

IN THE CROWN COURT FOR NORTHERN IRELAND

CRAIGAVON CROWN COURT
(SITTING AT BELFAST)

THE QUEEN

-v-

BRENDAN JOHN JOSEPH RICE

HART J

[1] Brendan Rice is before the court to be sentenced on his plea of guilty to the manslaughter of Ciaran Brian Irvine on 28th day of March 2005. Rice was originally charged with the murder of Ciaran Irvine, but after the trial had lasted a number of days, during which the principal witnesses gave evidence, he asked to be rearraigned and pleaded guilty to the manslaughter of Ciaran Irvine. This plea was accepted by the prosecution.

[2] As a result of the evidence given before Rice changed his plea there is no real dispute as to many of the events prior to the moment at which he stabbed Ciaran Irvine. I have no doubt that the events of this night which led to such a tragic outcome would have taken a completely different course if so many of the males involved had not been heavily intoxicated. Patrick Todd's evidence was that he consumed at least 4 pints of cider, several vodkas and a couple of Red Bulls. Gerard Boyle accepted that he was "fairly drunk", and it appears that over the course of several hours he consumed in the region of 8 to 9 double vodkas. Emmanuel Smedley had a couple of pints in the afternoon, followed by "quite a lot" later, which was followed by vodka. After he returned home from the Chinese takeaway he had more alcohol, although he was unable to say how many vodkas he had. As he could not remember how much he had to drink, he accepted in cross examination that

he was too drunk to drive. Sean Smyth had also been drinking vodka and Red Bull, and was unable to say how much he had consumed, although he conceded that by the time he went with Smedley and the others to his home at 39 Juniper Park he was still drunk, although he expressed the view that, despite his condition, he was not really lacking in judgment.

[3] The post mortem examination on Ciaran Irvine established that his alcohol level was 92 milligrams per 100 millilitres of blood, a figure described by the pathologist as “low”. He had been with Todd in the Twinbrook Social Club, and then they went to two other public houses, and so he had been with the others for about 12 hours before his death. His blood alcohol level may have been a little higher at the time he was stabbed because death was pronounced at 4.06 am, and it seems that the stabbing must have occurred a few minutes before 3.00 am because the 999 calls were timed at 2.50 am and 2.58 am. It may therefore be assumed that he died about an hour, or a little over an hour, after he was stabbed.

[4] Rice had been drinking heavily that day at the Fiddler’s Inn. He had 6 pints of cider and then 2 vodkas. He then went to a social club where he had two more pints of cider, followed by a further half litre of cider when he returned to the flat. Altogether therefore he had consumed in the region of 9 pints of cider and 2 vodkas.

[5] The chain of events that led to the tragic death of Irvine was initiated by the abuse shouted at Laura Sands and Deborah Maguire by Smedley as the two girls sat having a smoke on the wall outside the flats at 52 Juniper Park. It is clear that this unprovoked abuse was in very vulgar and provocative terms, and not surprisingly it appears to have caused grave offence. Rice accepts that he threw a bottle at Smedley’s car but it missed. Smedley drove off and parked his car in Jasmine End. Todd, Boyle, Smedley and Irvine got out of the car and went back towards Juniper Park. By that time Rice, John Hand, who was carrying what was described as a spade or a shovel, and Peter Fitzpatrick, were making their way down the street in pursuit of the car. It is abundantly clear that both groups were spoiling for a fight. Smedley’s group was joined by Sean Smyth who had gone into his house at 39 Juniper Park, realised that there was an altercation and ran down to join the others.

[6] A fight then took place between the two groups in the vicinity of the junction between Jasmine End and Juniper Park. As Smedley and his group outnumbered Rice and his group, Rice’s group gradually retreated back up to the top of Juniper Park because they were outnumbered 5 to 3. By this stage Irvine had torn a piece of timber from a fence. He proceeded to brandish that piece of timber at Rice’s party to keep them back. The fight appears to have been somewhat fluid in its composition as those who were accompanying Rice became separated from others on their side on occasion.

[7] Present at the scene, but not joining in the fighting, were Laura Sands and Deborah Maguire. Deborah Maguire was the defendant's girlfriend and was 5 ½ months pregnant. It seems that at some stage she became embroiled in what was going on and ended upon on the ground, although it was not established whether she had fallen or been knocked to the ground. Laura Sands was trying to calm matters down.

[8] None of those who were involved as participants in or as nearby spectators of what was by this stage a significant affray actually saw Irvine being stabbed. There is considerable evidence that Irvine was playing a full part in the fighting. As I have already stated, a number of witnesses identified him as carrying the piece of wood taken from the fence. Patrick Todd accepted in cross examination that he had seen Irvine carrying this piece of wood as he chased someone. Todd said that he saw Irvine throw the plank as he called it away, but this was contradicted by Sean Smyth who said that Irvine had the piece of wood throughout. Smyth also said that Irvine had punched someone although he was unable to say who it was. He agreed that Irvine had punched the man in the mouth who he described as having a moustache. This would seem to be Fitzpatrick.

[9] John Hand, who was not a witness, was carrying the spade or shovel, although I should record that the evidence was that he appeared to use it in a defensive fashion to deter others, rather than as an offensive weapon.

[10] Rice now admits that he threw the bottle at Smedley's car after Smedley shouted abuse at the two girls. He told the police that after he told Deborah Maguire and Laura Sands to go inside because he was frightened for the safety of his girlfriend and their unborn child, he walked towards Jasmine End where he had heard the men get out of their car. It is clear that he engaged in the affray before he went to Laura Sands' flat where he armed himself with a knife and returned to the street where the fighting was continuing. He asserted he intended to use the knife as a threat to make them back off. He told the police he shouted at the opposing group that he had a knife, and that he had it in the air to show them. (See page 139 of the interviews). He said he didn't know how many times he shouted, but they started to back off, and it was starting to work. On his own account Rice therefore behaved in a distinctly aggressive fashion throughout by throwing the bottle at the car, pursuing the car and its occupants, taking part in the subsequent fight, going into the flat and arming himself with the knife, and then returning to the fighting and brandishing the knife from side to side at the opposing group. Several of the witnesses demonstrated how he held the knife in front of him at about waist or midriff level, moving it from left to right and back again.

[11] How the deceased actually came to be stabbed was at the centre of the disputed evidence. The prosecution opened the case to the jury upon the

basis that the defendant deliberately stabbed Mr Irvine from behind. This version depended upon the evidence of Michael McCarron and his partner Bernadette Keenan. They were in their house at No 48, Mr McCarron was downstairs and Miss Keenan upstairs. Each looked out at the fighting. Mr McCarron described how the defendant walked towards a man who was calming the crowd, the defendant was carrying a knife down by his trousers and struck out with the knife, missed, and then as the deceased turned pushed the knife into his back. Miss Keenan described how she saw the man without a shirt, who was the defendant, return from the flats with a knife and saw the knife going to the side of one of four men standing who then took a few steps and fell to the ground. There was also evidence from Thomas Davidson who said that he saw the bare chested man emerge from the flat and then lunge at one man and then at a second man who fell to the ground. The fatal wound was to the back of the deceased and followed an upward trajectory to his heart. There was also a second wound to the face caused by a bladed instrument according to the evidence of the pathologist.

[12] Michael McCarron and Bernadette Keenan were a considerable distance from the fighting, and there were various obstacles, notably the branches of trees in the case of Miss Keenan, which it was alleged obstructed their view of events to a greater or lesser degree. When cross-examined Mr McCarron said that the defendant lunged towards the deceased's front, not towards his back, whereupon the deceased turned slightly to his right before the fatal wound was inflicted. On the other hand Bernadette Keenan described how there were four men in a line, the defendant came up behind the deceased who did not see him coming, and the defendant simply stabbed him in the back. Miss Keenan was emphatic that she had not seen anything in the hands of the deceased when he was stabbed.

[13] Given the contradictions between the accounts as to the direction in which the deceased was facing moments before the stabbing occurred, it is difficult to see how the jury could have been satisfied beyond reasonable doubt that the deceased was not facing the defendant immediately prior to the stabbing. The evidence that the deceased had earlier behaved in an aggressive manner, and had been armed with a piece of wood, lent support to the defendant's case that the deceased had lunged at him immediately prior to the stabbing. The defendant's case was that when the deceased lunged at him, they grappled with each other and he accidentally stabbed the deceased in the course of the contact between them.

[14] Mr McDonald QC put to Mr McCarron and Miss Keenan that the position of the holes in the clothing of the deceased made by the knife meant that his clothing was disarrayed and around his back at the moment of the stabbing, and that this supported the defendant's contention that he and the deceased ended up with their arms round each other whilst they were struggling.

[15] After Mr McCarron and Miss Keenan gave their evidence, the prosecution accepted a plea to manslaughter when the defendant asked to be re arraigned. I am satisfied that it was not until Mr McCarron and Miss Keenan had given their evidence that the prosecution was prepared to accept a plea to manslaughter. Whilst the defendant did not offer a plea of manslaughter in the formal sense prior to the commencement of the trial by entering a plea of guilty to that charge, I am satisfied that if he had done so it would not have been accepted by the prosecution until after the evidence of Mr McCarron and Miss Keenan had been tested. In those circumstances I propose to treat the defendant as having pleaded guilty to the charge of manslaughter at the first available opportunity and give him the appropriate credit for doing so. The defendant's plea was entered on the basis that he was guilty of manslaughter by performing an unlawful and dangerous act, namely taking part in an affray with a knife.

[16] The defendant's conduct on this night was throughout aggressive and unrestrained. By his actions he brought about the death of Ciaran Irvine. I have had the benefit of a letter written to the court by Shauna Collins, who was Ciaran Irvine's girlfriend. In this she describes in moving terms the devastating effect that his death has had upon her life. I have also had an equally moving, restrained and dignified letter from Mrs McPhillips, Ciaran Irvine's mother, in which she describes the grief, pain and anxiety experienced by her family as a result of her son's tragic death.

[17] The willingness of individuals to resort to knives in the course of fights, actions which all too often lead to death or serious injury, is a very serious problem in our society, and one which requires the imposition of severe sentences as a deterrent to others. As the Lord Chief Justice said in the Queen v. Ryan Arthur Quinn 2006 NI CA 27 -

"But in this difficult area of striking a balance between, on the one hand, the culpability of the offender, and on the other, the public's sense of justice, this court must reflect conditions encountered in our community and the expectations of its citizens. As we have said, it is now, sadly, common experience that serious assaults involving young men leading to grave injury and, far too often, death occur after offenders and victims have been drinking heavily. The courts must respond to this experience by the imposition of penalties not only for the purpose of deterrence but also to mark our society's abhorrence and rejection of the phenomenon."

[18] I have been referred to a number of decisions in cases where death has been brought about by the use of knives. As has been repeatedly stated, sentencing in cases of manslaughter presents particular difficulties because manslaughter can cover at one extreme of the spectrum cases where a single blow has led to an unexpected death, to those at the other extreme where the circumstances are barely distinguishable from murder.

[19] There are a number of aggravating factors in the present case.

- (1) Rice behaved in a distinctly aggressive fashion from the beginning by throwing the bottle at the car.
- (2) He pursued the car and its occupants, plainly intending to engage in a fight with them.
- (3) He took a full part in the fight which ensued.
- (4) He then went into the flat and armed himself with a knife before returning to the fight.
- (5) He brandished the knife at the opposing group, moving it backwards and forwards from left to right in front of him, thereby increasing the danger to those present.

[20] There are also a number of mitigating factors which have to be taken into account.

- (1) To all intents and purposes he has a completely clear record.
- (2) He has a good work record and is an otherwise respectable young man.
- (3) He pleaded guilty to the charge of manslaughter at the first opportunity.
- (4) I am satisfied that he has shown genuine remorse for the devastation which he has wrought by bringing about the death of Mr Irvine.

[21] It is evident from what was said in court that there are many who do not believe that his remorse is genuine, including Shauna Collins and Mrs McPhillips. However, I have had the benefit of the views of those who have had the opportunity of observing the defendant since he committed this offence. A letter from a senior teacher in the Prison Service states that the defendant has fully participated in education classes since he was first remanded in custody. Father Donohoe, a prison chaplain, states that the accused's "remorse is real and felt deeply for what occurred that night, and if

he could change things he would especially for the Irvine family.” The very experienced probation officer who has prepared the pre-sentence report states that “the defendant expresses deep remorse and a high level of insight into the consequences of his behaviour for his victim, his victim’s family and his own family”. Immediately after these events his girlfriend contacted his aunt, and she went to see him. She described how he just kept repeating over and over again that he had stabbed someone and that he had ruined so many lives.

[22] I have been referred to a number of decisions which it is suggested may indicate the appropriate level of sentence in this case, although as counsel both for the prosecution and the defence readily accepted, the decisions in manslaughter cases in particular depend very much on the circumstances of each particular case. In assessing what the proper sentence should be in this case, I consider it appropriate to bear in mind that the defendant’s conduct in taking such an active and prolonged part in this affray is in itself something that should lead to a period of imprisonment. To that has to be added an appropriate element to reflect that the fact that he equipped himself with a knife. In addition the sentence has to reflect that it was the defendant’s conduct that caused the death of Ciaran Irvine. I was referred to the decision of Deeny J in R v. Fisher [2005] NI CC 17, to R v. Knight 2 Cr App R(S) 394 and the Attorney General’s Reference No 3 of 1999 (Lynn) 1999 2 Cr App R(S) 433), and I have also considered the decision in R v. Kelly (1996) 1 Cr. App. R. (S) 452, and the decision of Morgan J in R v. Fulton and Others [2006] NI CC 14.

[23] As the defendant must receive a substantial period of imprisonment in excess of 12 months I am required by statute to consider whether I should impose a custody probation order. Such an order is recommended in the pre - sentence report. The writer of the report refers to the defendant’s intention to move away from Belfast upon his release in order to avoid any further situations of conflict in view of threats made against his safety. The report continues -

“It is my assessment that given the above situation the defendant could benefit from a period of Probation Supervision to assist him to adjust to returning to the community upon his release from custody. Supervision will serve to monitor his lifestyle and hold him to account. The defendant will continue to have the support from his own family. He needs however to resettle into a new environment and be vigilant as to the link between excess alcohol and his own aggressive behaviour”.

[24] However the author also states -

“Prior to the commission of this offence the defendant’s lifestyle was a stable and constructive one. He was in full time employment and there is no evidence that his abuse of alcohol was a regular occurrence. He does not present as a young man who holds pro-criminal attitudes or beliefs. He demonstrates an ability to recognise how excess alcohol can affect behaviour and contribute to aggression. I believe that he is motivated to actively avoid any future situations of confrontation and place limitations upon his alcohol intake. It is my assessment that his risk of reoffending is also low”.

[25] Elsewhere in the report the author describes the friends that he proposes initially to settle with elsewhere in the province, and his confidence that he will find full-time employment in the building trade.

[26] As the Court of Appeal pointed out in R v. Quinn at [29]:

“A custody/probation order should only be made where it is considered that the offender would benefit from probation at the conclusion of a period of custody and that it is deemed necessary to enable him to reintegrate into society or because of the risk that he would otherwise pose.”

[27] I have concluded that the defendant does not require probation supervision upon his release in view of the fact that he clearly poses a low risk of further offending, his lifestyle beforehand was a stable and constructive one with his being in full time employment, and there is no evidence that his abuse of alcohol was a regular occurrence. In short I am satisfied that there is nothing to be gained by imposing probation supervision on his release. That being the case I do not consider that a custody probation order is appropriate.

[28] I consider that the appropriate sentence which properly reflects the gravity of this crime and the aggravating and mitigating factors to which I have referred is one of 6 years imprisonment.