

Neutral Citation No: [2018] NICC 2

Ref: KEE10565

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

Delivered: 16/2/2018

IN THE CROWN COURT FOR THE DIVISION OF LONDONDERRY

—
R

-v-

FINBAR McCOY
—

SENTENCING REMARKS
—

KEEGAN J

[1] Finbar McCoy on 9 January 2018 you pleaded guilty to manslaughter contrary to common law in that you unlawfully killed James McDonagh on the 10 January 2016. It is now my duty to sentence you for that offence.

[2] Mr Ciaran Murphy QC appeared for the prosecution with Mr Magee BL. Ms McDermott QC appeared for the defence with Mr McCann BL.

[3] Counsel helpfully provided an agreed statement of facts as follows:

“The victim in this case is James McDonagh. He was born on [...] of Hillhead Cottages, Castledawson. He was aged 28 when he died.

The Defendant is Finbar McCoy. He was born on [...] and he was aged 24 at the time of this incident. He lives at [...] Loughbeg Road, Toome.

This case relates to an altercation outside the Elk Bar, Toomebridge at approximately 2.30a.m. on 10 January 2016.

On the evening of Saturday 9 January 2016 a surprise retirement party had been organized at the Elk Bar, Toomebridge, for the father of the Defendant, Finbar McCoy Snr. Mr McCoy Snr. was well known having worked as a doorman in the Elk Bar for a long period of time. The Defendant attended with other members

of his family for dinner at the Elk Bar prior to the commencement of the surprise party which took place in the public bar.

James McDonagh was drinking in the public bar of the Elk Bar during the evening of the 9 January 2016. He was with his 15 year old nephew, Daniel McDonagh. As the evening wore on Mr McDonagh became increasingly intoxicated with alcohol and was observed to be paying unwanted attention to a number of females in the McCoy party including the Defendant's sister.

The Defendant had been in attendance at this event throughout the evening along with other friends and family members. During the course of the evening he too had consumed alcohol.

Sometime after 2.00a.m. Finbar McCoy Snr. was observed to be involved in an altercation with James McDonagh in the car park of the Elk Bar. This appears to have arisen out of a confrontation between Daniel McDonagh aged 15 and Finbar McCoy Snr. close to a smoking area outside the premises and in relation to another incident in Toomebridge. During this altercation Mr McDonagh punched Mr McCoy Snr. The defendant was not present at this time.

Mr McCoy was observed to have blood on his forehead and his wife (the mother of the Defendant) was observed to be picking herself off the ground at one stage.

During this altercation James McDonagh was also observed swinging a punch which struck Sean Diamond causing a cut below his eye.

Finbar McCoy Snr. was restrained by members of his family and Mr McDonagh was gesturing to Mr McCoy Snr. that he wanted a fight.

Finbar McCoy Jnr. then arrived at the car park having returned home briefly. He made a remark to the effect that he believed Mr McDonagh had hit his mother. Mr McDonagh was observed by witnesses to be attempting to "rile" Finbar McCoy Jnr. A number of people attempted to hold Finbar Jnr. back but he struggled free and approached Mr McDonagh.

The Defendant threw one punch which struck Mr McDonagh in the face. Both the Defendant and the deceased fell to the ground. In doing so, Mr McDonagh fell backwards and became unconscious. He never regained consciousness.

Peter McErlane refers to Finbar Snr's daughter moving Jim slightly from lying on his left side to a propped up sitting position with his back leaning on the wall. There was blood coming from Jim's mouth and he was unconscious. Finbar Jnr. was sitting on the wall and seemed quite distraught; Dawn was screaming at him 'What have you done'.

Members of the McCoy family placed Mr McDonagh into the recovery position at the scene. Finbar McCoy Senior and his wife then moved Mr McDonagh and propped him against a wall. Mr McCoy Snr checked his breathing. Mr McDonagh was observed to be snoring loudly.

The Defendant's sister asked the manageress of the Elk Inn, Joan Belton, to phone for an ambulance. At that time a man named Jim Maguire arrived in a blue van. Ms Belton asked the man to take Mr McDonagh to hospital but he refused saying that he would return with guns.

Mr McDonagh was taken to his mother's house. He was still unconscious. Mrs McDonagh checked his head and found no lumps. He was placed on the living room floor with his head on a pillow and his body covered by a rug.

In the morning, when Mr McDonagh still had not regained consciousness, his family became concerned for his welfare and an ambulance was called.

James McOscar, a Paramedic attended [-] Hillhead Cottages, Castledawson, at approximately 8.20am. He noted that "when we found the patient he was lying on the ground in the sitting room." He transported Mr McDonagh to Antrim Area Hospital arriving at 9.03am. He was unconscious and unresponsive. He was breathing rapidly and his pupils were dilated. He was noted to have a swollen lip which had evidence of blood around his mouth

and it was clear he had suffered a significant head injury. An emergency CT scan carried out which showed severe injuries to his head, including a right temporal parietal skull vault fracture (extensive fracture over the right side of the skull); a left occipital scalp haematoma (large bruise to the back of the head); evidence of bleeding into the lining of the brain (subarachnoid blood); right frontal lobe haemorrhagic contusion (bleeding and bruising into the right front side of the brain); right sided bleeding around the brain and significant evidence of swelling with midline shift towards the left hand side of this suggestive of recent severe traumatic event.

Mr McDonagh was transferred to intensive care in the Royal Victoria Hospital. At 11.27am on Monday 11 January, medical staff carried out a brain stem check to test for any activity in the brain; no activity had been detected. A second test was carried out at 2.38pm and again no activity was detected. Life was pronounced extinct at 2.38pm hours on Monday, 11 January 2016.

On Wednesday 13 January 2016, Dr. Peter Ingram, the Assistant State Pathologist conducted a post-mortem. There were areas of abrasion on the scalp on the left side at the back and on the right side towards the back consistent with contact with a rough surface. There was extensive bruising of the underlying scalp at the back as well as a bruise on the right side which also involved the right temporalis muscle. A large fracture was situated on the right side of the skull and was associated with considerable bleeding over the surface of the brain which also showed extensive surface bruising, particularly on the right side. As a result of the head injuries the brain had undergone cerebral oedema (reactive swelling) with the development of small secondary haemorrhages in the brain stem. He concluded that the cause of death was a bruising and oedema (swelling) of the brain associated with a fracture of skull and secondary brain stem haemorrhage.

Dr Ingram indicated that Mr McDonagh had sustained bruising and laceration to the left side of his lower lip consistent with having been struck on the mouth probably as a result of a punch. There was

also a bruise on the underside of the chin consistent with a blow such as punch. Whilst those injuries were of themselves quite trivial, Dr. Ingram concluded that they could have resulted in his falling and striking his head on the ground. There were no other injuries to his face.

At the time of his admission to hospital Mr McDonagh had a blood alcohol concentration of 148 mg per 100 ml of blood. This sample producing this reading was taken approximately 7 hours after the incident during which time alcohol would have eliminated from the blood. The level of alcohol in the blood stream would have been considerably higher earlier that morning and his level of intoxication would have been significantly greater.

The nature of the fall described by the witnesses was entirely consistent with the injuries found. Dr. Ingram considered it was "unlikely that he was struck in the face with any significant degree of force more than twice". In Dr Ingram's opinion, Mr McDonagh was struck in the face, fell backwards, as described by the witnesses, struck his head of the ground resulting in injury, fracture of the skull, internal bleeding and ultimately death.

Finbar McCoy (the Defendant) was examined by Helen McNeely (Nurse Practitioner) at 10.15 a.m. on 10 January 2016. He had an injury to his right hand; he said he had hit a wall. X-rays showed that he had fractured a knuckle. Mr McCoy also had an injury to his knee consistent with a fall.

Just after midnight on Monday 11 January 2016, Constable Brendan Agnew arrested Finbar McCoy in respect of the incident. Finbar McCoy made no reply to caution. He was then taken to Musgrave Street Police Station where he was interviewed by police.

During interview, Finbar McCoy said he had left the Elk Bar to go home. He had received a call from his sister to return and get his parents home. He came back driven by Dermot Gribbon. When he came back he saw a commotion and considered his parents and sister had been assaulted. His father had blood on his face. He heard someone shout, 'It was him over

there' and the Deceased was identified to him wearing a white shirt. He said one of the bar staff was holding him back. He said McDonagh was taunting, laughing, shouting and roaring, looking to fight. He broke free and went to McDonagh punching him with his right fist once on the head around the chin (consistent with the medical evidence). They both fell to the ground. He said he got up immediately and walked towards a fence that he punched. At this point he noticed that his hand was cut and he felt pain in his right hand/wrist. He then claimed that he noticed 2 or 3 persons sitting on McDonagh and "beating the life out of him". He said McDonagh's head was bouncing as though there was a drum beneath it. In light of the reports from Dr. Ingram and ultimately his guilty plea, this account is neither supported nor maintained. Mr McCoy denied knocking Mr McDonagh out although he accepted he punched him. He said his father pushed these people away and helped McDonagh into a Transit van.

On the evening of 13 January 2016 Finbar McCoy was charged with murder. He replied, "I can't bring words together to say how sorry I am. I feel so sad for the family, but I did not murder James McDonagh."

I have also had the benefit of hearing evidence from witnesses about the demeanour of the deceased and the defendant on the night in question.

The pre-sentence report

[4] A report has been compiled by Mr Terry McLaughlin of the probation service dated 5 February 2018. The defendant and his family cooperated fully in the preparation of this report. This report sets out the stable family background of the defendant. It also sets out the defendant's full acceptance of the offence. The report assesses the defendant as a low likelihood of reoffending for the following reasons:

1. The absence of a relevant criminal record
2. The manner in which the defendant has met these charges
3. The defendant's excellent employment record
4. The support provided within the defendant's immediate family circle
5. The salutary lesson already experienced by the defendant from this situation
6. The significant level of remorse demonstrated by the defendant.

The report repeats these factors in assessing that “despite the very concerning nature of the current offence the defendant has not been assessed as presenting a significant risk of serious harm at this time.”

The probation report also states that;” given the salutary lesson already experienced by the defendant and the fact he has been assessed as low risk of reoffending and not a significant risk of serious harm to others at this time, the court may wish to give consideration to suspending such a sentence for a protracted period.”

Submissions on behalf of the prosecution

[5] In his submissions, Mr Murphy QC referred me to R v Stephen Magee [2007] NICA 21 in which Kerr LCJ set out general guidance for courts when dealing with sentencing offenders for the offence of manslaughter. Mr Murphy made the point that this case was designed to deter offences of this nature in a particular social context of young intoxicated men targeting each other on the street. He also referred to the case of R v Ryan Arthur Quinn [2006] NICA 27 which set some guidelines for sentencing on a plea however Mr Murphy submitted that the application of this authority would depend upon the circumstances of each case. In particular Mr Murphy highlighted that cases such as Quinn involved targeting and attacks to wholly unprepared victims.

[6] Mr Murphy submitted that the only possible aggravating factor in this case was that the incident occurred in a public place. However, he submitted that the defendant did not choose this, arriving as he did on the scene after an altercation had taken place which did not involve him.

[7] By way of mitigation, I recite the facts Mr Murphy accepted as material: that the defendant was not initially involved; he came upon the scene at a time when the deceased had already used violence; there was an element of understandable provocation caused by the fact that he believed his father, who was bleeding, and his mother had been assaulted by the deceased; the offence was a spontaneous reaction to events; he struck one punch; the injury caused by the punch was itself relatively minor, as it was the fall that killed the deceased, this was assisted by his high level of intoxication; after the punch the defendant removed himself from the scene and did nothing more; the deceased received no immediate medical attention to attempt to save his life and there was a delay of 7 hours before the ambulance arrived; the defendant has a clear record. He is from a well-known family of good reputation. He pleaded guilty quickly after his first trial. He pleaded in advance of a second trial.

Victim impact reports

[8] Mr Murphy referred to three victim impact statements filed by the deceased’s mother, sister and his widow. I have read all these statements and I note that the deceased had a family of two small children and that he was married (although separated at the time of the incident as is apparent from the heading to the statement of Christina McDonagh). Christina McDonagh said that “our lives will never be the

same again.” Mary McDonagh speaks of the family’s “huge loss”. Mr Murphy read in particular from Mrs Roseanne McDonagh’s statement in which the mother of the deceased expressed her sorrow that James had been taken from her which she said had “ripped her apart” but as he said she expressed her sympathy for the defendant’s family. In that statement she said:

“Whilst attending Court, I felt sorry for Finbar’s mother and father and his family, I didn’t care if Finbar Junior did not see the inside of a prison, as a family we just wanted the recognition for what he had done and caused Jim’s death. I also recognise and respect that Finbar Junior done a big thing in pleading guilty, I don’t want the boy to be punished. We are so glad that we were not put through another trial. I don’t believe that we could have coped as a family. I feel sorry for Finbar’s mother and father, it’s an awful thing to see your child go to jail.”

Submissions on behalf of the defence

[9] Ms McDermott QC began her submission by stating that the death of James McDonagh is at the forefront of the defendant’s mind. She said that this was a “needless tragedy”. Ms McDermott said that her client’s family always respected the McDonagh family and that they were willing to accept the hand of friendship offered by Mrs McDonagh. Reference was then made to the positive pre-sentence report. In particular Ms McDermott pointed to the assessment of low likelihood of reoffending and that the defendant has not been assessed as posing a serious risk of serious harm. Ms McDermott stressed the fact that her client had been charged with murder for some 18 months before the manslaughter charge was preferred.

[10] Ms McDermott submitted that there were no aggravating factors in this case. By way of mitigation, she echoed Mr Murphy’s analysis. In addition she referred to the fact that the defendant came from a highly respected family. She pointed out that the defendant was employed within the family business since age 16 and that he worked as a joiner to a high standard. He had lived a stable and structured life. He has no criminal convictions. He has had a steady girlfriend of 10 years who is now his fiancée and who he is due to marry in May 2019. Ms McDermott referenced the fact that the defendant always accepted the punch. She stressed that he also expressed remorse from the outset and that continues and is genuine.

[11] Ms McDermott referred to many excellent references filed on behalf of the defendant. These come from a range of sources including clergy from both the catholic and protestant denominations, also people who had employed the defendant, school teachers and other highly respected members of the community. It is clear from these testimonials that the defendant is held in high regard in the community both for his work and his good manners and consideration to others.

[12] Ms McDermott also commented upon the particular characteristics of this incident. She reminded the court of the scene the defendant met on returning to the Elk, and that he was concerned for the safety of his father and mother who he was coming to collect. It is accepted that he did throw one punch having broken from restraint as he was angry about what he saw. Both the deceased and the defendant fell over together and Ms McDermott stressed that he left it there.

[13] Ms McDermott submitted that this was not a Quinn type case and that the court should be careful not to impose a disproportionate sentence. She referred to a number of English authorities namely R -v- Coleman (1992) 13 Cr App R(S) 508, R -v- Edwards (2001) 2 Cr App R(S) 125 and R -v- Furby 2006 2 Cr App R(S) 8. She said the facts of this case were truly a case akin to Coleman. Ms McDermott also informed the court that in England and Wales draft guidelines have been circulated for the first time in relation to unlawful act manslaughter.

[14] Ms McDermott highlighted the fact that the harm is always the same in these cases. However, she also correctly stressed that culpability can vary widely and that this was a case at the lowest end of the spectrum. Ms McDermott referred to the lowest category of culpability characterised as where death was caused in the course of an unlawful act which was in defence of self or others (where not amounting to a defence) or where there was no intention to cause any harm and no obvious risk of anything more than minor harm or where the defendant was a minor player.

[15] Ms McDermott asked the court to give credit for the plea given that the jury had failed to reach a verdict. She said the defendant did not want to put his family or the McDonagh family through another trial. She asked the court to consider the mitigating factors in this case and to decide where on the spectrum this case lies. She also asked that the court consider suspending any sentence.

Discussion

[16] The consequences in this as in any other unlawful act manslaughter case are stark. This defendant did not go out on 10 January 2016 to kill James McDonagh. However, his assault led to Mr McDonagh falling over and hitting his head off a hard pavement and that caused his death. This chain of events establishes unlawful act manslaughter. The defendant accepts this and as the Probation Service puts it “a salutary lesson has been learnt.” The defendant regrets that he broke free from those restraining him and punched Mr McDonagh. However he was angry and he made a choice in an instant to act as he did on the night in question. This case provides a warning as to how the lives of two young men and their families have been blighted by something that happened in a matter of seconds.

[17] These cases which are described as “one punch” manslaughter pose a difficult sentencing exercise. There was no argument that the custody threshold has been passed. However the court must strive to reach a sentence reflecting the justice of the case. In this regard the court must assess the aggravating and mitigating factors to reach a starting point. In this case I consider that there were no aggravating factors.

In terms of mitigation, I accept that this was a spontaneous single act, of low force, without substantial intoxication on the part of the defendant, in a situation which involved provocation, where the defendant was attempting to protect his family, and for which he displays genuine remorse. These mitigating factors are particularly strong and in my view they establish that the defendant's culpability is low.

[18] I have had the benefit of a probation report which I have considered. This reflects the fact that the defendant is at low risk of reoffending and he does not pose a risk of serious harm to the public. All of the excellent references presented on behalf of the defendant support this assessment of him and point to the fact that the defendant does not have a violent nature and that his behaviour on the night in question was very much out of character. I also consider, without hesitation, that the remorse shown by this defendant is genuine and real.

[19] I have read the victim impact reports which properly inform me of the anguish and suffering felt by various members of the deceased's family. All of these statements are poignant and I do not underestimate the effects upon this family of the loss of James. I must commend Mrs McDonagh for the remarks she makes in her victim impact statement which are particularly impressive, offered as they are with a strong sense of empathy. I note the importance to her of recognition of this offence. I know that Mrs McDonagh is heart-broken by the loss of her much loved son however she has exhibited deep humanity in that she bears no ill-will to the McCoy family and she graciously extends sympathy towards them. Mrs McDonagh also makes a plea for leniency. I acknowledge all of these matters however I must decide this case on the basis of the legal principles to which I now turn.

[20] I have been greatly assisted by counsel in this case as to the relevant law. The main authorities in Northern Ireland are the two cases of the Court of Appeal, Magee and Quinn, referred to by Mr Murphy. It is explicitly recognised in these cases that "offences of manslaughter typically cover a very wide spectrum." In Quinn, the Court of Appeal, while recognising the persuasive guidance contained in the English cases of Coleman and Furby, decided to apply a higher starting point than those cases provided. The subsequent case of Magee deals with the upper end of the spectrum but it refers to Quinn and restates the rationale underlying sentencing in these cases. In Magee the court refers to the fact that aggravating and mitigating factors will be instrumental in fixing the chosen sentence within or in exceptional cases beyond the range. These principles are uncontroversial and the guidelines remain in place for consideration subject to the flexibility allowed to a court in deciding upon the correct sentence on the particular facts of a case.

[21] It was submitted by both senior counsel that this case is distinguishable on the facts from the cases of Quinn and Magee. I agree that this case represents a very different factual situation to that in those cases notwithstanding the common factor that a young man has tragically died. I must look at all of the circumstances of this case. The distinguishing factors are not simply related to the defendant's good character but crucially they go to the circumstances of the offence itself which I have described above in particular the fact that this was not an unprovoked attack. In that

context, I consider that the appropriate sentence falls outside of the range of these cases. I stress that I am taking this exceptional step based on the highly specific factual circumstances of this case. In my view, taking into account the lack of aggravating factors and the mitigating factors and before applying any discount for a plea, the sentence I reach is one of 18 months' imprisonment.

[22] However the defendant has the benefit of a guilty plea. This was offered in advance of a retrial and it is clear that it is very much welcomed by the family of the deceased as they were distressed by the prospects of a retrial. The defendant wanted to save both families that additional pain and I give him considerable credit for this approach. Accordingly I reduce the sentence to 12 months' imprisonment.

[23] Ms McDermott has asked me to consider suspending any sentence of imprisonment. I have already said that the facts of this case are sufficiently exceptional to fall outside the Quinn sentencing range. However, this remains what is described as a "one punch" case resulting in fatal consequences. I consider that an immediate custodial sentence is required to reflect the gravity of the offence and in my view the circumstances do not warrant a departure from that principle. There also remains the need for deterrence in all of these cases to ensure that this type of event does not occur again. I therefore decline to suspend the sentence.

Sentence

[24] Finbar McCoy, I sentence you to 12 months' imprisonment, 6 months of which will be spent in custody and 6 months on licence.