

IN THE CROWN COURT IN NORTHERN IRELAND

—
BELFAST CROWN COURT
—

THE QUEEN

-v-

DARREN JOHNSTON
—

HART J

[1] The defendant has pleaded guilty to a single count of malicious wounding of his step-brother Ian Thompson on 29 March 2008, contrary to s. 20 of the Offences Against the Person Act 1861. The defendant was originally charged with a single count of attempted murder of Ian Thompson, but at the commencement of the first trial before Stephens J on 26 January 2009 the prosecution lodged an amended indictment containing a second count of wounding with intent, contrary to s. 18, and the present count of malicious wounding, contrary to s. 20 of the Act of 1861.

[2] On 29 March 2008 Ian Thompson was in his flat when he received a text from his mother asking for a small loan so she could buy vodka. Later that evening he called round at her house. He arrived about 6.00 pm, having taken the precaution of asking whether the defendant was present, because the defendant would become aggressive and start fighting when he had been drinking.

[3] However the defendant was present when Ian Thompson arrived, and it seems from the description of events given by Ian Thompson, and his mother when she was questioned, that all were drinking heavily when a drunken argument took place between Ian Thompson and his mother. Ian Thompson said that he saw the defendant go into the kitchen, and said to his mother "he's going to get a knife", and when the defendant emerged from the kitchen he either fell back or was kicked to the ground. He alleges that he was kicked repeatedly by the defendant, although he managed to get back on to his feet, but the attack continued and he ended up on the ground.

[4] He alleges that the defendant then knelt on his stomach or chest and he felt blood trickling down the left side of his neck and realised that he was being attacked with a knife by the defendant. He then saw the knife in the defendant's hand, and at that point felt the knife being plunged into his chest near his left armpit. When he got to his feet he was bleeding profusely from the face and the police and ambulance were called.

[5] When the police arrived he was bleeding profusely, and when examined by Dr Stewart at the A&E Department of the Royal Victoria Hospital later that night was found to have sustained three wide lacerations from his chin to his upper neck, on the left side of centre. He also had sustained a laceration to his left shoulder. The wounds to his face can be seen in the photographs contained in the photograph album Exhibit 1 and take the form of two lengthy lacerations. The upper one runs across from the lower part of the left side of his face to the right point of his chin; with a second lower laceration following approximately the same path. Sandwiched between them is a smaller laceration starting at the left hand side of the chin and ending on the point of his chin.

[6] A considerable number of stitches were inserted in these lacerations and I have had the opportunity of viewing the resulting scars in chambers during the plea in mitigation in the presence of Mr Mateer QC (who appears for the prosecution with Mr Gary McCrudden) and Mr Gavan Duffy (who appears for the defendant). Whilst the appearance of the scars on the face and neck has improved and the colouring faded, they remain plainly visible and constitute a significant cosmetic disfigurement, and there is nothing to suggest that they can be improved. Mr Thompson said that he has difficulty shaving as one of the scars protrudes somewhat. The scar beside his left armpit is much more livid in colour, although it would not usually be visible. He says that it is itchy from time to time. I will deal with the case on the basis that the scars constitute a significant and permanent disfigurement.

[7] When questioned by the police the defendant denied being present or in any way involved in the events of that night. However, when he came to lodge his defence statement he said:

“... the defendant accepts he was present at 16 Batley Street, Belfast together with his mother having a drink when his half-brother entered the premises. The defendant at interview denied being there present due to the fact it was in breach of a non-molestation order and then active terms and conditions of bail. An altercation developed during which the injured party who was in possession of a knife approached the defendant. The defendant pushed him back

causing the injured party to fall to the ground whereupon he self-inflicted the facial lacerations.”

The defendant denied any other assault on his brother.

[8] The matter came on for trial before Stephens J and a jury on 26 January 2009 and the trial commenced on all four counts of the indictment to which I have already referred. After some evidence was heard, and rulings given, by the trial judge relating to bad character the defendant dispensed with his solicitor and counsel on Wednesday 28 January. The matter was then adjourned to enable the defendant to obtain the services of new counsel and solicitor and the trial was fixed for 16 February. On 16 February the defendant, who was now represented by his new solicitor entered a plea of guilty to s. 20 and the prosecution accepted the pleas of not guilty to the remaining counts against the defendant. These counts were then ordered to lie on the file, not to be proceeded with without leave of the Crown Court or the Court of Appeal.

[9] I have been provided with a victim impact report on Mr Thompson prepared by his GP. Dr Kyle describes Mr Thompson as “being a vulnerable man with a past history of mental health problems who has suffered considerably as a result of this assault”. Dr Kyle’s opinion is that “the assault has had a very significant (and ongoing) effect on his mental health”. He continues

“He has suffered depressed mood and severe anxiety resulting in disturbed sleep, paranoid thoughts, self blame and low self esteem, loss of concentration and poor memory. He has become socially withdrawn and frightened to leave his flat. He felt under such threat that he applied to be re-housed. As a coping strategy he began drinking excessively and suffered an attack of acute pancreatitis requiring hospital admission.”

[10] Whilst this shows that this attack upon Mr Thompson has affected him, it would be wrong to assume that some of these problems might not have manifested themselves in any event. The third party disclosure material I directed should be disclosed to the defence prior to the trial shows that before these events he has

- (i) been alcohol dependent for many years;
- (ii) been aggressive towards medical staff and police on several occasions;
- (iii) has a history of self-harming; and
- (iv) has been diagnosed with paranoid and dissocial personality disorder.

Nevertheless I am satisfied that this attack has had a significant effect upon Mr Thompson and I regard this as an aggravating feature of the case.

[11] I have been provided with a pre-sentence report upon the defendant. This relates that he too has an ongoing problem with alcohol misuse, has a history of self harm and was attending a psychiatrist prior to his remand in custody. He has spent much of his teenage and adult years in prison, and the writer of the report is of the opinion that he has now become institutionalised. He has been assessed as presenting a high level of risk of harm to others, and the likelihood of re-offending is also assessed as high.

[12] There are several aggravating features of this case. First of all, the complainant has been left with significant scars as a consequence of the defendant's actions. Secondly the psychiatric effect upon him has been significant. Thirdly, the defendant has an extremely bad record, particularly for offences of violence. On no fewer than four occasions in 2008 he was sentenced to periods of imprisonment for offences of assault occasioning actual bodily harm, and has four other convictions for the same offence. In addition his record contains 34 convictions for assault on the police, 7 for common assault and 3 robberies as well as a very large number of other offences of varying types. Fourthly, the defendant was on bail at the time as he admitted in his defence statement. Finally, the injuries were inflicted with a knife.

[13] As the courts in this jurisdiction have repeatedly emphasised in recent years the use of knives has resulted in a significant number of deaths and serious injuries. Attacks where knives are used must therefore receive substantial sentences, and in R v. Daniel McArdle [2008] NICA 29 the Court of Appeal concluded:

“That for offences of wounding with intent to cause grievous bodily harm the sentencing range should be between 7 and 15 years' imprisonment, following conviction after trial. An appropriate reduction on this range should be made where the offender has pleaded guilty.”

Whilst these remarks were made in the context of the more serious charge under s. 18 of the Offences Against the Person Act 1861 where the maximum sentence is life imprisonment, whereas the maximum sentence under s. 20 is now seven years, they are a reminder of the gravity with which the use of knives must be viewed.

[14] The only mitigating feature of the case is the defendant's plea of guilty. As will be apparent from the history of the case I have already given, the defendant was not originally charged with an offence contrary to s. 20 of the

Act of 1861, but that charge was on the indictment upon which the first trial commenced before Stephens J on 26 January. The defendant is therefore entitled to some credit for his plea of guilty, but not as much as would have been the case had he pleaded guilty at an earlier stage.

[15] Malicious wounding carries a maximum sentence of 7 years' imprisonment, and the aggravating features of the case to which I have referred place this case close to the maximum sentence permitted for an offence of this nature.

[16] As the sentence must exceed twelve months' imprisonment I am obliged to consider whether a custody probation order should be imposed. Having regard to his history of repeatedly re-offending there is clearly a very substantial risk that the defendant would not comply with any conditions imposed upon him if such an order were made. Professor Davidson, a clinical psychologist, suggests that the defendant would benefit from anger management training and would benefit from ongoing work with the Dunlewey Counsellor whilst in prison. However, he also points to the need for there to be long term motivation and I am not persuaded that the defendant has that motivation. Despite what Mr Duffy has suggested I do not consider that a custody probation order is justified in this case.

[17] I sentence the defendant to five years' imprisonment.