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

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Delivered: 04/02/2022

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING IN LAGANSIDE COURTHOUSE**

THE QUEEN

v

DAVID ELLIS

and

DEAN EDWARD MARTIN

**Mr N Connor QC with Mr I Tannahill (instructed by the Public Prosecution Service)
Mr P Lyttle QC with Mr K Magill (instructed by Gillen & Co Solicitors) for the
Defendant Ellis
Mr I McAteer with Mr P Taggart (instructed by G R Ingram & Co Solicitors) for the
Defendant Martin**

O'HARA J

Introduction

[1] The defendants have pleaded guilty to the manslaughter of Robert Ellis, known as "Foggy." Mr Ellis who was 49 years old was attacked in his own home on 9 December 2019 by the two defendants. He bled to death as the result of a knife wound to his leg. According to the pathologist it would have taken some hours for him to die. During that time he tried in vain to stop the bleeding by tying a tourniquet above the wound. If the defendants had not run off and left him bleeding or if anyone else had been available to come to his aid he may well have survived the attack.

[2] The defendants were originally charged with murder but the prosecution accepted their pleas to manslaughter, partly on the ground that it could not be proved that there was an intention to cause really serious harm to Foggy Ellis. The prosecution does not know why the attack took place. The defendant Ellis, a

nephew of the deceased, has given conflicting explanations which cannot be reconciled. The defendant Martin purports not to remember what happened or why it happened. Another relevant factor in the decision not to proceed with the murder charge must have been the fact that the only injury was the stabbing to the leg, not an injury which one would typically expect to cause serious injury or death.

Factual Background

[3] Foggy Ellis lived alone at a house in Portadown. While he was only 49 years old he suffered from ill-health and was severely disabled. He was also an alcoholic. His friend, Mr Lutton, who visited him almost daily provided important support for him and last saw him on Saturday 7 December 2019.

[4] It appears that on Sunday 8 December the defendant Ellis, who was then 18 years old, had been drinking for some time when somehow he fell into the company of the defendant Martin, who was then 24 years old. The defendants say that they did not know each other at all before that day. Martin too had been drinking, it appears. They continued to drink excessively and at some point, very late at night or early on the Monday morning, ended up in the home of the defendant Ellis.

[5] It then appears that at some point the name of Foggy Ellis must have come up. Quite how this happened is unknown. The defendant Ellis was not in any way close to his uncle and Martin did not know him at all. Yet for some reason, on the version given by the defendant Ellis, the two defendants went to his uncle's house armed with knives which they had taken from the kitchen. When they arrived, again according to defendant Ellis, he tried to get into his uncle's house by persuading his uncle to open the door. He claims that once the door was opened Martin forced his way in and the co-accused followed. Within a few minutes, says the defendant Ellis, and after only a brief discussion Martin stabbed Foggy Ellis in the leg. Foggy started to scream that he would bleed to death but the two men ran off.

[6] There is no evidence that this was an attempted robbery which went wrong. As already indicated, the defendant Ellis gave a number of versions of what happened which are not consistent and, more importantly, do not explain why it happened. Meanwhile, the defendant Martin purports not to remember anything which might explain what he did or why he did it.

[7] The death of Mr Ellis was initially regarded as unexplained rather than criminal. However, a few days later the police were contacted by a lady, who was only slightly acquainted with the defendant Ellis, to say that he had told her and her sister that he had been involved in killing his uncle.

[8] The defendant Martin, despite claiming not to recall anything, is reported in the depositions to have rung his father in the early hours of Monday morning to say that he had stabbed someone. This ties in with the statement of his occasional

girlfriend who describes him as being very distressed in the early hours of the Monday morning and needing to speak to his father because "I have done something."

[9] Police investigations established from CCTV footage that the defendants left a bar together in Portadown town centre and at other locations leading in the general direction of the home of Foggy Ellis. DNA evidence then linked them to each other and to the deceased's home. This included the deceased's blood being found on the shoe of Martin.

[10] At interview the defendant Ellis (accompanied by a Registered Intermediary) stated that he was scared of and intimidated by Martin whom he had told some family history to. That history was that when he was a child his uncle had hit him and his mother. Martin had responded, allegedly, by offering to kill Foggy Ellis.

[11] For his part Martin denied knowing his co-defendant or the deceased, denied any involvement in the killing and denied calling his father to say that he was in trouble.

[12] For the prosecution Mr Connor QC confirmed that both defendants pleaded not guilty to murder on 26 March 2021 and then pleaded to the charge of manslaughter on 5 November 2021. He indicated, however, that for some time there had been discussions with counsel for the defendant Ellis about a guilty plea but that in light of certain limitations a psychiatric report had first to be obtained. In relation to Martin, who had made no admissions at any time, there were general discussions between counsel which Mr Connor indicated were likely to lead to some resolution. I infer however that this was more to do with the compelling evidence that Martin was involved in the killing rather than any willingness on his part to admit or disclose what had really happened.

David Ellis

[13] David Ellis is now 21 years old, having been just a few weeks short of his 19th birthday when he killed his uncle. The series of reports on him as part of his plea in mitigation make dismal reading. The points made in those reports include the following:

- He was initially considered by Dr Bownes to be unfit to plead either guilty or not guilty, such is the extent of his intellectual deficits.
- His IQ is such that he is in the bottom 3% of the population.
- As a child he was exposed to poor parenting and neglect with significant disruption of attachments.
- All of these factors pre-dispose him to poor mental health in later life.

- He was first given alcohol when he was only 9 years old and was taken into foster care due to concerns about the parenting provided by his mother.
- A full care order was made in May 2013.
- Despite this intervention and the efforts of foster carers, social workers, CAMHS and the 16+ team his prospects in life are extremely limited.
- A maternal grandparent and an aunt who were important to him died in 2016 and 2017 respectively.
- He has limited contact with his mother who has her own challenges and difficulties.

[14] On the positive side Ellis has no criminal record or history. A very helpful pre-sentence report from the Probation Board concluded that he does not pose a significant risk of serious harm at this time. Within Hydebank he is on the enhanced regime of progressive regimes and earned privileges scheme and has been since February 2021. His behaviour is largely good and he engages positively with prison staff to the extent that he is a landing orderly and works in a recycling team.

[15] It was emphasised to me by Mr Lyttle QC that because of Ellis's limitations and vulnerabilities he was bullied when he was first taken into custody in December 2019. While he is now just past his 21st birthday and is eligible for transfer to an adult prison, that is unlikely to happen in the near future. However, he must be transferred to such a prison on the day before his 24th birthday *i.e.* by 25 December 2024. Mr Lyttle submitted that this is important because being in an adult prison would, in his words, be "a disaster" for somebody as limited as Ellis.

Dean Edward Martin

[16] The defendant Martin was 24 years old at the time of the offence and is now 26. He has a criminal record but a limited one, mostly for driving and minor offences for which he has only ever been fined. There is one potentially relevant offence for possessing a knife in a public place in July 2018 but there was no violence associated with that possession and again the penalty was a fine.

[17] As Mr McAteer QC emphasised, his family background is also very troubled, a point illustrated by the fact that relevant information was given to the Probation Board by a maternal uncle rather than his father who appears to have issues with alcohol and has been violent or his mother who is described as having some mental health issues. Of his five siblings he is reported only to have support from one.

[18] This defendant has worked sporadically over the years but has been somewhat restricted by injuries to his leg which were sustained in a motor bike accident. He has a partner and also a son by a previous relationship.

[19] The pre-sentence report suggests that he does not pose a significant risk of serious harm despite some issues with alcohol and despite the writer's handicap of not being able to understand the dynamic between the defendants which led to the killing of Foggy Ellis.

Effect on victim's family

[20] A Victim Impact Statement has been provided by the sister of Foggy Ellis who is also the mother of David Ellis. She describes happier aspects of her brother's life and the impact on her of this senseless and shocking killing which has been aggravated by the fact of her son's direct involvement in it. I take account of that statement while noting that it does not take away from my earlier summary of her son's childhood.

Sentence

[21] No sentence which I pass can in any way make good or repair the loss and pain caused by the killing of Foggy Ellis. In this sentencing process I am inevitably constrained by the fact that the prosecution (quite properly) accepted the pleas to manslaughter rather than murder. The sentence which I impose must reflect that fact. I also accept that neither defendant is dangerous within the legal meaning of that term as set out in the Criminal Justice (NI) Order 2008.

[22] In *R v Magee* [2007] NICA 21 the Court of Appeal gave broad guidelines to be followed in sentencing defendants for manslaughter. Those guidelines are still relevant today – see *R v Smyth and Laverty* (8 October 2020) NICA. At paragraph 22 of the court's judgment in *R v Magee*, Kerr LJ said:

“[22] Offences of manslaughter typically cover a very wide factual spectrum. It is not easy in these circumstances to prescribe a sentencing range that will be meaningful. Certain common characteristics of many offences of violence committed by young men on other young men are readily detectable, however, and, for reasons that we will discuss, these call for a consistent sentencing approach.”

[23] The court then continued at paragraph 26:

“[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it

cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required."

[24] In the course of the helpful submissions of counsel I was referred to a number of other cases involving what might broadly be described as similar or comparable circumstances. I was also referred to an invaluable paper written by the late Sir Anthony Hart for the Judicial Studies Board for Northern Ireland in September 2013 dealing with sentences in manslaughter cases. I have considered all of the authorities and Sir Anthony's paper when deciding on the sentences which are set out below.

[25] One of the most troubling factors in this case is the mystery of why Foggy Ellis was attacked. Mr Lyttle accepted that his client gave three versions of events which cannot be reconciled. I believe that there is some truth among those versions but nothing like the full story. So far as Martin is concerned, I do not believe that the man who was so anxiously trying to make contact with his father and who was very distressed in the hours following the killing cannot remember anything about it. I regard that as an aggravating factor to be taken into account when passing sentence.

[26] The other aggravating factors appear to me to be as follows:

- (i) The pre-arming by the defendants with knives when they set off to the deceased's home.
- (ii) The strong likelihood that some level of attack on the deceased was envisaged by them.
- (iii) The vulnerability of the deceased.
- (iv) The use of a knife.
- (v) The fact that he was attacked and killed within his own home where he should have been safe.
- (vi) The fact that Foggy Ellis was abandoned when any call to or contact with emergency services might well have saved him.
- (vii) The commission of the offence when drunk.

(viii) The unprovoked nature of the attack.

[27] For the defendant Ellis the mitigating factors are:

- (i) His early admissions to the police (even if some truths were withheld).
- (ii) His clear criminal record.
- (iii) His plea of guilty.
- (iv) His very disadvantaged and difficult childhood.
- (v) His extremely limited intellectual ability.
- (vi) His positive response to being in Hydebank for two years to date.
- (vii) His comparative youth.

[28] For the defendant Martin the mitigating factors are:

- (i) His very limited criminal record.
- (ii) His plea of guilty (though later than his co-defendant).
- (iii) His difficult family background.

[29] Mr Connor suggested that taking account of all of the factors in this case the appropriate sentence before allowing for the plea of guilty was in the upper end of the range of 8-15 years. Mr Lyttle suggested that the appropriate range for the defendant Ellis is between 6 and 8 years because of strong personal factors and because he was not the principal offender. Mr McAteer, in effect, suggested that a sentence in single figures would be appropriate.

[30] The level of violence in this case is not at the upper end. Apart from the stab wound to the calf, which in many circumstances would not have caused death, the pathologist's report reveals almost no other injury. In that respect this case can be distinguished from those involving multiple blows such as kicks or punches.

[31] On the issue of principal offender, I reject Mr Lyttle's submission. While I believe that it is more likely than not that Martin inflicted the fatal stab wound, the defendants acted in concert. Moreover, it is difficult in the extreme to understand why they went to the home of Foggy Ellis at all if it was not for something said or complained of by his nephew since there was no apparent connection whatever between the deceased and Martin. How even did Martin know where Foggy Ellis lived if he was not told by his co-accused?

[32] As between the defendants I make some distinction in favour of Ellis primarily because of his age and his limitations but also because he made significant admissions at an early stage, indicating an acceptance of guilt well before Martin.

[33] In Ellis's case, taking all submissions and factors into account, I conclude that the starting point for his sentence before any discount for a plea of guilty is 11 years while for Martin the starting point is 13 years.

[34] Turning to the discount for the plea of guilty I impose on Ellis a sentence of eight years of which four years will be spent in custody and the remaining period on licence. So far as Martin is concerned I impose a sentence of 10 years of which five years will be spent in custody and five years on licence. Each is to receive credit for time spent in custody to date.

[35] I endorse the recommendations in the pre-sentence reports about the sort of conditions which might be imposed on the defendants when they are released on licence. They seem to me to make a lot of sense. Mr Ellis in particular will need very significant support in the years ahead.