

IN THE CROWN COURT IN NORTHERN IRELAND

DUNGANNON CROWN COURT
(SITTING AT BELFAST)

THE QUEEN

v

BRENDAN QUINN

HART J

[1] The defendant is to be sentenced on his plea of guilty to wounding Gintaras Gedrimas with intent to cause grievous bodily harm, contrary to s. 18 of the Offences Against the Person Act 1861. The defendant was originally charged with the attempted murder of Mr Gedrimas, and was due to stand trial on that charge on Monday 15 March 2010, but on Wednesday 10 March 2010 he asked to be re-arraigned and pleaded guilty to the charge under s. 18, and this plea was accepted by the prosecution.

[2] On 25 May 2008 Mr Gedrimas and a group of fellow Lithuanians were walking through Coalisland after a party when they were approached by a masked man carrying a gun resembling a rifle which the gunman held at waist level. He then fired a shot from 10-15 metres away which struck Mr Gedrimas in the right side.

[3] The gunman was chased by some of the crowd and seen to get into a waiting car, but before he did so he turned and pointed the gun at Vidmantas Gedrimas, the injured man's brother, who had chased the gunman.

[4] Mr Gedrimas suffered a severe gunshot wound to the right chest and arm, resulting in a pneumothorax. A number of pellets lodged in his arm, the wall of the large bowel, liver and right kidney, thereby indicating that the weapon was a shotgun. He spent some time in the Intensive Care Unit. The wound was described as a serious injury which was potentially life threatening.

[5] When seen again in June 2009, that is a little over a year after the injury, he was described as having significant functional problems with his chest and right arm, with shortness of breath and pain on moving his right forearm. I do not have the benefit of a more recent report on his physical injuries, although I have been provided with an up-to-date psychiatric report upon him from Dr Lamont, a consultant psychiatrist who states that the physical injuries are not within his speciality. Dr Lamont's report infers that Mr Gedrimas may still be living in Northern Ireland, but on my enquiring Mr Mateer QC (who appears for the prosecution with Mr Simon Reid) said that the undated letter from Mr Gedrimas put forward as his victim impact statement was received by the officer in charge of the case on 16 April 2010, he understands that Mr Gedrimas is in Lithuania at present and that he has found a job there, so it would appear that for the present he is unlikely to return to Northern Ireland, although it seems there is some doubt whether his job in Lithuania will prove to be permanent.

[6] In that letter Mr Gedrimas describes frequent pain in his right hand, stomach and right side, with cramps and diminution of power of grip in his right hand, which, to judge by his reference to his difficulty in performing everyday basic tasks, must be his dominant hand. He describes how he has not regained 9 kg in weight he has lost since being shot, and takes painkillers every day. These continuing symptoms are consistent with the continuing problems of shortness of breath and pain with the movement of his right forearm described in the medical report dated 10 June 2009. This refers to him "still having significant functional problems with his chest and right arm" and the prediction in that report was that "he may require to stay on long term painkillers". The psychiatric symptoms he describes are considered in the psychiatric report, and Dr Lamont's opinion is that Mr Gedrimas has "now suffered depressive symptoms for some considerable time period having passed eighteen months duration of illness, and this makes his prognosis worse". I am satisfied that Mr Gedrimas has received significant physical and psychiatric injuries, injuries that at the very least will significantly affect him for a considerable period in the future. The gravity of his wounds and of his continuing problems must be regarded as significant aggravating factors in the case.

[7] Prior to this incident some ill feeling had been displayed by Quinn's sister towards a young man called Cathal Dobbin, who lived with his parents at Canal Quay overlooking the scene of the shooting. Because of this ill-feeling Cathal Dobbin and his father James Dobbin had been keeping watch over Cathal Dobbin's car that night. They saw the defendant (whom they knew) walking from an Astra car to a point near the shooting. As the group including Mr Gedrimas approached Cathal and James Dobbin saw the defendant go towards the group. Cathal Dobbin says he saw the defendant fire a shot, and both he and his father saw the defendant run towards the

Astra and that he was now wearing a balaclava. The defendant got into the car which drove off.

[8] It transpired that the car was driven by the defendant's girlfriend Emma Rintoul. She came to the police and described how she and the defendant had a row earlier that night. The defendant later sent her a text asking her to meet him which she did at Canal Quay. He asked her to wait and walked away. She then heard a bang, and the defendant ran towards the car chased by a Lithuanian man, got in and told her to drive off which she did. She saw that he had a shotgun and was wearing a balaclava. They drove to her home.

[9] The defendant was then arrested and questioned by the police, but made no comment throughout the interviews when he was asked about the incident. In his defence statement he admitted firing the shotgun, but claimed that it was his intention to scare one of the Dobbin family. He said that he did not intend to shoot anyone. The gun has not been recovered, nor has he explained how he came to be in possession of a loaded weapon.

[10] It may be that the defendant's animosity was directed towards Cathal Dobbin, because in the immediate aftermath of the shooting one of the group of Lithuanians said to Cathal Dobbin that Mr Gedrimas looked like Dobbin, and the defendant may therefore have aimed the gun at Mr Gedrimas under the mistaken impression that he was Cathal Dobbin. Be that as it may, the defendant plainly intended to cause serious injury when he fired the shotgun from close range at a group of people, irrespective of who he thought they were.

[11] The defendant's date of birth is 5 February 1987 and he is now 23. He has one previous conviction, although he has been arrested on other charges allegedly committed whilst on bail on this matter. Those charges will be dealt with on a future occasion, but for the purposes of this case I regard him as having a minor record at the time he committed this offence. The defendant did not co-operate with the police during interview, and his plea of guilty, although to a lesser charge, was only entered three days before the trial was due to start. The Court of Appeal in this jurisdiction has repeatedly emphasised that the maximum discount for a plea of guilty is only to be allowed to those who fully cooperate with the police during interview and enter an early plea of guilty. The defendant did neither. It is correct that the defendant was initially charged with a more serious offence, but in the Attorney General's Reference (No 1 of 2006) (McDonald & Ors) [2006] NICA 4 [18] the Court of Appeal emphasised that

"If a defendant wishes to avail of the maximum discount in respect of a particular offence on account of his guilty plea he should be in a

position to demonstrate that he pleaded guilty in respect of that offence at the earliest opportunity. It will not excuse a failure to plead guilty to a particular offence if the reason for delay in making the plea was that the defendant was not prepared to plead guilty to a different charge that was subsequently withdrawn or not proceeded with."

The defendant is entitled to some credit for his plea of guilty, but not as much as would have been the case had he made a clean breast of matters to the police. It is said that he has become a born-again Christian whilst in prison. The pre-sentence report refers to the defendant having been affected by the death of his grandmother when aged 13, and he seems to have had a dysfunctional life since then, a life characterised by a growing sense of anger throughout that time. His plea of guilty and his minor record at the time are the only mitigating factors in the case.

[12] This was a grave offence with a number of aggravating features.

- (1) The defendant armed himself with the shotgun in advance.
- (2) He fired at a group of individuals from short range, thereby putting several people at risk of injury or death.
- (3) He inflicted very serious injuries on Mr Gedrimas, the consequences of which have been considerable, and they may well affect Mr Gedrimas both physically and mentally for a long time.
- (4) The shotgun has not been recovered.

[13] Mr Pownall QC (who appears for the defence with Mr Kieran Vaughan) took issue with the basis of the conclusion of the pre-sentence report that the defendant meets the criteria for risk of serious harm. This offence is one that has to be first of all considered under the provisions of Chapter 2 of the Criminal Justice (Northern Ireland) Order 2008 (the 2008 Order) because the offence was committed on 25 May 2008 and it is a specified violent offence within Schedule 1 of the 2008 Order. Whilst many of Mr Pownall's criticisms of the reasoning that led to this conclusion are justified, the facts of the case undoubtedly establish the following.

- (1) The attack was pre-meditated because the defendant armed himself with a loaded gun, and, wearing a balaclava, on his own account went to scare someone. That he was going to use a loaded gun for this purpose is strong evidence that he was prepared to fire the gun if necessary, as he did.
- (2) It was a very grave offence creating a serious and obvious risk of physical injury or death to the group of people he faced when he fired the shotgun at them from a range of 10-15 metres.

[14] The offence is therefore a serious one and was committed after 15 May 2008, so it has to be decided whether either (i) a life sentence or (ii) an intermediate custodial sentence is appropriate under Art. 13 of the 2008 Order. If neither is appropriate I have then to consider whether (iii) an extended custodial sentence under Art. 14 of the 2008 Order is appropriate. Although a serious offence, and one which might otherwise trigger any one of these sentencing options, I consider that the absence of any other significant offence on his record before this (and I do not consider that the conviction for possessing a pepper spray amounts to a significant offence in this context), and the absence of any other indication in his background that he is prone to violence, means that a life sentence, an indeterminate custodial sentence and an extended custodial sentence are all inappropriate. That is because I do not accept that there is sufficient evidence from the single offence before the court today that there is a significant risk to members of the public of serious harm occasioned by the commission of further offences by the defendant, and I reiterate that when considering this question the present offence is the only one I can take into account today.

[15] However, because Articles 13 and 14 of the 2008 Order are not applicable, and because this offence was committed after 15 May 2008 but before 1 April 2009 when Art. 8 of the 2008 Order was brought into effect for offences not covered by Articles 13 and 14, the effect of this is that the pre-2008 Order sentencing regime still applies to this offence. As a result I have to consider whether a custody probation order should be imposed. I consider that for the protection of the public in future the defendant may benefit from a period of probation supervision upon his release. Provided that the defendant consents, I will therefore impose a custody probation order of nine years' imprisonment to be followed by one year's probation, the probation element of the sentence to be subject to the conditions proposed in the pre-sentence report. The sentence would otherwise have been one of 10 years' imprisonment.