

**Neutral Citation No. [2007] NICC 31**

*Ref:* **COGC5926**

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

*Delivered:* **21/09/2007**

**IN THE CROWN COURT IN NORTHERN IRELAND**

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**THE QUEEN**

**v**

**JOHN THOMAS MICHAEL McDONAGH  
and PATRICK MICHAEL WARD**

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**COGHLIN J**

[1] John Thomas Michael McDonagh and Patrick Michael Ward each of you has pleaded guilty to wounding with intent contrary to Section 18 of the Offences Against the Person Act 1861 and to aggravated burglary contrary to Section 10(1) of the Theft Act (Northern Ireland) 1969.

[2] In the early hours of the morning of 21 January 2006 both of you were heavily intoxicated after consuming substantial quantities of alcohol and drugs. You, Ward, told the police that you had drunk a litre bottle of vodka and a bottle of Buckfast and I believe that may well have been an underestimate. It seems that you had also ingested both diazepam and ecstasy tablets. The evidence of the police in Newry suggests that you were already behaving in an aggressive manner in public shortly before 2.00am. During the course of your police interview you admitted to being “stoned to the bone” to use your own phraseology. You, John McDonagh, are Patrick Ward’s uncle and older than he is by some 10 years. You were with your nephew during the relevant period and, in addition to the alcohol that you consumed, you told the police that you were also “popping” Valium from about 8.00pm that evening.

[3] At about 2.45am the two of you broke into the flat in which the injured party was sleeping by kicking in the door. You demanded money and one of you hit the injured party with a broken bottle. One of you then obtained some knives from the kitchen, handed them to the other who then proceeded to stab the injured party some 6 or 7 times in various parts of his body as a

consequence of which the blade of one of the knives appears to have broken. The injured party was also subjected to punches and kicks after he collapsed to the ground. Quite apart from serious physical injuries, from which the injured party now seems to have made a reasonable recovery, he also suffered significant psychological injuries as a result of which he continues to display many of the symptoms of post traumatic stress. The extent to which these symptoms have impacted upon his personal and social life have been helpfully detailed in the Victim Impact Report. DNA testing by the forensic scientist of bloodstains on the clothing and the broken knife indicate that the knife was wielded by you Patrick Ward. After savagely attacking the injured party in this way his wallet which contained £35 was stolen and that sum was later found in the possession of John McDonagh.

[4] Despite a number of invitations, you, John McDonagh, have adamantly refused to cooperate with the Probation Board for Northern Ireland for the purpose of producing a pre-sentence report. Such cooperation is voluntary and you are quite entitled to take such a course of action. Your decision can have no adverse effect upon sentencing.

[5] I have carefully read the pre-sentence report provided by the Probation Board in relation to you Patrick Ward together with the reports from Dr Hanley and Dr Bownes. It is clear that you were brought up in a violent environment in which you, your mother and your siblings were subjected to physical beatings by at least one other extended family member. You were also regularly assaulted by your mother. Both alcohol and drugs have been prevalent in your life and, as you have candidly admitted, you used "whatever was available". You started drinking at age 12 and graduated to cannabis and other drugs by age 14. Your father died of a heroin overdose in 2001. I have no doubt that your violent family background together with the constant use of intoxicants has affected your personality and significantly blunted your emotional and behavioural development although I am also aware that Dr Bownes has concluded that you are not suffering from any mental illness or impairment within the terms of the Mental Health Order. You have a significant number of previous convictions, including several involving violence, in respect of which you have been dealt with in a number of different non custodial ways including probation, conditional discharge, a combination probation and community service order and suspended sentence. None of these measures seem to have been particularly successful and you appear to have breached probation orders to which you have been subjected. I take into account the fact that you have shown a degree of genuine remorse and that you have also completed a number of courses including an NVQ (level 1) whilst in Hydebank.

[6] The accused McDonagh has a relatively limited criminal record in this jurisdiction, although it includes a conviction of the offence of Grievous Bodily Harm in June 2004. I am told that offence related to an assault upon a

doctor who was trying to treat him for a head injury. That was a particularly despicable incident and one in respect of which it is unsurprising that he received a custodial sentence of eight months. However the information supplied by the Irish authorities confirms that, in that jurisdiction, he has been convicted of a formidable number of offences including assault, robbery and many burglaries and thefts.

[7] The lethal combination of excessive alcohol consumption and violence now presents a significant and growing social problem in many areas of Northern Ireland. The courts in this jurisdiction have issued many warnings that the use of knives and similar weapons will be met with condign sentences. In this case the seriousness of the events was exacerbated by the use of knives in the course of a violent assault committed against the injured party at a time when he was entitled to assume that he was safe and secure sleeping within his private residence. The unfortunate injured party did absolutely nothing to warrant the attack upon him which was motivated solely by criminal greed fuelled by drugs and alcohol. While it appears that it was Patrick Ward who actually used the knife to inflict the wounds, I consider that there is little to distinguish between the accused in terms of responsibility, bearing in mind that it was his uncle, McDonagh, who is some 10 years older, who supplied the knives. It is my view that he did so being fully aware of his nephew's state of intoxication and propensity for violence. I take into account the fact that the knives were obtained within the premises at a late stage during the commission of the offences. However, applying the provisions of the Criminal Justice (Northern Ireland) Order 1996 I am quite satisfied that the offences were so serious that only custodial sentences could be justified. In the circumstances of these offences the major factors to be considered are those of retribution and deterrence which must be seen as paramount as compared to individual personal factors that might tell in favour of defendants. As has been said many times before it is fundamental that the courts should be seen to protect the public.

[8] Both of you have pleaded guilty to these charges and I will allow some discount in respect of those pleas. However such discount must be limited having regard to the weight of the evidence relating to these serious offences. I also remind myself of the recent confirmation by Kerr LCJ in Attorney General's Reference No. 1 of 2006 that those who wish to gain the maximum benefit of such discount must plead guilty to the relevant offence/s at the earliest opportunity. It will not excuse a failure to plead guilty to a particular offence if the reason for delay in making the plea was that the defendant was not prepared to plead guilty to a different charge that was later withdrawn or in respect of which the prosecution elected not to proceed further.

[9] Counsel have helpfully furnished me with a number of authorities in relation to sentence. However I bear in mind the observations of Kerr LCJ in *R v Kernaghan* [2003] NICA 52 at paragraph [15] when he said:

“Comparisons of sentences in other cases must be carefully undertaken especially where offences of violence are involved since these are usually highly fact specific and cannot therefore provide an infallible guide to appropriate sentence even where the circumstances appear similar.”

[10] In my opinion the appropriate sentence on count 2 is one of 8 years imprisonment. In the case of Patrick Ward, notwithstanding his signal lack of positive response in the past, I am prepared to consider the imposition of a custody probation order in accordance with Article 24 of the 1996 Order. In so doing I take into account his youth and the recommendation contained in Dr Hanley’s helpful report. Providing he consents, the terms of the order will be 7 years imprisonment followed by a period of probation for 18 months. However, as he himself realises, if he continues to abuse alcohol and drugs his quick temper will inevitably lead to further offences. Therefore I attach to the order a condition that he shall in accordance with instructions given by his Probation Officer actively participate in addressing his use of alcohol and drugs. He must also consult his General Practitioner within two weeks of his release from custody with a view to receiving such treatment/therapy as may be available for the Conduct Disorder referred to by Dr Bownes in his report of 2 September 2007. John McDonagh is significantly older with a more substantial criminal record and there is no evidence before me that would justify the making of such an order within the provisions of Article 24 (2) of the 1996 Order. On count 3 you will both go to prison for 5 years. The sentences in respect of both counts will be concurrent. I also put into effect the suspended sentence of four months imprisonment to which Patrick Ward is currently subject. Again that sentence is to run concurrently with the sentences imposed on counts 2 and 3 of this indictment.