

Neutral Citation No. [2014] NIMag 3

Ref:

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

Delivered: **12/11/2014**

IN THE PETTY SESSIONS DISTRICT OF LIMAVADY

THE DIRECTOR OF PUBLIC PROSECUTIONS FOR NORTHERN IRELAND

-v-

JOANNE DOHERTY

District Judge (Magistrates' Courts) McNally

1. The Defendant Joanne Doherty has entered a plea of guilty to wilfully neglecting a patient, namely Eileen Bruce, who was for the time being receiving treatment for mental disorder as an in patient at a nursing home where the Defendant was employed contrary to Art 121(1) of the Mental Health (NI) Order 1986.
2. There are no sentencing guidelines in this jurisdiction, or in England & Wales for this particular offence. Accordingly I think it important for the benefit of the Defendant and the family of Mrs Bruce to set out the basic principles which a court considers in sentencing a Defendant for a particular offence.
3. The primary factor in considering sentence is the seriousness of the offence committed; that is determined by assessing the culpability of the offender and the harm caused, intended or reasonably foreseeable. A community sentence can be imposed only if the court considers that the offence is serious enough to justify it and a custodial sentence can be imposed only if the court considers that a community sentence or a fine alone cannot be justified in view of the seriousness of the offence. The court will take into account any aggravating or mitigating circumstances.
4. In order to assess properly the seriousness of an offence, the precise nature of the offence must be established before consideration is given to a range of contingent factors, including the Defendant's intent, the length of time over which the neglect

took place, and the degree of physical and psychological harm suffered by the patient.

5. In some cases there may be a significant distinction between wilful ill treatment which usually involves positive acts of abuse and physical violence, and cases of neglect which are typified by the absence of actions.

6. At the centre of this case is Mrs Bruce who on the 24th November 2013 was a resident at Rush Hall Private Nursing Home. She had been in care since 1999 and in 2010 was diagnosed as suffering from vascular dementia. At 9.45 p.m. on 24th November Staff Nurse Paula Robinson was called to Mrs Bruce's room where the Defendant and another carer Sonia Fleming were in attendance. The Defendant told Nurse Robinson that when they were undressing Mrs Bruce they noted a cut to her leg. They did not know how it happened. Upon enquiry from the Nurse Mrs Bruce was not able to account for the cause of the cut. The Nurse completed her duties with Mrs Bruce and dressed her leg. On the next morning Nurse Bennett was advised at the commencement of her shift by Nurse Robinson of the cut to Mrs Bruce's leg. She was also advised by another carer that Mrs Bruce was complaining of a sore arm. Mrs Bruce told Nurse Bennett that she had fallen on the previous evening when "Annie" was with her. The Defendant is known as "Annie". The nurse examined her arm but could not see any bruising. She arranged for the doctor to attend who referred her to Altnagelvin hospital. An x ray showed a fracture of her shoulder. She was placed in a collar-and-cuff type sling and she returned to the home. Unfortunately Mrs Bruce died on 14th March 2014 from unrelated causes.

7. The matter was then investigated by the management of the care home and it was discovered that on the evening of 24th November the defendant was attending Mrs Bruce on her own and that she fell or slipped when the defendant was lifting her. This would normally be done by two carers and the Defendant should not have attempted to do this on her own. After the fall she called upon Sonia Fleming for assistance to get Mrs Bruce back into bed. They notified Nurse Robinson of the cut but did not disclose that Mrs Bruce had fallen. When she was suspended by the manager of the care home she stated "She did not fall, she may have slipped". When being interviewed by the police she accepted that Mrs Bruce had fallen and that Sonia Fleming had agreed she would not say anything. She stated that she was too scared to say that Mrs Bruce had fallen.

8. In a nutshell the Defendant wilfully neglected Mrs Bruce in her failure to carry out the proper handling procedures and her failure to report to the nursing staff that Mrs Bruce had fallen. Reckless neglect will involve the carer pursuing a course of action while consciously disregarding the fact that the action gives rise to a

substantial and unjustifiable risk to the patient even if the harm risked was not intended.

9. The immediate consequences of this neglect were concisely stated by Nurse Robinson when she said in her statement "If I had known that Eileen Bruce had actually fallen the night I dressed her leg I would have done a full head to toe assessment, assessed her limb movements, carried out clinical observations-blood pressure, saturations, respirations, pulse, pupil dilation and also asked Eileen if she was in any pain. She also would not have been moved until the examination was complete."

10. There is no doubt that Mrs Bruce suffered a great deal of pain and discomfort between the time of the fall and her treatment in hospital which could have been avoided if the fall had been reported and the injury may not have occurred at all if the Defendant had awaited the availability of another member of staff.

11. The offence was aggravated by the conspiracy which the Defendant entered into with Sonia Fleming to conceal the fact that Mrs Bruce had fallen.

12. In considering any mitigating factors I take into account that the Defendant has a clear record. There are a number of references from families of patients cared for by the defendant which speak highly of her standards of care and compassion to patients. I note that she is described in the pre sentence report as having a learning disability and that she has had serious medical problems which resulted in her having a colostomy. She is entitled to a reduction in sentence by reason, not only for her plea of guilty at the first opportunity, but also her acknowledgment of guilt in the course of the police interview. I have had the benefit of a pre sentence report which indicates the Defendant is not suitable for a probation order or a community service order.

13. The maximum sentence a Magistrates' Court can pass for this offence is 6 months imprisonment and/or a fine of £5000. (In England the maximum sentence is 12 months.) It is regarded as a serious offence as the public must have confidence in carers who are responsible for looking after the most vulnerable members of society. In view of the seriousness with which society as a whole regards ill treatment or neglect of elderly vulnerable people with a mental disorder the starting point must be a custodial sentence of 4 months in a situation where a defendant with a clear record has been convicted after contesting the charges. The appropriate sentence should be found within a range of a community order to 6 months in custody. (I have previously imposed a sentence of 200 hours community service on Sonia Fleming for her role in this matter.) The length of the sentence and whether it should be suspended will be influenced by the circumstances in which the offence took

place. The court is not unmindful of the difficulties faced by carers and the patience required of them in the care of the elderly.

14. It is agreed by the prosecution that the Defendant did not set out deliberately to harm Mrs Bruce. Whilst the family take a critical view of the role played by the Defendant they acknowledge quite fairly that their mother has received a high quality of care in this home. The culpability of the Defendant in allowing the Defendant to fall and not report the fall led to a painful injury being caused to Mrs Bruce and unnecessary suffering overnight. I am satisfied that whilst her culpability is high this was very much an isolated incident. There are no allegations in this case of a systematic period or system of abuse. The Defendant did not conceal the incident completely in that she brought the cut to the leg to the attention of Nurse Robinson. It appears to me that the lack of complaint of any pain by Mrs Bruce until the next morning and the absence of any bruising, swelling or injury to the arm led the Defendant to believe there was no injury other than the cut and that she could get away, in those circumstances, with not reporting the fall. This would be corroborated by Nurse Robinson not being alerted to the arm injury by reason of the absence of any visible injury at that time, or indeed, that no bruising was found on the arm by Nurse Bennett on the following morning. That it turned out to be a serious injury is evident from the photograph of the bruising and swelling taken some 4 days after the fall.

15. In all the circumstances the appropriate sentence is 4 months' imprisonment which I will suspend for 2 years. I should also make it clear that, in my view, the Defendant should not be in a position where she is allowed to care for any patient for some considerable time and certainly not until she undergoes extensive retraining.