

**IN THE CROWN COURT IN NORTHERN IRELAND**

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**THE QUEEN**

**v**

**PAUL MARK BRANIFF & OTHERS**

**Bill No 146A/4**

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**WEIR J**

[1] Paul Mark Braniff, Gerard Maguire, Gerald Anthony Bradley, Ian Oliver Carlin and Michael Patrick Kearney you have each pleaded guilty to the offence of assisting offenders contrary to Section 4 of the Criminal Law Act (NI) 1967. The nature and quality of your admitted assistance varied; you Braniff, Carlin and Kearney assisted the principals to the offence of blackmail, who unfortunately are not before this court, by facilitating their communications with intent to impede their apprehension or prosecution, you Bradley assisted the principals to the offence of blackmail by transporting a sum of money with intent to impede their apprehension or prosecution and you Maguire assisted the principals to the offence of false imprisonment by assisting in the false imprisonment of Charlie Doherty in your home at Ballyhornan. I shall say more about the particular involvements of each of you when I come to deal with your individual cases.

[2] Before doing that I wish to summarise the facts of this most unpleasant case in which the Court has had the advantage of hearing and seeing those principally affected before your pleas of guilty to the present charges were entered. This was a despicable crime involving the violent and forcible kidnap of a teenage boy by armed and masked men in front of his siblings. He was then taken into the countryside and held in a dark and squalid disused military bunker for a period of days before being transferred for a few hours to Gerard Maguire's home from which he was then taken back to Belfast and released. Meanwhile his distraught parents were desperately attempting to discover what had become of their son and were being told by telephone that he was in the hands of paramilitaries so as to encourage their

efforts to raise the ransom of £100,000 which was demanded for the boy's safe release with the threat that in default he would be shot. When the money was collected together and handed over it passed through several hands including those of Gerald Bradley before disappearing, never to be recovered.

[3] No one who saw and heard the boy, his sisters, his father, his brother and his sister-in-law could have failed to appreciate the horror of the situation as it unfolded, the fear that they felt for the boy's life and the desperate nature of the efforts made to get together the money demanded before he might be harmed. It was, in short, every parent's worst nightmare and it continued for days.

[4] I now deal with each of you in turn and in each case I take account of the fact that you pleaded guilty at the first available opportunity to the present charges. You Braniff were substantially involved in communications with others including Carlin and Kearney. Your role was to provide misleading information to the family of the kidnapped boy and thereby to assist the blackmailers to achieve their ransom objective. Your efforts have been described by the prosecution as "extensive" and your counsel, Mr Gallagher QC, has told the court that when you became aware that the kidnapping had occurred your role was to mislead the family by encouraging their belief that a paramilitary organisation was involved and then to report back to the principals. He frankly acknowledged on your behalf that it was of assistance to the kidnapers to cause the Doherty family to fear that a sinister group was behind the kidnapping since the more likely that would make it that they would pay the ransom. It of course also greatly heightened their fears for the boy's safety as it was intended to do and as you must have appreciated it would. Mr Gallagher informed me that you neither asked for nor were offered any form of payment for your assistance. Accepting that at face value and bearing in mind that Mr Gallagher has also told me that he is not making any case of, or akin to, duress, I am left to wonder what did motivate you to become involved with this heartless crime.

[5] You have a lengthy criminal record mainly for motoring offences but also for serious assaults, burglary and robbery. I am told in the probation report that your pattern of offending has shown improvement since you moved to Ballynahinch from Belfast. This offence is a serious interruption to that pattern. Mr Gallagher and the Probation Officer both point to the fact that you are at present subject to a Custody Probation Order with which you have been complying and the Probation Officer adds that, for the three objectives that she gives, a further Custody Probation Order is worthy of consideration in the present case. Mr Gallagher, tacitly accepting that this is an offence of such seriousness that only a custodial sentence can be justified, urges the imposition of a Custody Probation Order.

[6] In deciding whether to offer you the opportunity to avail of a Custody Probation Order I must bear in mind in your case and all others that the Court of Appeal has said that courts passing sentence should, before making such an order, look for some material which indicates that at the time of release there will be a need to protect the public from harm from the offender or to prevent the commission by him of further offences. In your case my conclusion is that there is evidence of both considerations in your case. If you do not wish to accept a Custody Probation Order I shall impose upon you a sentence of 5 years' imprisonment. If you are willing to accept custody probation I shall impose upon you a sentence of 4 years' imprisonment together with 18 months' probation supervision to commence upon your release from custody.

[7] I want to make it clear to you and to any of your co-accused to whom I offer the possibility of custody probation that a Probation Order is not an easy option. Anyone agreeing to accept such an order will have to follow such directions as the Probation Order Officer may give and attend any meetings, courses or appointments that may be arranged. Failure to comply will be a breach of the Probation Order and liable to be punished accordingly. Having heard what I have said, do you Braniff agree to the making of a Custody Probation Order? Very well, in that case I sentence you to 4 years' imprisonment with 18 months' probation supervision to commence upon your release from prison.

[8] Turning to you Carlin, you were also concerned in facilitating communications between the principal parties in this crime. I have not been given any very clear picture of the precise nature and extent of your involvement. Mr Hunter QC for the prosecution has said that the evidence in relation to you is less extensive than that relating to Braniff. Your counsel, Mr Grant QC, has drawn attention to your unfortunate early childhood and your committal to training school at a very young age which no doubt exposed you to the temptation to involvement in the very numerous road traffic and dishonesty offences that are a feature of your early record. I take full account of all that was said in those regards. Mr Grant points out that your sentence in October 2003 for an attempted armed robbery related to events on 3 September 2002, some months after your involvement in the present matter. You were released from prison on 30 June 2005 having served that sentence and are now engaged in the probation element of it and the probation report indicates that you have been cooperating well. As part of your probation you are due to attend a violence/cognitive self-change programme to begin in January 2006 which, from the details provided, requires twice weekly attendance over 12-18 months so that a period supervision of at least two years duration is necessary for all parts of the programme to be delivered.

[9] Mr Grant has urged me to sentence you in such a way as to enable you to avail of this arranged programme. I cannot do so. Nothing less than a

significant immediate custodial sentence will meet the seriousness of your involvement and the more so having regard to your long history of persistent offending.

[10] The Probation Officer assesses you, in accordance with Probation Service criteria, as a potentially dangerous offender, one who requires a high level of supervision and management when in the community and with a significant likelihood of re-offending. Moreover you were assessed as someone whose acknowledgement of the fear and distress suffered by the victims of this crime is minimal. I therefore consider that you also meet both limbs of the Court of Appeal threshold test for the making of a Custody Probation Order. If you are not willing to accept a Custody Probation Order I shall impose upon you a sentence of 4 years' imprisonment but if you are I will impose a sentence of 3 years' imprisonment followed by 2 years' probation supervision to allow sufficient time for you to undertake a future self-change programme. Are you willing to accept a Custody Probation Order? Very well, in that case the sentence of the court is one of 3 years' imprisonment together with 18 months' probation supervision to commence upon your release from custody.

[11] Moving to you Kearney, your counsel, Mr Little QC, has emphasised your own difficult family background. Your father was shot dead when you were 12 and your mother has struggled to raise her family of 6 single-handed. From medical reports provided to the court it is clear that your mother is presently suffering from a serious and possibly life-threatening illness. I am also satisfied that as the eldest child still at home you have the major responsibility for looking after her. I take account of all those matters in your favour.

[12] As against those however, you have a significant criminal record of escalating seriousness. The Probation Officer points out that in the past you have been dealt with by a wide range of measures including probation, community service and imprisonment. The officer comments that your history and pattern of offending indicates an escalation in the gravity of your behaviour which in her opinion presents a potential risk of harm to the public. She also considers that, given your history, there is a likelihood of reoffending. Of further concern to me is your denial to the Probation Officer of any intentional involvement in this matter. This is, of course, completely at variance with your admission to making a phone call in which you cruelly added to this family's anguish by passing on the demands of the principals in this affair in threatening terms. Your concern for these victims, either at the time or since, is not readily to be seen.

[13] In view of the opinion of the Probation Officer noted above and which I accept, I am prepared to offer you the opportunity of a Custody Probation Order. If you are prepared to accept such an order the sentence I shall impose

upon you is one of 2 years' imprisonment together with 18 months' probation supervision following your release from prison. If you do not wish to avail of custody probation the sentence of the court will be one of 3 years' imprisonment. Do you wish to accept a Custody Probation Order? Very well, in that case the sentence of the court is one of 2 years' imprisonment followed by 18 months' custody probation.

[14] I deal next with you Bradley. Your case is in many ways the most perplexing. You were involved in the periphery of this matter by acting as a courier for the ransom money on part of its journey. You claimed to have been used by someone you thought of as a friend but your detailed explanation to the Probation Officer as to how you came to be involved suggests a level of naivety that is quite inconsistent with your educational ability and attainment and your professional background. The fact that you have pleaded to this charge is an acknowledgement that you realise full well how improbable that explanation was.

[15] Unlike the other accused in this case you have not had a disadvantaged upbringing or later life. You come from a stable and supportive home environment, you have an excellent educational and early professional history and should by now instead of sitting before me in the dock be well established in your professional career and a source of pride to yourself and your parents instead of a cause of shame. From the references provided to me it is clear that you have won golden opinions from significant figures across the community; from professionals, community leaders and sporting figures. It is clear that you have done and have the potential to do much good work rather than engage in the squalid and demeaning activity to which you leant yourself in this affair.

[16] You have, by comparison with the other accused with whom I have already dealt, a relatively minor criminal record. For the most part it relates to motoring matters. I am unimpressed by the fact that since your motoring accident in 2001 you have not practised your profession but have lived on State benefits. I have been told that that was because of these impending court matters but the court would have been much happier to see you back in the gainful employment for which you are well qualified and able instead of hanging around aimlessly for 4 years. I am also concerned to read that you told the Probation Officer that you have not given any real thought to the victims in this matter. I can only say that it is high time you began to.

[17] In your case too the seriousness of the matter would well merit a sentence of immediate imprisonment notwithstanding your more peripheral role and, were it not for the offer of employment made to you by Mr McConville in his letter to the court, I would have no hesitation in following that course. However I am caused to pause by that offer and the generous views of you expressed in the 9 references from the sources I have earlier

mentioned. I am also concerned that to sentence you to immediate imprisonment may debar you from again following the profession for which you clearly have an aptitude and I would also like you to have the opportunity, if you take it, to repair your parents' faith in you.

[18] What I therefore propose to do in your case, being satisfied that it is in the interests of justice to do so, is that, provided you agree, I will defer sentence until Friday 28 April 2006. If by that date you have returned to regular employment, have not committed further offences and receive a favourable follow-up report from the Probation Service I shall impose upon you a sentence of 2 years' imprisonment suspended for 3 years. If I do so and you keep out of trouble for those 3 years you will hear no more about this matter. If you do commit further offences you will be liable to have the sentence of 2 years' imprisonment put into effect as well as being punished for the subsequent offence. Do you understand what I have said? Do you agree to your sentence being deferred on that basis? Very well, I will defer sentence in your case until 28 April next but be in no doubt that if before that date you are convicted in Northern Ireland of any offence then you can be recalled to court early and sentenced. I direct that a further pre-sentence report be provided by the Probation Service before the date of the deferred hearing.

[19] Lastly I deal with you Maguire. In my judgment your culpability is the least grave of those presently before the court. The evidence is that the boy was brought to your home from the bunker and remained there for some 3 hours before being taken by others to Belfast. There is no suggestion that he was ill-treated by you during his time in your home.

[20] Your own history to date is one of a life ruined by alcohol. After being released from prison in 1982 having served a long sentence for a terrorist-type offence you attempted to make a new life at the still young age of 23. Since then your criminal record has been almost entirely related to motoring matters and is not extensive. You married and had 5 children but your marriage disintegrated in the mid 1990s due to your alcohol addiction following which you lived in shelters and continued to drink heavily. In about 2000 your brother brought you to County Down and helped you to become settled in your own home but your excessive drinking continued. Your counsel, Mr O'Rourke, in his perceptive and well-focussed submissions, points out that when you were arrested some hours after the boy left your house the police doctor who examined you on arrival at the police station was so concerned about your level of intoxication that he directed that you be taken to hospital for treatment and did not certify you as fit for interview until more than a day after your arrest.

[21] When granted bail following your arrest you failed, again because of your addiction, to comply with the terms of your bail as a result of which you

were returned to custody. I am told that you have spent almost 3 years in custody which is the equivalent of a sentence of imprisonment of 6 years.

[22] I consider that such a sentence far exceeds your admitted culpability in this matter. In my view you were taken advantage of by the principals and, given their demonstrated level of violence and determination, it would have been very difficult for you to have successfully resisted them even had you been a fit state to do so. I am sorry that due to your own actions you have had to spend such an extended period in custody awaiting trial. I sentence you to one year's imprisonment which should result in your early release. I hope that the lengthy period that you have been forced to spend without access to alcohol may help you to decide to abstain in future and to seek help in doing so. At 46 you are still young enough to make a worthwhile life for yourself if you choose to do so.