

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

STEWART MORRIS LINDSAY

HART J

[1] The defendant is before the court to be sentenced on his plea of guilty to the charge of causing grievous bodily harm with intent to cause Ciaran McGuran grievous bodily harm on 23 September 2007, contrary to Section 18 of the Offences Against the Person Act 1861. The defendant was originally charged with the attempted murder of Mr McGuran and upon his arraignment on 11 April 2008 he pleaded not guilty to the charge of attempted murder but guilty to the charge under Section 18. Initially the prosecution did not accept this plea and the matter was listed for trial, however on 26 June 2008 the prosecution stated that they would accept the plea to the lesser charge.

[2] Mr McGuran, who is 21, and some friends, had travelled from Portadown to Belfast on the night of 22 September 2007, and were returning to Portadown by taxi bus in the early hours of Sunday 23. The bus stopped at the Broadway roundabout whereupon Mr McGuran and two companions, Conor Keegan and Ian Latimer, decided to get off the bus and return to the centre of Belfast to go to a night club. They were making their way along Glenmachan Street when they were approached by the defendant, who repeatedly asked where they were from. Mr McGuran decided to say that they were from Belfast, and when the defendant persisted in asking where they were from Mr McGuran said that he was from a particular street (which he named) where his sister had a house.

[3] The defendant called him a liar and then produced a weapon and struck Mr McGuran a blow to the left side of his face, inflicting serious injuries. The defendant fled and a passing motorist took Mr McGuran and his

companions to hospital. The weapon used by the defendant at the time was variously described as a baton or "a small hurly bat shaped machete" by Ian Latimer.

[4] On admission to the Mater Hospital Mr McGuran was seen by Dr Robinson who found that -

"He had a large incision wound to his left cheek from his left earlobe to just below his lip. It was almost full thickness through the soft tissue".

[5] Mr McGuran was referred to the Ulster Hospital for further treatment of his wound. In his statement of additional evidence Mr Basheer said -

"On 24.09.07 Ciaran was taken to theatre where under general anaesthetic the wound was explored. Exploration revealed full thickness wound dividing all the facial layers and leading to a fracture (sic) mandible, pressurising the oral mucosa only at the anterior third, the left corner of the mouth was involved as well and wound was thoroughly irrigated. Exploration revealed no damage to the branches of facial nerves however there was division of all the facial muscles by parotid gland. Maxillofacial opinion regarding the fractured mandible deferred the management to post operative period. The wound was closed in layers."

[6] Mr McGuran therefore suffered two serious injuries. The first was the fracture of the mandible, which was also referred to by Dr Bentley in his report. The second injury was the severe laceration to the left cheek described by Mr Basheer and which is graphically illustrated by the photographs of Mr McGuran's injuries. The wound runs from the left hand corner of the mouth horizontally right across the front of his cheek and terminates almost under the left ear. It is in an extremely prominent position and Dr Carson, who examined the medical evidence on behalf of the defendant, observed that Mr McGuran had been left with -

". . . a thin regular linear scar, which may fade a little with time but which will presumably be permanent"

[7] I have viewed the scar in the presence of counsel for the prosecution and the defence. It is bright vermilion in colour and broader in appearance than might have been anticipated from the condition seen in the photographs in Exhibit 11. I have no evidence as to whether it will improve, or could be

improved by further surgery, but I have no doubt that even if there is some improvement Mr McGuran will be left with a significant scar for the rest of his life. He also informed me that he suffers from a good deal of discomfort inside his mouth when eating and brushing his teeth because of the operation scars inside his mouth.

[8] As both Dr Carson and Dr Bentley agree, it is clear that not only was Mr McGuran struck with a blade, but he was struck with some force thereby causing the fracture of the mandible. He had to spend five days in hospital. It appears that he has made a satisfactory recovery from the injury to his jaw because there is no medical evidence to suggest that he has not made a full recovery from this injury.

[9] I have been provided with a Victim Impact Report on Mr McGuran's reaction to this attack upon him prepared on 13 August 2008 by Anne Kelly, a chartered psychologist. She describes how he has been attending a counsellor for about a year, and reports symptoms of posttraumatic hyperarousal; physical symptoms of anxiety; severe anxiety; avoidance and the re-living of the attack in the form of "flashbacks" which occur approximately three times per week and are described as "terrifying". In her opinion he is suffering from clinical depression, and she concludes that he suffers from chronic posttraumatic stress disorder with co-morbid clinical depression. Whilst he has clearly done much to come to terms with this terrifying experience, she has recommended that he receive expert psychotherapeutic help.

[10] In the pre-sentence report and the reports submitted on the defendant's behalf the defendant denies that he acted for sectarian motives. He alleges that he was provoked but there is no other evidence to support this assertion, which is contradicted by the statements of the prosecution witnesses at the scene. No other explanation is advanced for his conduct other than that he had been drinking. This was an extremely vicious assault upon a young man who did nothing whatever to provoke this attack other than to have had the misfortune, which unfortunately many people in Northern Ireland have suffered, of being attacked because he was in a place where the defendant clearly believed he had no right to be. Despite the defendant's denials, given the location of the attack and the defendant's repeated demands to know where his victim lived I can conceive of no reason other than a sectarian motive for the attack, and I am therefore satisfied that this attack was carried out for sectarian reasons.

[11] So far as mitigating features of the case are concerned, the defendant is entitled to appropriate credit for his early plea of guilty. He voluntarily attended the police station for interview on 26 September 2007 when he learnt that the police were looking for him. However, during interview he made no admissions and denied that the description put to him of the attacker fitted him. He said that he had alibi witnesses and demanded to be put on an

identification parade. A VIPER identification procedure was held on 26 September and the defendant was identified by Mr Keegan.

[12] Whilst the defendant is entitled to considerable credit for his plea of guilty upon arraignment, he is not entitled to the maximum credit which otherwise would be allowed had he made a full and frank admission of his guilt during interview.

[13] From the pre-sentence report and the reports on behalf of the defendant from Mr Colin McClelland, an educational psychologist, and Dr Bownes, a consultant forensic psychiatrist, it is evident that the defendant, whilst a young man of average intelligence and literacy, has for many years demonstrated that he has a violent temper and refuses to behave in a disciplined and responsible fashion. In his detailed review of the defendant's GP notes, Dr Bownes refers to the defendant's having being diagnosed as having Attention Deficit Hyperactivity Disorder as a child. He has also resorted to heavy drinking and illicit drug taking, and Dr Bownes concludes that the defendant's

“...mental health difficulties are presently related to the outworkings of personality based deficits and deficits of the Emotionally Unstable and Dissocial Types as defined by the ICD-10 International Classification of Mental and Behavioural Disorders and characterised particularly by a propensity to aggressive, dissocial and irresponsible behaviours, limited regard for societal norms, limited preparedness to learn from mistakes, emotional volatility, low frustration tolerance and difficulty coping appropriately with stress and demand.”

[14] The defendant has two previous convictions, one for receiving stolen property, for which he was sentenced to 100 hours community service, and the second for a breach of that order, for which he received a suspended sentence. The suspended sentence expired less than a month before this offence. Whilst the defendant cannot claim the benefit allowed for a clear record I do not regard his record as an aggravating factor of the case.

[15] Not only did this attack inflict serious consequences of a lasting nature upon Mr McGuran, but it could very easily have resulted in his death because of the type of weapon involved and where the blow was struck. The sectarian motive for the attack, the use of a knife, and the serious physical and emotional consequences of the attack for Mr McGuran are each substantial aggravating factors in the case. As I pointed out in *R v. Smylie* [2007] NICC 50 at [14] and [15], it is clear from the authorities discussed in that case that in recent years the courts have adopted an increasingly severe attitude towards the use of knives to inflict injury, and the range of sentence on a plea of guilty has been between

three and eight years. But as I observed during the plea hearing, that is not an inflexible range and each case must be looked at in the light of its own facts. The grave nature of the injuries sustained by Mr McGuran are such that I consider that a sentence in excess of the normal range is required. Taking into account all of the aggravating and mitigating features of the case and in particular the defendant's plea of guilty, subject to the question of a custody probation order to which I refer below, I consider that the appropriate sentence would have been one of nine years imprisonment.

[17] As the sentence must exceed one year's imprisonment I am obliged by statute to consider whether a custody probation order should be imposed. I am satisfied from the pre-sentence report and the reports by Mr McClelland and Dr Bownes that the defendant could benefit from probation supervision upon his release, and, subject to his consent, I propose to require him to serve twelve months probation upon his release from custody, and to undergo during that time the two additional requirements suggested in the pre-sentence report, namely that he participate in an Alcohol Management Course and in an Anger Management Course. I therefore sentence him to a custody probation order of eight years imprisonment to be followed by one years probation subject to these additional requirements. Had the defendant not consented to the custody probation order the sentence would have been one of nine years imprisonment.