

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

CIARAN BRENDAN LAVERTY

HART J

[1] The defendant has pleaded guilty to the manslaughter of Aaron Edgar Montgomery in the early hours of 15 February 2008.

[2] Aaron Montgomery, his brother Adam and a friend Dean McCool had been out socialising in Belfast, and had spent some time in the Skye bar and nightclub in Howard Street. Somewhere in the region of 1.00-1.30 am on 15 February they left the premises and stood outside the entrance. At that time a large number of patrons were leaving the premises and some were also standing around outside. Because of this there appears to have been a degree of congestion in and around the doorway, and as a result considerable pushing and shoving took place.

[3] Because of the effect of the crowd behaving in this way Aaron Montgomery and his brother were pushed against the wall, whereupon Adam Montgomery shouted to the crowd to stop pushing and the situation eased. However one of the crowd pointed at him, but he thought that it did not appear to be in a threatening way. Moments later he saw his brother Aaron on the ground.

[4] Police and ambulance were called to the scene and Aaron was taken to the Royal Victoria Hospital, but it is clear from the accounts given by the ambulance personnel that in all probability he was dead before he arrived at the hospital where it proved impossible to revive him, and death was confirmed at 2.30 am that morning.

[5] The defendant admits it was he who struck the blow that caused Aaron Montgomery's death. Whilst a number of the witnesses who described the way in which the blow was struck had been drinking, and this may have affected their perception of events, there is a good deal of agreement that the blow struck by the defendant was a forceful one. Dean McCool for example at page 9 said:

"I saw a fellow almost jog towards Aaron, he wasn't running or walking but came up to Aaron from behind and then I heard the whack, there was some force behind it. It happened so quickly. I saw Aaron slump to the ground. He didn't fall back."

[6] Laura Burns, who appears to have a good deal to drink, described at page 32 how she was standing only a couple of feet from the deceased when he was punched.

"I saw the fella with his hand drawn back and raised and heard the punch. It sounded like a big smack, but I definitely saw the punch was from a clenched fist. I think the punch was to the right side of his head. When Aaron got hit he went down and loads of people gathered round him."

[7] Emma Diamond was talking to her friend when she heard another friend screaming. Her account continued at page 38.

"I turned around straight away and saw Aaron being punched. It was one single punch and whoever did it was either pulled away or ran away. My attention was focused on Aaron, I saw him falling to the ground right in front of me. He fell backwards. He didn't stumble but collapsed. I saw and heard his head hit the ground. It sounded like a wallop as soon as it happened, the sound really shocked me, I have heard people being punched before but it sounded like hollow. Kind of like a wood noise. I don't know if the sound was from the punch or when he hit his head on the ground. He was hit really hard, it was like someone launched at him, he wasn't dazed, and he was just out cold. ...

I basically saw a bare fist connecting with Aaron's face. I think he was hit on the side of the face but I'm not sure, it could have been the front."

[8] Eoin Holland at pages 43 and 44 described the blow being struck in the following passage.

“A few seconds later I saw a male come from the right of this guy, he came from nowhere. The male ran at him and give him a good punch to the side of the head or face, either temple, cheek or neck. It was a loud noise like a clap. The guy wouldn’t have seen him coming. It was a right handed punch, full fist, he had his elbow right back. The guy just fell to the ground.”

[9] There are therefore a number of common features about the descriptions of the manner in which the blow was struck.

- (i) The deceased was completely unaware that a blow was about to be struck, and had no opportunity to avoid the blow.
- (ii) The blow was struck with some force with a clenched fist.
- (iii) The blow was struck to the side of the head or neck.

[10] These conclusions are supported by the findings of Dr Bentley, the Deputy State Pathologist for Northern Ireland, and in the commentary to his post mortem report he expressed his findings in the following passages.

“1. Death was due to haemorrhage into one of the membrane-bound spaces that surround the brain and this is known as subarachnoid haemorrhage. This is a severe life-threatening condition that can cause very rapid death.

2. In this instance the subarachnoid haemorrhage had been due to a tear of the vertebral artery on the right side of the neck. The vertebral arteries pass upwards on either side of the neck, within bony rings at the sides of the cervical spine, then passing into the vault of the skull, entering the subarachnoid space at the base of the brain.

3. Autopsy revealed bruising of the skin and marked bleeding into the fat and muscle under the skin on the right side of the neck, adjacent to the angle of the jaw. This indicated that he had sustained blunt trauma to that site and this could have been inflicted

by a blow such as a punch, kick or from a blunt weapon.

4. A forceful blow to the side of the neck, in the region below the ear and adjacent to the angle of the jaw would cause sudden bending of the head to the side and possible rotation of the head. Such a movement of the head and neck would stretch the vertebral artery on that side, which, in this instance, was injured as noted above and had caused his death."

[11] It is therefore clear that Aaron Montgomery's death was brought about by a single forceful blow to the right hand side of the neck which caused the head to bend to one side, and possibly to rotate, thereby tearing the vertebral artery and leading to his very rapid death.

[12] The statement of Catriona Ratcliffe of the Forensic Science Service records that the defendant's blood alcohol level some 7½ hours after these events was 93 mg per 100 ml of blood, and she then calculated that:

"... at the time of the incident Mr Lavery could have had a blood alcohol level between 170 and 280 mg per 100 ml with a most likely level of 230 mg per 100 ml.

Blood alcohol levels within this range are associated with moderate to extreme drunkenness in a person with average tolerance to alcohol."

[13] After he struck the deceased the defendant remained at the scene. When the police arrived he was cautioned and replied "My friend said hit him. A fight broke out. I jumped in middle and someone head butted me. I walked away. Mate said hit him." On the way to the police station the defendant repeatedly asked about Mr Montgomery's condition and Constable O'Driscoll states that:

"He made numerous comments such as 'I just hope to God he's okay', 'I am such a dick. I can't believe I was so stupid', 'I hope his family knock the shit out of me. It's the only way I'd feel better about what I've done'. The detained male was obviously in a state of concern for the injured male."

[14] The defendant was interviewed on a number of occasions throughout the evening and night of 15 February. In the first interview he made no comment when asked to explain his role in these events, although it is

apparent from the remarks of the interviewing officers that he was distressed at the end of the interview. In the second interview he described how he had tried to break up a fight that was taking place and had been head butted by someone. At page 26 he said:

“So the bouncers ran over then or whatever and must have broke the two crowds up and they just broke the two crowds up and I turned round to my friend Connor and he says he head butted you, whack him and then I went and punched that fella Aaron must have been roughly about just above his ear.”

[15] In a later interview he said that he was sure that the person he had punched was the person who had head-butted him because such a short time had elapsed. In the fourth interview he denied running at Mr Montgomery although he confirmed that he had punched him. He agreed that in the course of the night he had consumed nine 330 ml bottles of Budweiser, as well as a beer he had drunk before he left home, together with two Stella at the end of the night, as well as one Choc Pop (a mixture of Crème de Menthe and Baileys). He was plainly considerably intoxicated although he maintained that he was in control of himself.

[16] During interview he repeated his remorse and regret for what he had done, saying:

“Just couldn’t believe it. Can’t believe what I was capable of doing like.”

And

“If I could turn back the clock I wouldn’t have, I wouldn’t have left the house yesterday if I knew that I had’ve, it was going to be something like that.”

[17] He denied that he had intended to kill Mr Montgomery saying:

“I wasn’t even expecting to knock him over. Most certainly didn’t mean to kill him.”

[18] At the end of the interviews the police officers stated that “we know that you were remorseful from the very start”.

[19] Aaron Montgomery was a young man aged 23 and I have been provided with victim impact statements by his parents, his brother and sister and other relatives. I do not wish to add to their grief by reciting what each has said, other than to say that they have eloquently and movingly expressed

the acute loss and deprivation each has suffered as a result of Aaron's sudden and unnecessary death. Their statements serve as a poignant reminder of the effect of such a loss on those who are left to grieve for the loss of a loved one.

[20] The defendant was a first year student at Queen's University at the time and is now in his second year. He has no previous convictions and is plainly a young man of excellent character apart from the tragic events of that night, as can be seen from the various testimonials handed in on his behalf, his school reports, and the evidence of Mrs Mary Owens, one of his former teachers who gave evidence on his behalf. I accept that his conduct that night was out of character. Sadly the reason for his behaviour is all too familiar with cheap alcohol readily available and large numbers of drunken young people spilling onto the streets when pubs and night clubs close. The events of this night were brought about by the combination of heavy drinking and a mistake on his part as to who had earlier assaulted him. That mistake was due to the erroneous identification of Aaron Montgomery as his attacker by Conor McCarragher who has expressed his guilt at the predicament his actions contributed to in a statement dated 25 February 2009 handed in on behalf of the defendant during the plea in mitigation.

[21] The defendant was 18 when he killed Aaron Montgomery, and is now approaching his 20th birthday, and the report from Dr Helen Harbinson, a consultant psychiatrist, states that at the time he was in the habit of drinking ten or eleven bottles of beer four nights a week, which is excessive by any standards.

[22] In R v Ryan Arthur Quinn [2006] NICA 27 the Court of Appeal considered the recent authorities on sentencing in this area and in particular the decisions of Furbey and Coleman, where the Court of Appeal in England concluded that the appropriate starting point on a plea of guilty in circumstances of this type was a sentence of 12 months imprisonment. However, the Court of Appeal in Northern Ireland held that the proper range of sentence was between 2 and 6 years in this type of case. Whilst that was not explicitly stated to be on a plea of guilty, I am satisfied that was what the Court of Appeal intended because of the discussion of the guidelines in Furbey and Coleman which related to a plea of guilty.

[23] I am satisfied that this case is one which falls within the range of cases where the appropriate sentence on a plea of guilty is between 2 and 6 years' imprisonment. This case has a number of aggravating features.

- (i) This attack on Mr Montgomery was entirely unprovoked.
- (ii) Mr Montgomery was wholly unprepared for the blow and therefore had no opportunity to avoid it.
- (iii) The blow was a forceful one.
- (iv) The attack took place in a public place.

(v) The defendant had consumed a substantial amount of alcohol which I am satisfied led him to behave in this fashion.

[24] There are a number of mitigating factors.

(i) The defendant from the earliest moment displayed genuine remorse for his conduct.

(ii) He immediately admitted his guilt after caution at the scene, and did so again in interview.

(iii) He pleaded guilty at the first opportunity.

(iv) He has a clear record and is a young man of previously excellent character.

I have considered the pre-sentence report, as well as the reports from Dr. Harbinson; from Dr Davies, a clinical psychologist, and the extensive references and other documents handed in on his behalf.

[25] Mr Pownall QC (who appears for the defendant with Mr Denis Boyd) recognised that an immediate custodial sentence is inevitable, and accepted that the case could not be said to be one of the very rare cases where a non-custodial sentence would be justified. Whilst a custodial sentence will clearly have a severe effect on this young man and his future, it has to be remembered that his conduct brought about the death of a young man of blameless character who had done nothing whatever to provoke this unjustified attack which it appears was because of a case of mistaken identity. Regrettably on many occasions the courts have to deal with tragedies which have resulted from drunken violence. As the Court of Appeal stated in Quinn's case:

“Substantial sentences are required to deter young men from engaging in this type of wanton violence and to remind them that if the effects of their actions go beyond what they and their drunken condition intended, they must face the consequences of that eventuality. Severe sentences are also required to mark society’s outright rejection of such behaviour and to reflect the ultimate and terrible tragedy of a young life brought shamefully to an end.”

[26] A sentence of immediate custody is inevitable in this case. As it must exceed 12 months detention I am therefore required to consider whether or not a custody probation order would be appropriate. Mr Pownall urged me to impose such an order to help the defendant come to terms with what he has done and to enable him to return to his studies as soon as possible if he is permitted to do so. I do not consider that a custody probation order would be

justified. This is an able and intelligent young man of hitherto excellent character with strong family support, and there is nothing to suggest that he is likely to commit any offence of this or any other type again in the future. There is therefore no justification in imposing such an order, either to prevent him offending again or for the protection of society.

[27] Taking into account all of the mitigating and aggravating features of this case the least sentence I can impose is one of two years' detention.