

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

KASPARS VALTERS

HART J

[1] The defendant has pleaded guilty to the manslaughter of James McDonald on 6 September 2006. He was originally charged with murder, but on 14 May 2008 he asked to be re-arraigned and pleaded guilty to manslaughter. This plea has been accepted by the prosecution and he is now before the court to be sentenced.

[2] At the time of his death James McDonald was 56. He was born in Scotland and had lived a nomadic lifestyle over the years, and it is apparent that he had a severe drink problem. In September 2006 he was associated with the Centenary House in Victoria Street, Belfast, a hostel run by the Salvation Army, particularly for homeless people. He suffered from depression and was on medication for this.

[3] On 6 September 2006 Terence Byrne, a building contractor, arrived at 28 Penrose Street, Belfast and noticed that the downstairs front window was open. Mr Byrne entered a room at the back of the house where he found a body lying on a settee. The police were called and the man was found to be dead. It was ultimately established that the man was Mr McDonald.

[4] A post mortem examination was carried out by Dr Ingram, the Assistant State Pathologist. Dr Ingram concluded that death was due to a head injury, and there were a number of injuries to the body, principally to the head, but also to the trunk and limbs. Dr Ingram found bruises, abrasions and lacerations on the scalp surface, on the forehead, around the eyes and on the nose. The lips and their linings were bruised. The lower jaw was fractured in two places and the nose was also broken. Furthermore there

were five bruises on the under surface of the scalp related to the injuries on its surface.

[5] Dr Ingram concluded that these injuries were consistent with blows to the head, possibly by Mr McDonald having been punched, kicked or stamped upon. As a result of the blows to the head, there had been bleeding over the surface of the brain on the left side, principally in the form of a subdural haemorrhage. Dr Ingram's view is this could have occurred as a result of Mr McDonald having been struck whilst upright, and then having fallen to the ground striking his head. As a result of the bleeding the brain had become swollen, that is undergone cerebral oedema. Dr Ingram concluded that it was the effects of the surface bleeding and the secondary brain swelling which were responsible for Mr McDonald's death. He concluded that death would not have been immediate, but would have been preceded by a progressive deterioration in his level of unconsciousness, probably over a number of hours after the initial assault.

[6] In addition to the head injuries there were bruises and abrasions to various parts of the body which could have been caused by kicks or blows, possibly as Mr McDonald attempted to defend himself. There were other recent bruises, but none of these were serious and played no part in the fatal outcome. There was also an undisplaced fracture of one of the fourth left ribs, but the underlying lung was uninjured and such a fracture would not have been life threatening.

[7] Abrasions on the right side of the back could possibly have been sustained if Mr McDonald collapsed on to a rough surface such as the edge of a wall. About 12 bruises were found in the soft tissues of the back, some of which could have been sustained if he had fallen backwards. Others may have been sustained as a result of blows, and some could also have resulted from contact with a hard surface if he had been assaulted as he lay on his back on the ground.

[8] There are findings which suggested that during the assault the neck had been forcibly grasped.

[9] There was 93 mg per 100 mls of alcohol in the blood at the time of death, although it seems likely that his blood alcohol level at the time of assault could have been a little bit higher. His blood was also found to contain a therapeutic level of the anti-depressant Fluoxetine, which had been prescribed for the deceased.

[10] All of the evidence suggests that Mr McDonald died as a result of a severe assault. It may well have involved not only his being kicked but his being stamped upon. Mr Murphy QC on behalf of the prosecution stated that the prosecution view is that there may well have been others involved in this

assault as well as the defendant. It is believed that he was assaulted outside the house and eventually ended up on the ground. When his body was discovered by the police there was obvious evidence of injury, including a gash to the right side of Mr McDonald's head above his ear. It is believed that Mr McDonald was brought into the house after he was assaulted and died some hours later.

[11] On 6 September the defendant was seen in the centre of Belfast by one Arthur Biel who noted that his clothing was covered in spots of blood and that his hands were red and swollen. On 6 September a man called Sergei spoke to Paula Quigley who was employed by the Welcome Centre which provides help for the homeless in Belfast. Sergei told her that he had been staying in the house and that a Scottish man tried to set his sleeping bag on fire. The defendant also frequented the Centre, and when he came into their premises on 6 September she asked him what had happened last night, and he replied that a Scottish man had tried to set Sergei on fire and that he had beaten him up. The defendant was noted to have soot on his face and hands and a large mark on his trousers which appeared to be blood.

[12] On the same night the defendant had a conversation with Seamus Donnelly, who also worked for the Welcome Centre. Mr Donnelly gave the defendant a lift and in the course of a conversation the defendant told him that he had seen someone trying to set fire to Sergei when he was sleeping and the defendant had beaten this man. Mr Donnelly described the defendant as punching his palm and saying "I have beaten him real hard".

[13] A forensic examination of jeans taken from the defendant by Mr Lawrence Marshall of Forensic Science Northern Ireland disclosed spots of projected blood on the bottom of the right leg of the jeans, with three fine spots of blood on the inside front of the bottom of the leg. He concluded that this distribution pattern is consistent with an allegation that the jeans were being worn by a person kicking or stamping on a source of wet blood.

[14] An examination of the interior of 28 Penrose Street by John Brown of Forensic Science Northern Ireland identified several fingerprints in blood, three of which from a handrail, and one from the living room side of the hall/living room door, were identified as belonging to the defendant. Mr Brown concluded that the appearance of two of the fingerprints found on the handrail "provides evidence to strongly support the proposition that they have been deposited by a bloodstained hand coming into contact with the surface of the handrail".

[15] On 7 September the defendant went to Donegall Pass Police Station and told the police he had stayed at 28 Penrose Street on 5 September, and that a fire had started in the house when a Scottish man set a pillow alight. The defendant went on to say that he had put the fire out by putting the

pillow in the toilet and flushing it. He was arrested on suspicion of Mr McDonald's murder and questioned.

[16] The defendant, who is a native of Latvia who had been living in Northern Ireland for about 15 months before these events, admitted being in 28 Penrose Street that night. He said that he had met a number of men drinking in the city centre and had gone with them. One of these men was Mr McDonald. They went to a house which he did not know off the Ormeau Road and he went to sleep in one of the upstairs rooms. He said that he woke when he smelt smoke and discovered a sleeping bag or quilt alight in the bathroom, which he put out by flushing the toilet. He then made his way downstairs and went outside where he was told by one of the other men in the house that the Scottish man (that is Mr McDonald) had started the fire. The defendant said that he saw someone lying on the sofa who mumbled something or made a sound like a croak.

[17] After a window had been opened and the smoke from the fire had cleared the defendant went back to his room and went back to sleep. He left the next morning with one of the other men without seeing the deceased. He had agreed that the staining on his trousers looked like blood and said that he tripped and fallen in the house after he had seen Mr McDonald lying on the sofa. In relation to many other questions he made no comment answers. In interview he said that he did not know whether he was involved in a fight as he was too drunk. He was asked whether he had been in a fight with anyone, or kicked anyone, but said that he could not remember.

[18] In the pre-sentence report the defendant gives a different account as to what occurred after he woke smelling smoke and put out the fire in the bathroom, opened the windows and went out the front door.

“At this point Mr Valters states he encountered the victim and a fight developed. Mr Valters tells me that the victim grabbed his genitals and that he pushed him away and told him to stay away. Mr Valters states that the victim then tried to hit him with his fist but missed and a fight developed. Mr Valters states that he hit the victim several times in the face with his fist. He reports that Mr McDonald fell and hit his head on a garden wall, appearing to be knocked out. The defendant acknowledges he also kicked the [deceased] in the face. He reports then dragging the victim inside and on to a sofa. He states the victim was still breathing and he thought of calling an ambulance but had no money in his phone to do so. The following morning Mr Valters states he believed the victim was still breathing. However he

acknowledges that he did not ensure any help for him, a situation which he now regrets.

The following day Mr Valters states that he heard on the television news that Mr McDonald had died. He states he knew he would be sought by the police so decided to go to the police himself.

Mr Valters states regret for having caused the death of Mr McDonald. Whilst maintaining that he did not intend this, he acknowledged that he was totally reckless in relation to the impact of his violent behaviour and also irresponsible in not obtaining help for the victim. The defendant states that he felt at the time 'because things happened so fast' that he had to engage in a fight."

[19] The defendant's admissions that he had been fighting with the Scottish man, who was obviously Mr McDonald, together with the blood on his clothing, and the blood-stained fingerprints on the stair handle, establish that he struck Mr McDonald, and did so several times. Mr Barry MacDonald QC for the defendant said that the account given by the defendant in the pre-sentence report represents the defendant's version of events. The evidence from Dr Ingram is that death was caused by a single blow, and Mr MacDonald QC also referred to a pathology report produced for the defence by Dr Marie Cassidy. Dr Cassidy concluded that

"3.5 The pattern of trauma sustained by this man would be consistent with an assault, although some injuries could have been due to a fall.

3.6 His death was not due to a single injury but due to the combined effects of all the injuries to his head.

3.7 Despite the multiplicity of injuries to the head there were no fractures to the skull to indicate severe force being used.

3.8 As there were multiple injuries, and particularly as some of the injuries to the head, and possibly to the back, could be due to kicking, it is possible that there was more than one assailant."

[20] Mr Murphy QC said that it was accepted that whilst the defendant was involved in a serious assault on Mr McDonald, the cause of death was the

head injury received when he was struck and fell against the wall. The plea to manslaughter was accepted on that basis, although a further factor was that the defendant failed to seek medical assistance for Mr McDonald afterwards.

[21] Mr Murphy QC also stated that the prosecution view is that there may well have been others involved in this assault as well as the defendant, and as can be seen from the passage quoted above from her report Dr Cassidy accepts that it is possible that there was more than one assailant. Mr MacDonald QC stated that a DNA analysis carried out on behalf of the defence of blood splashes found in the living room disclosed that the DNA did not come from the deceased, and he submitted that this suggests that there may have been further assaults of the deceased in the living room by persons other than the defendant.

[22] Whilst that may be so, nevertheless the defendant admits that he also kicked Mr McDonald in the face, as well as hitting him several times in the face. The blood stains to the bottom of his jeans and on his fleece suggest contact with Mr McDonald as the blood appears to have originated from him. The significance of these findings is that they confirm that the defendant did not just strike or kick Mr MacDonald once, and those additional blows are an aggravating factor.

[23] The deceased's GP records apparently show that the deceased had a history of heavy drinking, and Dr Cassidy commented on the effect of a subdural haemorrhage in individuals where there is generalised atrophy of the brain, as in chronic alcoholics. She describes how the quantity of blood within the skull cavity increases, causing the pressure on the brain to also increase, and the brain to be compressed. She continued:-

“This results in decreasing levels of consciousness and eventually the injured person will lapse into a coma and, unless treated surgically, will die.

Unfortunately, as very often the injured party has been drinking, the unconscious state is often mistaken for an alcohol induced deep sleep.”

This may well explain, at least in part, why it was not appreciated by the defendant that the deceased had suffered a head injury and required medical treatment.

[24] Mr MacDonald QC submitted that there are a number of mitigating factors.

(i) The attack was a spontaneous one and an unplanned reaction to events which were not of the defendant's making.

- (ii) No weapon was used in the attack.
- (iii) The defendant had no intent to cause serious injury.
- (iv) The defendant has shown deep remorse for his actions.
- (v) The defendant's plea of guilty, and its being entered at the earliest opportunity. Mr Murphy QC accepted that the plea was made at the first opportunity when it would have been acceptable to the prosecution. That being so, I am satisfied that the defendant is entitled to the appropriate credit for his plea of guilty. It is correct that he did not advance his present explanation during interview, but he did go to the police of his own volition, and in all the circumstances I consider that this cancels out the effect of his failure to give a true account in interview, and I propose to give him the maximum credit for his plea of guilty.
- (vi) The defendant's youth and clear record.

[25] Counsel referred me to three authorities, R v Quinn [2006] NICA 27; R v Stephen Magee [2007] NICA 21, and R v Rush [2007] NICC 48. Quinn and Magee are both guideline decisions from the Court of Appeal on manslaughter, but I am satisfied the guidelines in Quinn are the appropriate guidelines, and that the decision in Magee was not intended to alter the guidelines in Quinn, as can be seen from the following extract from the judgment of the Lord Chief Justice in Magee at [25].

"The case of Ryan Quinn involved the manslaughter of a young man by the delivery of a single blow by a closed fist. This court concluded that the starting point in Northern Ireland for that type of offence was two years' imprisonment and that this should rise, where there were significant aggravating factors, to six years. That was a very different case from the present. In that case there could be no doubt that the applicant did not intend serious injury to his victim although the court was of the view that he should have been aware that this might occur. In the present case the applicant deliberately stabbed his victim with a long knife. He must have known that this would inflict a significant injury. The attack took place because the deceased man took objection to the earlier entirely unprovoked attack on him by the applicant." (Emphasis added).

[26] The references in Quinn to the appropriate level of sentence were made in the context of the sentence appealed against having been imposed

after a plea of guilty, and I am satisfied that in that case the Court of Appeal therefore intended to indicate the range of sentences after allowance had been made for a plea of guilty.

[27] The number and type of blows inflicted by the defendant in the present case are very significant aggravating factors, because there were several blows, and one of them took the form of a kick. There are also the mitigating factors identified by Mr MacDonald QC. Before the questions of deportation or a custody probation order are addressed, taking the aggravating and mitigating factors into account I consider that the appropriate sentence would be one of five years imprisonment.

[28] The defendant has been served with a notice under the Immigration Act 1971, and I am obliged to consider whether I should make a recommendation that he be deported. As stated earlier the defendant is a Latvian national and as such a citizen of the European Union. As the Court of Appeal in England pointed out in R v Bogoslov [2008] EWCA Crim 676, as a citizen of the EU the defendant's rights of residence in this country

“can only be derogated from in strictly confined circumstances according to the principles of community law reflected in both the legislation and the case law of the European Court of Justice”.

The Court of Appeal also said

“As this court has confirmed in the case of Carmona [2006] 2 Cr App R (S) 662 the criminal courts cannot make a recommendation for deportation in respect of an EU national, which would conflict with those criteria of community law.”

[29] The relevant principles of community law are now set out in Directive 2004 38/EC which came into effect on 30 April 2006. The relevant provisions of the Directive are paragraphs 27(2) and 28 (1).

27(2) “Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently

serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

28(1) Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural interrogation (sic) into the host Member State and the extent of his/her links with the country of origin”

[30] The defendant had only been living in Northern Ireland for 15 months before this offence. He has no family or other links with Northern Ireland, nor do his age or state of health or any of the other matters referred to at paragraph 28(1) above suggest that he should not be deported if that is otherwise the appropriate recommendation. This was a serious offence, but I have been informed he has no previous convictions either here or in Latvia. The pre-sentence report states that he has been cautioned for shop-lifting, but the prosecution say that there is no trace of any such conviction. Be that as it may, even if he was cautioned, that that course was taken and the description of the offence as shop-lifting suggest the offence was a minor one. Given that the defendant has no previous convictions, his youth, that he lacked the intent necessary to commit murder, and that others may have been involved in the assault, despite the serious nature of the charge with some hesitation I have concluded that his case is not one that requires me to recommend his deportation, and I do not propose to do so.

[31] As the sentence must exceed twelve months imprisonment I am obliged to consider whether I should impose a custody probation order. The pre-sentence report recommends that the defendant should be made subject to additional requirements to attend alcohol management and anger management courses if he is to be subjected to post custody supervision. It appears from the report that initially the defendant was reluctant to consent to engage with these programmes “although after much discussion and challenge he stated that he might gain some education and awareness in relation to his violent behaviour”. If the defendant does remain in Northern Ireland after completing the custodial element of his sentence, and the pre-sentence report states that he would like to remain here and obtain work, I am satisfied that he would benefit from probation supervision of the types recommended in order to curb his obvious tendency to excessive drinking,

and his tendency to violence demonstrated by his repeatedly striking, and then kicking, Mr McDonald.

[32] Subject to the defendant's consent I will therefore impose a custody probation order of four years' imprisonment to be followed by one years' probation. The sentence would otherwise be one of five years' imprisonment.