts 1 and 3, on the basis of the psychiatric assessment of the defendant. The Crown also applied for Count 2, which was an alternative to Count 3 to be left on the books of the Court not to be proceeded without leave of the Crown Court or the Court of Appeal.

[3] The defendant was born on the 3rd August 1975 and was nearly 35 at the time of the incident. He is now 37 years of age. He has a relevant criminal record including 36 previous convictions committed over a 19 year period between 1991 and 2010. In addition to crimes of dishonesty, (including burglary, deception, forgery, and handling stolen goods), and numerous motoring offences he has been convicted of the following –

10th June 1999 – assault occasioning actual bodily harm, common assault and resisting police for which he received an 8 month prison sentence suspended for 2 years in February 2000

15th August 2004 – disorderly behaviour for which he received a fine in August 2004

11th August 2008 – possession of a blade for which he received a fine in September 2008

11th May 2009 – simple drunk and resisting police for which he received a fine in June 2009

6th June 2010 – common assault, assault on police and resisting police for which he received a three month prison sentence in September 2010.

In relation to this final matter he had been arrested on the 6th June, charged on the 7th June, released on police bail to attend at Enniskillen Magistrates' Court on the 28th June, and subsequently was released on bail by that court. He was therefore on bail on the 20th July 2010.

He received a 2 year Probation Order in 1991, and a further 2 year Probation Order in 1999.

[4] On the ~~19th~~-20th July 2010 and into the early hours of the 20th July, the defendant had been involved in what could only be described as an alcoholic binge primarily in the village of Lisnaskea. He fell into the company of several people, some of whom would later become his victims. An analysis of blood taken from the defendant approximately 7½ hours after the incident indicated a reading of 86 milligrams of alcohol per 100 millilitres of blood. A forensic scientist using the well-established 'back calculation' procedure estimated that at the time of the incident (4 a.m. on the 20th July 2011) the reading would have been somewhere between 162 and 275 milligrams. It is also worthy of note that the deceased, with whom the defendant had been drinking, had a reading of 283 milligrams. It is therefore probable that the defendant's actual reading at the time of the incident is likely to have been in the higher part of that estimated range. Although of modest consequences in the overall context of this sentence, I am satisfied beyond reasonable doubt

that the reading was in excess of 200 milligrams. This means that he is a High Risk driving offender, about which I will comment later. To put these results into perspective, they represent a level of alcohol in the defendant's blood in the region of two and a half to three times the driving limit.

- [5] Eventually the group made its way to the home of Kathleen McQuaid, at her invitation, in the village of Tempo. Whilst in the home there was an incident when the defendant armed himself with a knife and attacked Ciaran Woods. As to what actually happened the circumstances are unclear, as the defendant states that he has little recollection of events. It appears that Ciaran Woods had been in the company of McQuaid in the house and the defendant appeared seeking to speak to Ciaran Woods. Both men went into the kitchen. Some form of argument started probably about the intentions of the group for the rest of the night. Nobody else was present at this stage although McQuaid has stated that she heard Woods utter the words "*Don't be doing this, I've got a 7 year old daughter, don't, don't do this*"
- [6] Ciaran Woods was then observed in a conscious state but bleeding. The defendant was clearly in an enraged state and turned his anger against McQuaid and Damien Crudden. Crudden had been asleep and on waking saw the defendant holding a knife and described him as "roaring and shouting". The defendant then made a threat to kill Crudden. Meanwhile McQuaid, having been confronted by the defendant, was in an extremely distressed state. She had escaped from the house and had sought refuge in her car although not before the defendant grappled with her attempting to take the keys. When in the car, she was assaulted again when the defendant smashed the window. Crudden also went outside and was chased by the defendant but he was able to escape down a lane and over a fence into a field. The defendant then returned to the kitchen. At that stage Ciaran Woods was still alive. He may have remained conscious for a short period but the injuries sustained were so serious that he soon succumbed to his wounds and died in the house before medical assistance had arrived. McQuaid suffered two stab wounds of some depth to her breast and abdomen (although neither wound was life-threatening), and multiple soft tissue injuries to her back, legs and arms.
- [7] The defendant attempted to make his escape by taking McQuaid's vehicle and driving away in a clearly intoxicated state. Police responding to the emergency call came upon him, and were able to arrest and detain him without further incident.
- [8] Ciaran Woods received two stab wounds. At least one was made at the time of the first confrontation. The second could have been made either at that time, or when the defendant returned to the kitchen after the incident with McQuaid in the car. McQuaid stated that she saw the defendant in the

kitchen again. On balance I would be of the view that both wounds were sustained during the first incident, and this was not a case of what would be two separate assaults. In any event, the stab wounds were both serious. One was close to the centre of the chest and passed down between the third and fourth left ribs to penetrate the left ventricle of the heart. The other penetrated the breastbone and then the front wall of the heart and the left lung. These wounds caused massive bleeding into the heart sac and into the left chest cavity, resulting in a rapid death. Professor Crane concluded that at least moderate force would have been necessary to inflict the second wound.

- [9] I have received letters and statements from the two surviving victims, Kathleen McQuaid and Damien Crudden, from four sisters and a brother of Ciaran Woods - Donna McMahon, Yvonne Clarke, Claire Woods, Shauna Woods and John Woods and from Ms. O'Donnell, the mother of Ciaran Woods' daughter Erin. All were moving to read and spoke in pertinent and eloquent terms of the pain and suffering endured by each of them, and in particular the collective loss to the family of a father and brother cruelly taken from his loved ones.
- [10] The defendant has a long-standing condition relating to misuse of alcohol. This commenced when he was 14 years and subsequent deterioration in his physical health based on a form of Crohn's disease, resulted in increasing consumption of alcohol. He is currently diagnosed as suffering from Alcohol Dependence Syndrome (ICD 10.2). He has not engaged with any statutory agencies in respect of his illness and his brief attempts at work with Alcoholics Anonymous had failed. His wife describes him as having an obsession with knives when drunk. Much of his offending is related to alcohol misuse. His condition has been considered by Dr. Browne (in four reports), Dr. Bell, Dr. Weir (in two reports) and Dr. Pollock. Dr. Browne stated "I consider that the available information is consistent with Mr. Moane having suffered Alcohol Dependence Syndrome that reduced his capacity to control his drinking and led, on the night of the offence, to intoxication with alcohol that impaired his capacity to form a rational judgment and to exercise self-control. I further consider that Alcohol Dependence Syndrome was a significant contributory factor in causing Mr. Moane to the commit the offence." This was an opinion with which Dr. Bell agreed. I consider the decision of the prosecution to accept the plea to manslaughter based on diminished responsibility, and the plea to malicious wounding of McQuaid based on a lack of intent to cause really serious injury, was appropriate in light of all the available evidence.
- [11] I have also received a Pre-Sentence Report and a supplementary letter from the Probation Board of Northern Ireland, the relevant contents of which I will set out later.

- [12] Under the provisions of the Criminal Justice (NI) Order 2008 manslaughter and making threats to kill are “serious” offences, and malicious wounding is a “specified” offence. The provisions of Article 13 of the 2008 Order provide that a judge when dealing with an offender who has committed a serious offence which carries a maximum sentence of a discretionary life sentence, should proceed in the following manner –
- First, consider whether the offender is dangerous
 - If dangerous, consider whether a life sentence is appropriate
 - If a life sentence is not appropriate, consider whether an Extended Custodial Sentence is adequate to protect the public.
 - If not adequate, pass an Indeterminate Custodial Sentence.
- [13] Under Article 13(1) I am obliged to consider if he is dangerous, that is, is there a significant risk to members of the public of serious harm occasioned by the commission of further offences of the type specified in the 2008 Order. In considering this question, I have followed the approach suggested by the Court of Appeal in the case of **R -v- EB [2010] NICA 40** and the English case of **R -v- Lang [2005] EWCA Crim 2864**.
- [14] The PSR states that the multi-agency risk management meeting concluded that the defendant met the risk of serious harm criteria. This, coupled, with the assessment that there was a high likelihood of re-offending, supports the conclusion that the defendant is ‘dangerous’. The relevant issues are stated as being the circumstances of the present offences, the longstanding Alcohol Dependence Syndrome with the defendant giving priority to his alcoholism and his apparent ambivalence about addressing the addiction, association between intoxication and the propensity to use violent and aggressive behaviour, his paranoia and tendency to seek out knives, the pattern of incidents and conviction, the self-confessed stabbing of a fellow pupil when 13/14 years of age and the possession of a knife on the day in question.
- [15] Dr. Browne in his report on the issue has suggested an approach based on the HCR-20 tool widely used in psychiatric practice to assess risk of future violence. It involves assessment of twenty historical, clinical and risk factors. Dr. Browne’s conclusion is that if the defendant can abstain from consuming alcohol the risk of serious harm that he would pose to the public will be low. Dr. Pollock also using the HCR-20 tool, assessed a score of 17/40 and he concluded that the defendant should be categorised as posing a moderate and not a high risk of violent offending. As with Dr. Browne’s assessment, he is also guarded in relation to alcohol consumption. He states – “If Mr. Moane is acutely intoxicated, the risk of violent conduct in the future inflates substantially. If Mr. Moane is sober, the risk of violent conduct diminishes substantially.”

- [16] In simple terms, the conclusion of the psychiatric and psychological evidence submitted by the defendant is that if he remains sober he would not pose a significant risk to the public. The critical factor is the motivation and ability of Mr. Moane to remain abstinent from alcohol. He has suffered from Alcohol Dependence Syndrome for some 20 years now, and had shown little motivation to abstain from alcohol. He has undergone two 2 year Probation Orders with no long term benefit. Dr. Weir, a consultant clinical psychologist, reports that the period spent on remand and enforced abstinence, has resulted in a re-focussing of the defendant's motivation to abstain in the future. Dr Weir comments that this will be subjected to stress due to environmental pressures and life events, particularly after release. She also notes that the defendant's belief in the use of Alcoholics Anonymous would lead to him tending to resist other addiction services. Even his engagement with that agency had limited impact, as on his own admission at the time of the incident he was attending for three days a week, and binge drinking on the other four. The defendant states that he is now motivated to live the remainder of his life free from alcohol. This has not been the first time that he has been so motivated, but the enormity of these events will clearly have impacted on him. There is a substantial body of material showing excellent engagement with Alcoholics Anonymous and other services within prison. This has been supported by letters and oral testimony from a prison chaplain. However he has not yet had to deal with the stresses of living in the community, and taking into account his low to average cognitive functioning and history of failed attempts of abstinence I can have little confidence that, despite his intentions, he will be able to remain abstinent in the future.
- [17] Lord Philips in **R -v- Smith [2011] UKSC 37** emphasised at [17] that it was implicit that the question posed by the legislation must be answered on the premise that the defendant is at large. He stated "It is at the moment that he imposes the sentence that the judge must decide whether, on that premise, the defendant poses a significant risk of causing serious harm to members of the public." I am of the view that at this time, on the basis that the defendant is at large and given his current state of health and unproven ability to abstain from alcohol, he would pose a significant risk of serious harm caused by further offending. I therefore find him to be dangerous under the provisions of the 2008 Order.
- [18] I am now obliged under Article 13(2) of the 2008 Order to consider if a discretionary life sentence for the manslaughter and making the threat to kill is appropriate in the circumstances. In **R v Gallagher [2004] NICA 11** the NICA, approving the English authority of **R -v- Hodgson (1967) 52 Cr App R 113**, stated at [21] -

“In *R v Hodgson* [1967] 52 Cr App R 113 the Court of Appeal, dealing with the circumstances in which a discretionary life sentence might be imposed said: -

‘When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence’.”

- [19] Applying the *Hodgson* test, I am not satisfied that the circumstances require the imposition of a discretionary life sentence. The offence could be described as a grave offence as it involved the use of a knife and the attack on a drinking associate, however the overall circumstances and personal mitigation may not necessarily call for a very long sentence, as opposed to a long sentence.
- [20] Having determined that the defendant is dangerous and that the offence does not require a discretionary life sentence, I am obliged, under Article 13(2)(b) of the 2008 Order, to consider if an Extended Custodial Sentence would be adequate to protect the public. Such a sentence would involve the imposition of a commensurate custodial term. The defendant would have to serve at least one half of that term and thereafter may be released at a time to be determined by the Parole Commissioners. He would then have to spend a further period on licence (of up to 5 years) within the community.
- [21] The main factor in assessing future risk is the defendant's abstinence from alcohol. Alcohol Dependence Syndrome has the potential to be a life-long condition. The Extended Custodial Sentence, although extended in form, is ultimately a finite order. Given the uncertainty about the defendant's ability to abstain from alcohol at any time in the future, I would not consider that such a sentence would be adequate to protect the public.
- [22] I therefore propose to impose an Indeterminate Custodial Sentence. I am obliged to determine the minimum term of imprisonment which the defendant must serve before he can be considered for release by the Parole Commissioners 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.
- [23] The aggravating factors in this case are -

- The use of a knife as a weapon
- The conduct was unprovoked
- The fact that two people were attacked and both suffered more than one wound
- The defendant's criminal record, and in particular his previous violent offending
- The defendant was on bail at the time in relation to a crime of violence

The mitigating factors in this case are –

- The defendant's plea of guilty at the first opportunity
- The degree of genuine remorse shown by the defendant with the apparent motivation to attempt to address his alcohol dependency

[24] The case of **R -v- Crolly** (the sentencing remarks of Morgan J being reported at [2009] NICC 38 and the judgment of the Court of Appeal being reported at [2011] NICA 58) discussed the appropriate term in cases involving manslaughter, based on the partial defence to murder of diminished responsibility provided by section 5 of the Criminal Justice Act (NI) 1966. **Crolly** was in fact a discretionary life sentence case, but the same principles apply. It was acknowledged that there was a difficulty in determining guidelines due to the many and varied factual situations in which the offence of manslaughter can arise. It considered that the underlying principle that an offender who is suffering from mental abnormality which substantially impaired his mental responsibility should fall into a similar category as those who killed without the intention to kill or cause serious injury.

[25] To this end the comments of Kerr LCJ in **R -v- Magee [2007] NICA 21** are of some value in considering this matter. At [26] he stated –

“We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment”

These comments were made in the context of a determinate sentence and therefore will be subject to the usual reduction by 50% for notional remission when fixing a minimum term.

[26] I consider that this case falls at the top of the suggested range in **Magee**. Taking into account his plea of guilt and remorse, this will be reduced to 10 years, resulting in a minimum term of 5 years, less any time that he has spent

on remand. This is an indeterminate sentence. It is a recently introduced sentence and is often misunderstood. It is a custodial sentence for an indeterminate period, and to all intents and purposes it is equivalent to a life sentence. Moane will serve at least 5 years in prison. After that period, his release back into the community will be determined by the Parole Commissioners when they consider it safe to do so. He may never be released. Should he be released he will remain under licence for the remainder of the indeterminate sentence. The sentence is therefore not one of 5 years imprisonment. It is an indeterminate sentence with a minimum term of 5 years.

[27] The sentences for the other counts shall be concurrent. Given the constraints imposed by the legislation, the other sentences are required to be indeterminate, extended and determinate sentences. The concurrent sentences are as follows -

Count 1. - manslaughter of Ciaran Woods - indeterminate custodial sentence with a minimum term of 5 years.

Count 3. - malicious wounding of Kathleen McQuaid - extended custodial sentence with a custodial term of 2 ½ years and an extension period of 5 years.

Count 4. - making a threat to kill - indeterminate custodial sentence with a minimum term of 2 years (the statutory minimum).

Count 5. - hijacking a motor vehicle - determinate custodial sentence of 12 month, of which six months shall be the custodial period and six months shall be the licence period.

Count 6. - driving with excess alcohol - determinate custodial sentence of 12 month, of which six months shall be the custodial period and six months shall be the licence period. He will also be disqualified from driving for 3 years, and will then be required to re-sit his driving test. As a High Risk driving offender he may also be subject to medical examination by the DVLNI.