

IN THE CROWN COURT IN NORTHERN IRELAND

DUNGANNON CROWN COURT
(sitting in Belfast)

THE QUEEN

-v-

ANDRIUS DUNAUSKAS AND RAMUNAS BALSERIS

HART J

[1] The defendants have been convicted of the murder of Shaun Fitzpatrick in the early hours of Sunday 23 March 2008. They have been sentenced to life imprisonment, and it remains for the court to fix the minimum term of imprisonment which they must serve before they can be considered for release by the Parole Commissioners.

[2] Mr Fitzpatrick made no secret of his homosexuality, and his sexuality appears to have been relatively well known, at least by those who frequented Donaghy's Bar in Dungannon. He was in the bar on Saturday night, 22 March, as were the defendants. The events leading up to Mr Fitzpatrick's death have been described in detail in the course of the trial but it is necessary to state briefly what happened. By its verdict the jury has accepted that the defendants waited outside the bar after closing time and followed Mr Fitzpatrick as he made his way home along the Donaghmore Road. This was not the most direct route home for either of them, and it is therefore clear that they decided to follow him, and I have no doubt whatever that they did so because they knew that he was homosexual, and intended to attack him, and did attack him, for that reason. They caught up with him and subjected him to an exceptionally vicious and prolonged attack.

[3] The forensic evidence established that there were two scenes of attack, the first being close to the pavement on the alleyway leading up to the gap between numbers 32 and 36 Donaghmore Road. The presence and distribution of blood at that spot suggested that at the very least he was

severely kicked at that point. He was then dragged up the alleyway until he was between the gable walls of 32 and 36 Donaghmore Road, where a further and even more severe attack was inflicted upon him, as can be seen from the distribution of the blood spots over the walls on either side.

[4] The post mortem report of Dr Bentley, the Deputy State Pathologist for Northern Ireland, showed that Mr Fitzpatrick died as the result of blunt force trauma of the head and neck. Dr Bentley found no fewer than 52 sites of injury across Mr Fitzpatrick's head, neck, arms, legs and trunk. These were not all of the same severity, and some of the injuries represent injuries to the outer surface of the body on top of deeper injuries underneath the same site of injury. Nevertheless the injuries were very considerable in both their number and extent.

[5] In particular the injuries included:-

- A broken nose.
- Two broken teeth.
- Four broken ribs.
- A large and deep laceration of the chin, with multiple lacerations of both lips which were split open.
- The blow, or blows, to the front of the neck caused fractures of the hyoid bone in the neck, together with multiple fractures of the cartilage of the voice box.

Dr Bentley's opinion was that the injuries to the neck indicated that the blows delivered to the front of the neck were of considerable force, and would have interfered with Mr Fitzpatrick's ability to breathe. A number of the injuries, notably those to the right side of the face, and the fractures of the thyroid cartilage, strongly suggested that at least some of the injuries had been caused by kicking and stamping. Some of the injuries to the back of the scalp, and to the back of the trunk, strongly suggested that at least some of the injuries to the front of the body had been sustained while Mr Fitzpatrick was lying on his back on the ground.

[6] There can be no doubt, nor was it disputed during the trial, that not only was Mr Fitzpatrick kicked repeatedly and severely as he lay on the ground, but he was stamped upon in the area of his chest and neck.

[7] The defendants accepted that each had been present when the other attacked Mr Fitzpatrick, but the evidence of the presence of blood upon their jeans, and particularly the presence of both contact and projected blood staining on the jeans worn by Dunauskas, make it clear that both defendants participated in the attack upon Mr Fitzpatrick. I propose to sentence the accused upon the basis that at the very least Balseris was involved in kicking Mr Fitzpatrick as he lay bleeding on the ground, having already been attacked

by Dunauskas who kicked and stamped upon him. It may well be, that as Balseris alleged, Dunauskas was the principal initiator of this attack, nevertheless the presence and distribution of the projected blood on Balsersis' jeans, and the presence of the cigarette butt close to Mr Fitzpatrick's body which had Balseris' DNA upon it, leaves no doubt that Balseris also played a full and active part in the attack. Even if Dunauskas inflicted most of the injuries on Mr Fitzpatrick, that Balseris was smoking at the time of the second attack is chilling evidence of his callous disregard for their victim. I therefore propose not to distinguish between them when assessing their culpability.

[8] Dunauskas was convicted of an assault upon a fellow prisoner on remand on this charge, and that attack involved him making a high kick at his victim's head. It may well be that he used the same technique to inflict injury upon Mr Fitzpatrick.

[9] I have been provided with a pre-sentence report upon the accused Dunauskas, but it adds little if anything to what emerged in the trial. The report concludes that Dunauskas has the propensity to inflict serious harm in the future, and in the light of the evidence at the trial, and his subsequent conviction for assaulting a fellow inmate in prison, this is a conclusion I share.

[10] I have also been provided with a pre-sentence report upon Balsersis. He has engaged well with the prison system and has attained enhanced status. Balsersis was a young man of good character at the time but good character can be of little significance in a case of such exceptional and sustained violence. It was suggested by Mr Weir QC for Balseris that some allowance should be made for the effect of being imprisoned for a long time in a foreign land. I do not consider that there are any circumstances that require me to take that into account in the case of either defendant. In any event his client demonstrated during the trial that he has a good command of English, and the pre-sentence reports state that both defendants have family members living in Northern Ireland.

[11] I consider that there are no substantial mitigating factors in the case of either defendant. The ferocity of the attack, and the number of injuries, establishes that this attack was not an example of an intention to inflict grievous bodily harm, but the defendants intended to kill.

[12] In R v. McCandless and Others [2004] NI 269, the Court of Appeal in Northern Ireland directed judges in this jurisdiction to follow the *Practice Statement* issued by Lord Woolf CJ in 2002. This prescribes that in cases of murder the normal starting point for the minimum term to be served by the defendant is 12 years imprisonment. In the present case there are two factors which I consider require the court to adopt the higher starting point of 15/16 years prescribed by the *Practice Statement*. First of all, Mr Fitzpatrick was

deliberately targeted because of his sexual orientation. Secondly, he suffered multiple and extensive injuries.

[13] I have been provided with a victim impact statement on behalf of members of Mr Fitzpatrick's family prepared for the PPS by Dr John Ferguson, a chartered clinical forensic psychologist. He interviewed several members of the family, and in his extremely detailed report describes the various ways in which those family members he interviewed have been affected. I do not propose to rehearse the different ways in which these tragic events have affected each member of the family, not least because each has responded in different ways, and, as Dr Ferguson explained in his report, "...the members of the Fitzpatrick family have a need to maintain a certain confidentiality from each other in their struggle to cope and avoid hurting the feelings of one and another". The intensity of their experience is heightened by this not being the first tragic death to have afflicted the family because Shaun's eldest brother died some 10 years before in what is referred to as an "occupational accident in 1998". The effect of Shaun's death on his mother and father is described at length in the report. There can be no doubt that each member of Shaun Fitzpatrick's family has been deeply and grievously affected by what happened, and at least some have suffered what Dr Ferguson refers to as "permanent adjustment difficulties" as a result. The effect upon his family is of such a nature that I consider it amounts to a significant aggravating factor.

[14] There are other aggravating factors. Mr Fitzpatrick was in a vulnerable position when he was attacked. He was outnumbered two to one by two well-built, powerful young men, and his vulnerability was increased by the amount of alcohol he had consumed, the post-mortem examination revealing that he had a concentration of alcohol of 245 milligrams of alcohol per 100 millilitres of blood. Some of the injuries were obviously inflicted as he lay on his back on the ground, and there is no evidence to show that he was able to defend himself in any significant way. There was evidence before the jury that both defendants were involved in previous episodes that could be considered to show animosity towards Mr Fitzpatrick. These episodes were challenged by both defendants, and I propose to leave them out of account, particularly in Balseris's case because there were weaknesses in the prosecution evidence in relation to the May 2007 events as I explained to the jury. Nevertheless this was clearly a pre-meditated attack because the defendants followed him from Donaghy's Bar for some distance onto the Donaghmore Road and then attacked him. That is a further aggravating factor. Another aggravating factor is that there were two distinct phases in the attack. The defendants attacked him at two distinct locations, pulling him further up the alley from the site of the first attack to the point between the gable walls where he was attacked again. Taking all of these factors into account I sentence both defendants to a minimum term of 20 years' imprisonment.

[15] The defendants are Lithuanian nationals and therefore as citizens of the European Union entitled to reside in Northern Ireland. In R v Stirbys and Stonkus [2009] NICC 1 at [25] to [27] I considered the law relating to the recommendation for deportation from the United Kingdom of EU citizens, and I have borne the relevant considerations in mind in the present case. I consider that despite the presumption in favour of their being permitted to remain in Northern Ireland, the gravity of the offence of which they have been convicted is such that I should recommend their deportation upon completion of their sentence and I do so.