

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

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THE QUEEN

v

JAMES JOHN McNEILL

ICOS No 07/009060

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**HART J**

[1] The defendant is before the court to be sentenced on his plea of guilty to the manslaughter of his wife, Elizabeth McNeill, on 12 March 2006. This case is a most unusual one, and before turning to the circumstances surrounding the death of Mrs McNeill it is necessary to deal with her medical history in some detail because of the bearing which this has upon the background to, and the circumstances of, her death.

[2] Mrs McNeill was born on 8 August 1954 and was 51 at the time of her death. Sadly, she had been drinking heavily for many years, and her general practitioner described her condition in the following terms.

“In brief Mrs McNeill’s medical history would indicate that she suffered from alcohol abuse/dependence associated with binge drinking. She suffered from Peripheral Vascular disease in her lower limbs. Alcoholic Neuropathy and possible brain damage. As part of these conditions her balance was affected, resulting in her using a stick to aid her walking since 2003. There is background but not significant incidents of trauma. My perception was that these incidents were not systematic. In my opinion Mrs Elizabeth McNeill was permanently unfit

to work due to alcoholic brain damage and probable cerebrovascular disease . . .”

[3] Dr J E Gilmore MD, Consultant Physician, prepared a report on behalf of the defendant in which he exhaustively analysed and described the medical history of Mrs McNeill. So far as her alcoholism is concerned, he said -

“During the next 15 year period covered by the large format GP notes between 1986 and 2001, aged between thirty two and forty seven, a pattern appears to have developed whereby she had repeated attendances at the Accident and Emergency Departments of the main Belfast hospitals with recurrent falls, collapses and minor injuries almost invariably while under the influence of alcohol . . . This pattern of regular hospital Accident and Emergency Department attendance having fallen, been assaulted or found comatose continued for the next fourteen years. Both the Royal Victoria Hospital and the Belfast City Hospital summaries and the more detailed hospital discharge letters to the GP confirm that a very similar pattern was present on each occasion with the patient invariably being intoxicated and having sustained minor injuries often requiring staples or sutures to repair lacerations but on some occasions the notes simply state that she was drunk or found lying in the street”.

[4] These observations are corroborated by references in their statements by a number of the witnesses to finding Mrs McNeill in an intoxicated condition lying in the street, having fallen or bearing signs of apparently having been assaulted. Dr Gilmore’s report states -

“A pattern also clearly emerges of long standing marital problems and domestic violence.”

[5] During his police interviews the defendant admitted that “I did hit her before”, and then said “but she had more scars on her head than enough by falling, doing herself damage”. He described how he would lash out at her when she went off the rails through her drinking, having trusted her not to do it again.

[6] There are differing accounts from family and friends as to the nature of the relationship between the defendant and the deceased. However, all the accounts describe her heavy and persistent drinking, though it appears that there were periods of sobriety. In particular the defendant alleged to the police

that his wife had been abstinent from alcohol for some months prior to the events of 11 March 2006.

[7] Other relevant aspects of the health of the deceased were that in 2003 she underwent successful aortofemoral bypass surgery, and it was noted that at that time risk factors for her vascular disease included a heavy smoking habit, alcoholism and a family history of hypertension. Dr Gilmore concluded the medication prescribed for her following that operation “clearly indicates that she was deemed to be at high risk of further vascular disease hence the need for a secondary prevention regime.” In 2003 her general practitioner noted that she had “a very wide based gait requiring the use of a stick”, was “ataxic ++”, and that she “may never have normal balance and walks awkwardly with a stick”.

[8] Therefore not only was the deceased an alcoholic given to binge drinking, but this had gravely and permanently affected her physical and mental faculties.

[9] The post mortem report described a considerable number of injuries, with abrasions to various parts of her forehead, cheeks, face, together with bruising to her chest, abdomen and upper limbs, as well as numerous bruises and abrasions on the lower limbs. Dr Ingram commented –

“Most of these injuries were relatively trivial and none was life threatening and undoubtedly some of them could have been sustained as a result of minor knocks and falls. Some of the injuries could have been caused by blows such as if she had been assaulted, possibly by being punched or kicked. The bruises on the backs of the hands could have been caused accidentally, if she had raised her arms in a bid to defend herself, or if her hands had been stood on”.

[10] Internally fractures were found to eight of the underlying ribs, and the liver had been lacerated in two places, either by the fractured ends of one of the ribs or a direct result of the force applied to the chest wall. He concluded –

“Eventually it was the effects of the intra-abdominal haemorrhage which were responsible for her collapse and death”.

[11] There was, as I shall describe, considerable evidence that suggested that the defendant had attacked the deceased, some of this evidence coming from himself. Dr Ingram’s view was broadly accepted by Dr Carson in his report of his independent post mortem. Dr Ingram stated –

“There can be no doubt that she had sustained blunt force trauma, which had fractured her ribs and lacerated her liver ultimately leading to her death, however the cause of the trauma cannot be stated with certainty. The nature of the injuries could be consistent with a heavy fall, possibly down the stairs, or on to an item of furniture. The injuries could also have been due to her having been assaulted for example by a kick, or kicks, or stamping on her chest.

The autopsy also revealed that one of the coronary arteries of the heart, the right coronary artery, was narrowed up to a severe degree by degenerative thickening of its wall, coronary atheroma and this would have reduced blood supply to the heart muscle. The severity of this coronary artery disease was such that it could have caused her death at any time and as it is possible that it could have accelerated her death to some extent it would seem not unreasonable to regard it as a contributory factor in her death. However, even in the absence of the coronary artery disease it is possible that she could have succumbed to the intra-abdominal bleeding.”

[12] I have said that there is evidence that the defendant assaulted the deceased before her death. A neighbour, Ruth Campbell, said that she heard shouting and an argument between them before midnight on 11 March. The defendant’s own account was that his wife was sober when he went out to the pub that Saturday afternoon. He there met a friend, Barry Dalzell, who said that the defendant consumed six or eight pints. The defendant later put the amount he had consumed at somewhat less, saying that he had no more than four drinks when he returned home, and was not under the influence of alcohol. He described how he returned from the pub to find his wife drunk sitting on the floor. He described how he was so upset by finding his wife in this condition after she had been abstinent for some months that he gave her “dog’s abuse” and locked her in the living room. He then went out to a number of bars. When he returned later he found that she was even more intoxicated whereupon, as he put it, he “blew a fuse”. He then described how he “clouted her”, kicked her feet for badness, stamped upon her hands before he managed to manhandle her upstairs. There he threw plants at her, and at some stage he also threw a table top at her. He described how she was bleeding from the head. He described how she fell down at one stage and banged her head against the wall, to which he ascribed the bleeding from her head, and he thought that she had hit her head off the handrail on the way up. As apparently was her habit when in this condition, she made her way into

their son's room to get into his bed. This was also a cause of friction, and the defendant described how he got her by the leg and threw her on the floor. He then put her into their bed where she was again incontinent.

[13] He maintained that she was still alive when he woke the next morning, and because of her attitude the day before he went out to a pub at about 9.00 am, where his son found him, having discovered the deceased dead later that morning.

[14] The issue therefore was whether the defendant had inflicted the fractured ribs, thereby bringing about his wife's death, or whether they were caused by, or could have been caused by, a fall as the defendant's account indicated was probable. Mr Murphy QC on behalf of the prosecution accepted that on the medical evidence the prosecution were unable to say whether the fractures of the ribs had been caused by direct trauma or by a fall, and the difficulty in proving the cause of the fracture of the ribs was uppermost in the decision to accept the plea to manslaughter. The plea was accepted on the basis that although the prosecution could not prove intent on the part of the defendant to cause death or grievous bodily harm, the defendant had admitted mishandling and mistreating the deceased and not taking any steps to help her.

[15] Mr Harvey QC on behalf of the defendant accepted that the defendant was responsible for inflicting minor injuries on the deceased, but said that this had to be viewed against a background of the myriad problems from which she suffered. He said that the defendant accepted that he ought to have realised that his conduct would have compromised her health, and that he owed her a duty of care in the light of her complicated medical background. This duty included getting medical assistance for her when he found her in this condition, something that should have been obvious to a reasonable bystander, rather than inflicting further injury and so inflicting significant risk to her life.

[16] In view of the complicated medical history of the deceased, and in particular the inability of the expert evidence to eliminate the reasonable possibility that the fractures were due to a fall on the part of the deceased, I have to sentence the accused upon the basis that his criminal culpability is represented by a combination of his admitted assaults on his wife when he came home and found her in this drunken condition on the floor, and his subsequent failure to seek medical assistance for her.

[17] The defendant is 54 and has no previous convictions, he pleaded not guilty upon arraignment but changed his plea to manslaughter at a later date. Mr Murphy accepts that the defence had indicated before arraignment that the defendant was willing to plead guilty to manslaughter, but the prosecution wished to have time to consider the evidence, and he conceded that the defendant should therefore receive the maximum credit for his plea of guilty. I

accept that this is the case, and that the defendant has to be sentenced upon the basis that he was guilty of a failure to seek help for his wife.

[18] However, it remains the fact that his behaviour was in every respect deplorable, notwithstanding the considerable strain that must have been inflicted upon him by his wife's alcoholism, a continuing strain that must have been significant over the years. Nevertheless, whilst that strain may explain his anger at finding his wife in a drunken condition on the floor, it cannot excuse his reaction. He had a good deal to drink, and I must take into account his admitted ill treatment of his wife by striking her, kicking her feet, stamping on her hands and the other actions I have described.

[19] I accept his remorse for his conduct is genuine. The pre-sentence report assesses the likelihood of his reoffending as being in the medium category, in large measure because of the defendant's perception of himself being -

“ . . . that he is not a violent person as he believes his aggressive behaviour has been in response to the impact of his wife's behaviour on their relationship, their shared hopes and plans. In this sense, the defendant's victim awareness is misplaced as is his understanding of the consequences of his behaviour on the victim”.

[20] Given that the sentence I am about to impose exceeds twelve months imprisonment I have to consider whether a custody probation order is appropriate. The report says that in the event that a probation order was ordered as part of any sentence a condition requiring him to take part in the Men Overcoming Domestic Violence Programme would be appropriate. However, given the defendant's age, his clear record and excellent work record, and that his admitted violence towards his wife must be seen in the context of the stress placed upon him by her alcoholism, I do not consider that there is anything to be gained by imposing such a condition in his case, and I do not consider that a custody probation order is appropriate.

[21] Manslaughter cases are amongst the most difficult for courts to deal with because the circumstances of individual cases can vary a great deal. At one end of the spectrum are cases which are barely distinguishable from murder, whilst at the other end there are cases which are barely distinguishable from tragic accidents. I have not been referred by counsel to any comparable case nor am I aware of one. I consider that any sentence must reflect not only the defendant's plea of guilty and his evident remorse, but his admitted ill treatment of his wife upon his return home. The fact that he himself was intoxicated may explain, but certainly cannot excuse, his gross overreaction to her condition. In all of the circumstances I consider that an immediate custodial sentence is necessary in order to deter others from behaving in a

similar way towards people who, however difficult it may be to cope with their condition, are nonetheless in a helpless or vulnerable condition as this lady was because of her numerous physical ailments and difficulties. I consider the appropriate sentence is one of two years imprisonment.