

**IN THE CROWN COURT IN NORTHERN IRELAND
(Bill Number 14/030031)**

BELFAST CROWN COURT

THE QUEEN

-v-

**JAMIE DOWNEY
and
ANDREW RICHARD STEWART**

**His Honour Judge McFarland
Recorder of Belfast
7th October 2014**

- [1] The defendants were committed for trial on the 3rd April 2014. On the 30th May 2014 His Honour Judge Lynch QC refused an application that he enter a 'No Bill' on the basis of an insufficiency of evidence. On that date both defendants entered pleas of Not Guilty to a single count of causing unnecessary suffering to an animal contrary to Article 4(1) of the Welfare of Animals Act (NI) 2011. The trial commenced at Belfast Crown Court on the 3rd September 2014. On the second day of the trial Stewart was re-arraigned and pleaded Guilty to the count. The prosecution sought an amendment to the indictment by adding a second count against Downey, that he did an act intending to and intended to pervert the course of public justice. Downey pleaded guilty to that count, and the prosecution applied to leave the count of animal cruelty against Downey on the books of the court.
- [2] It would appear that on the evening of Saturday 25th August 2012 and into the hours of the following Sunday morning, Stewart and Downey had been at a party in their home village of Magheraberry at which they had consumed what was in all likelihood a substantial amount of alcohol. By morning they

left the party and were walking in the vicinity of the village. Whether it was their intention or not, it is clear that their walk took in what was an anti-clockwise circuit of roads, lanes and a railway track to the south of the village. Part of that circuit brought them walking past the home of Mr and Mrs Martin Agnew. Earlier that morning Mrs Natalie Agnew had let out the family's pet dog, a 3 year old border collie bitch called Cody, and it would have been in the vicinity of the home.

- [3] At or about 9 am, Jake Agnew, aged 6, was in the home and saw two men walking up to the house and looking through the window. Obviously his parents were slightly concerned by this possible intrusion and on checking about the house noticed that Cody was not in the vicinity of the home. It is clear that at this time, or shortly after, Cody had attached herself to Stewart and Downey, and as they continued on their walk, she followed. The walk then took them along a railway line, where they were observed by a witness, and then on to a quarry.
- [4] As to what happened at the quarry we have to rely on the defendants' versions of events, but it appears that at some stage Stewart poured inflammable liquid (probably diesel) over Cody and then ignited her coat. Downey was not present at the time, and had no fore-warning that such an attack would take place.
- [5] Cody managed to escape and return to her home, which was a short distance across fields. She was in such a state that the Agnew family were unable at first to identify her as being their much-loved pet. Ian Moore, a veterinary surgeon treated Cody and described Cody's coat as being burnt off in the areas of her back, flanks and belly, with further damage to her face. She underwent intensive treatment, but due to the extent of her injuries, and the general prognosis, she was euthanized two weeks later.
- [6] The defendants returned to the village and then to their respective homes, taking no steps to offer any assistance to Cody and making no contact with the Agnew family, a veterinary surgeon or the police. Naturally, the police became involved in this case a short time later, and no doubt it was the sole topic of conversation within the village at that time. After the police had received witness statements indicating a pair of youths had been in the village at or about the time, one identifying Stewart, and others identifying a tall youth which is one of the physical characteristics of Stewart, both defendants were approached by the police. They both made false statements to the police stating that after 7 am that morning they had not been in each other's company and had been in their respective homes.
- [7] This was a particularly appalling act on Stewart's part. Cody was a much loved pet, having lived with the Agnew family since she was a puppy. The

dog had attached itself to the defendants that morning. Domesticated animals do not have the inbuilt safety features of feral creatures which rely on fear and flight to protect them against predators. The domesticated canine now sees its adopted human family as its pack and will assume its role within the pack structure being subservient to the human pack leader. If properly reared and trained, and clearly Cody was, it will not see other humans as predators, but instead will adopt a friendly disposition in the company of humans, including strangers.

[8] Instead of taking care of Cody, and returning her to her owners, Stewart savagely attacked her in a most evil and vile fashion. It is beyond comprehension that any human being could act in such a manner towards any defenceless creature, which was posing no threat to him. It is very hard to fathom any rational motivation for Stewart's conduct. He was 21 years of age, had a reasonable education, a good upbringing in a stable family, and had to all intents and purposes a clear criminal record, with a good work record. Whatever that motivation, once he had committed the act and realised the enormity of his conduct and the resulting injuries to the dog, he simply walked away, leaving the dog to make its own way home, rendering no assistance whatsoever. Conduct of this type does raise fears within the court's mind that other vulnerable living creatures, be they animal or human, would be at risk in his company. The absence of any psychosis, personality disorder or mood disorder (according to Dr Loughrey, consultant psychiatrist) is reassuring at one level, yet disturbing in that it offers no explanation as to why Stewart could act in this way. His own words to the Probation Officer that it was a "moment of madness" are not an adequate explanation for his conduct.

[9] I am taking into account the anguish that has been suffered by the Agnew family. This was a well-structured family, living what would appear to be a normal happy family life in a quiet village in rural Northern Ireland. The parents and the two young boys had a much loved pet, which was so cruelly taken from them. Each has had to suffer the anguish of seeing their dog with these serious injuries, of living through the attempted rehabilitative treatment, and then the parents will have had to come to the decision to end Cody's life, in circumstances which were not of their making or choosing. A decision to euthanize is very often the final act of kindness that an owner can render to his or her pet dog. It may arise as a result of old age, illness, or unforeseen traumatic injury. It should never fall on any owner to make a decision that the Agnew family had to make. Subsequent to that decision, there has followed a period of two years of having to live, and re-live the events and finally the preparation for the trial, which would have necessitated both Natalie Agnew and young Jake having to give evidence. For the parents, they have had the unenviable task of having to explain to their young sons how this could have happened - why any human being

would do such a thing to an animal, particularly their beloved family pet. Each member of the family, in their own way, has spoken in very moving terms about how this event has impacted upon them and their family.

- [10] For cases of animal cruelty, there are no sentencing guidelines from the Court of Appeal. The maximum sentence in this court is 2 years imprisonment. Recently the Sentencing Council in Northern Ireland has approved some guidance to the Magistrates' Court, where the maximum sentence is 6 months imprisonment. The actual starting points and range of sentences are of little relevance, but they do set out important aggravating features in cases of this type and of particular relevance in this case is the fact that gratuitous violence was used by dousing the coat with an inflammable liquid and then igniting it. A further aggravating factor is the impact that the offending has had on the Agnew family, and particularly the younger members of the family.
- [11] In mitigation I take into account Stewart's age – he was 21 and had a virtually clear criminal record. He did enter a plea of guilty, although it was on the second day of the trial. It is normal for courts to recognise a plea of guilty by reducing the sentence. Courts do this as the plea is an acknowledgment of guilt and as such may display remorse, it can avoid witnesses from giving evidence, and may avoid costs and expenses associated with the running of a contested trial. The later the plea, the less credit is given. In this case there has been no remorse. In my view the recent expressions of regret are merely evidence of self-pity. The plea was very late, and the change of mind only followed when Downey had indicated to his counsel that he was now prepared to tell the truth. The only positive aspects flowing from the late plea were that Natalie Agnew and Jake Agnew were not required to give evidence and that some time and costs have been saved.
- [12] I am aware that there has been extensive interest in this case, as the plight of this dog, and its owners, have touched the hearts of many in Northern Ireland and further afield. There have been calls for the maximum sentence of 2 years to be imposed. Lawton LJ in the case of **R -v- Amber and Hargreaves (unreported) 24th November 1975** explained how judges should approach sentences falling into the higher category of culpability. He said "*It is of course a principle of sentencing that maximum sentences should only be passed for the worst kind of offence. But it is to be borne in mind that when judges are asking themselves whether they should pass the maximum sentence, they should not use their imagination to conjure up unlikely worst possible kinds of case. What they should consider is the worst type of offence which comes before the court and ask themselves whether the particular case they are dealing with comes within the broad band of that type. Where the maximum sentence is low, the band may be wide*" Although this case is of some vintage, the principle has been recently endorsed in the cases of **R -v- Butt [2006] 2 Cr App R (S) 364** and **R -v- Bright [2008] EWCA Crim 462** In **Bright** Judge LJ stated at [29] – "*The maximum sentence permitted by statute is reserved not for the worst possible case which can realistically be conceived,*

but for cases which in the statutory context are truly identified as cases of the utmost gravity."

- [13] I am of the view that this case falls to be considered as falling into the band where the maximum should be imposed, but for mitigating factors. Had this case gone to verdict, the appropriate sentence taking into account Stewart's age and lack of criminal record would have been 22 months. Early acknowledgment of guilt followed by a guilty plea would have resulted in a reduction of one third - over seven months. The late plea, and the circumstances surrounding it, will only attract 2 months' reduction, so the sentence will be 20 months' imprisonment. As required by Article 8 of the Criminal Justice (NI) Order 2008, I specify that the licence period shall be 10 months. I recommend to the Department of Justice that it considers the Probation Officer's suggested condition in relation to the Managing Alcohol Programme.
- [14] I order that Stewart be disqualified under Article 33 of the 2011 Act from owning or keeping any animal for a period of 30 years. He may not apply to terminate this disqualification before the end of 20 years. I also order Stewart to pay compensation of £2,600 to Martin and Natalie Agnew to cover the cost of veterinary expenses. I understand that some of these costs may already have been defrayed by funds contributed by well-wishers. If that is the case, re-imbusement to the donors is likely to be an impossible task, but I have every confidence that Mr and Mrs Agnew will donate any amount of compensation received to a suitable canine or other animal charity. I take into account his current financial position and his earning capacity after his release. I acknowledge that courts should be slow to impose immediate custodial sentences and large compensation orders at the same time. Bearing this in mind, I propose to allow Stewart to pay the amount by instalments of £100 per month, the first instalment being due on the 1st June 2016. This will allow him sufficient time after his release from prison to have the ability to pay the amount. It is important that he, and others, realise that there is very often a financial consequence to their criminal activity. There will also be an Offender Levy of £25.
- [15] Downey has pleaded guilty to a different offence - doing an act perverting the course of justice. It is acknowledged by the prosecution that although he had originally been charged with the offence of animal cruelty, he had nothing to do with the actual attack on the dog. He had been in the company of Stewart and would have been aware that Cody had attached herself to the pair of youths. He would have been aware that Stewart had attacked the dog, yet despite this, he remained in the company of Stewart, he did nothing to alleviate the suffering of Cody knowing that she had been injured in a most grievous fashion, and then through some misguided loyalty to Stewart agreed with him to concoct what were false stories to divert police attention away

from both defendants. No-one is ever punished for the company they keep and the friendships they maintain, but I have to say Downey did show extremely poor judgment in promoting his friendship with Stewart, knowing the conduct that Stewart was capable of, over the interests of the innocent Agnew family and the community generally.

- [16] Perverting the course of justice carries a potential life sentence, but it covers a very wide range of conduct. Courts will be concerned with the motivation on the part of the offender, the impact that the conduct has on others, and on the institutions of the state. This conduct in providing a false account to police, did not interfere with the police investigation to a large extent, primarily as it would have been perceived by the police as a lying account from an early stage, however during that early period it had the potential to point the finger of suspicion towards other, innocent, parties. It did however mean that the police were required to carry out extensive enquiries to seek out and accumulate evidence to establish Stewart's guilt. This in turn would have added to the cost of the investigation, and the time taken obviously added to the frustration and anguish of the Agnew family.
- [17] In mitigation I take into account his age - he was also 21 years of age - and his clear record. He has a good work ethic, and has been supported by references which speak highly of the positive aspects of his character. He entered his plea at the first opportunity. It is clear that driven by his conscience, he eventually decided to tell the truth, and thus end the Agnew's nightmare. His conduct forced Stewart to change his plea, a course Stewart is unlikely to have taken in the normal course of events.
- [18] A full and frank disclosure at the time of the original crime would have avoided the period of delay resulting from the police investigation and the trial process. It emboldened Stewart to think that if he kept to his story he might evade justice, and it led to extending the period of the Agnew's grief and anguish, delaying this moment of sentencing and if not closure for them, the end of this sad chapter in their lives.
- [19] The sentence, after a trial would have been 9 months in custody, and will be reduced to 6 months to take into account his plea of guilty. There will also be an Offender levy of £25.