Neutral Citation No: [2009] NICC 57 | *Ref:* **HAR7533**

Judgment: approved by the Court for handing down | *Delivered:* **18/9/2009**

*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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ENNISKILLEN CROWN COURT
(sitting at Belfast)

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THE QUEEN

-v-

KERRI CASSIDY

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HART J

[1] The defendant has pleaded guilty to the manslaughter of Gary Elliott. She was originally charged with his murder, but on 4 June 2009 at the commencement of her trial she asked to be rearraigned and pleaded guilty to his manslaughter and the prosecution accepted this plea.

[2] An agreed statement of facts prepared by the prosecution was placed before the court and the following account of the events of the night of Gary Elliott's death, and of the relationship between the defendant and the deceased, takes account of that agreed statement of facts.

[3] The defendant, who is now 27, and the deceased, who was 19, had been living together for approximately 12 months at 16 Townhill Park, Irvinestown, County Fermanagh when they went into Enniskillen on the evening of 23 September 2007. It is clear from the accounts of a number of witnesses, and from the defendant's admissions during interview, that she had a substantial quantity to drink in the course of that day. She had been drinking cider, some wine and altogether appears to have had some six vodkas in the course of that day. When they were in Enniskillen they ended up in a public house where about 9.00 to 9.30 pm the assistant bar manager decided not to serve their group any more drink because they were a bit loud. They then made their way back to Irvinestown by taxi and the taxi driver observed that whilst the defendant was sober the deceased was drunk. It was necessary for the deceased to be back in his home before 10.00 pm because he was on bail at the time and subject to a curfew.

[4] Later that night the defendant rang 999 and asked for an ambulance before she went to the home of her uncle, Martin Cassidy, who lived with his partner two doors down from her. They described how the defendant knocked on their door at approximately 11.30 pm in a hysterical state with her hands and arms covered in blood. She said, "I've stabbed Gary, can you come quick". They both went over to the house and saw the deceased lying on the kitchen floor. Martin Cassidy asked the defendant what she had stabbed him with, and she said, "A knife", pointing to a kitchen knife approximately 6 inches long which was lying on the floor. The police and ambulance came in due course but the deceased had died.

[5] At some stage after he went to the house Martin Cassidy asked the defendant what happened and she replied, "He had made a go for me and I stabbed him", and she kept saying, "I didn't mean to stab him".

[6] Donna McAnerin, Martin Cassidy's partner, went to fetch Paul Cassidy, another brother of Martin and uncle of the defendant, and brought him to the defendant's house. He arrived before the police and ambulance and asked her what had she done. She replied, "Paul I didn't mean to stab him, I didn't mean to stab him, I've phoned the ambulance why is it not here". He again asked her what happened and she said according to his witness statement –

> "we had a fight, we had not been back 20 minutes when he lunged at me, we had been to Enniskillen, Gary had taken an awful lot of vodka and red pills, he hadn't taken anything like that for months. I wanted him to come home cause he was under curfew and I didn't want him to get arrested. He started to twist with me about going home. We had not been back for 20 minutes when he started to argue, I went upstairs, came down, Gary followed me. I went into the kitchen and he started arguing. He lunged at me, and I lifted the knife".

[7] An autopsy was performed on 25 September 2007 by Dr Ingram, the Assistant State Pathologist for Northern Ireland. He concluded that death was due to a single stab wound to the chest. The knife had divided the second left rib, passing downwards and slightly backwards, dividing the aorta close to the heart and transfixing the atrium, the smaller chamber of the heart. This injury resulted in massive bleeding and was responsible for the collapse and rapid death of the deceased. Dr Ingram noted that no more than moderate force would have been required for the infliction of the wound, particularly if the tip of the weapon was sharp and pointed.

[8] The kitchen knife found in the house was examined by Mr Lawrence Marshall of FSNI. He described the knife as being a black handled kitchen knife with a serrated blade approximately 20 centimetres long and 2 ½ centimetres deep with a sharp blade and tip.

[9] The downwards track of the knife wound has been reconstructed in the form of a body mapping CD showing the relative positions of the defendant, who was some 5 foot 5 inches tall, and the deceased who was 5 foot 11 inches tall. This shows the knife pointing downwards whilst being held in a raised position, and Dr Ingram subsequently confirmed that the body mapping reconstruction, exhibit DMT/1F was "considerably the more likely . . . to represent their positions when the wound was sustained".

[10] When questioned by the police the defendant said that the deceased did not want to return to Irvinestown with her from Enniskillen, she told him that he had to because of the curfew and there was a row because of that. He told her that he had taken three ecstasy tablets. She went on to say that when they arrived at her home in Irvinestown she then told him to go to his own home, where he was required to live by his bail conditions. He was drunk and refused to do so, whereupon she went to go upstairs and the deceased pushed her onto a lounger chair in the kitchen. She then went upstairs, he was in the kitchen shouting and she came back downstairs to get a glass of water. She alleged that the deceased was accusing her of trying to get rid of him so that she could get other men down to the house, he pushed her and she fell on her bottom and on her hands in the kitchen. She got back up and said that the deceased was shouting at her, calling her a "slapper" and a "slut", and came at her with his fist raised.

[11] She stated that she took the knife out of the knife block beside the kitchen sink in order to get him to back off and she turned round. She was holding the knife with the blade pointing out in front of her, with her fingers over the top of the handle. In her interviews she said that after she had grabbed the knife "he was coming at me and the knife just, just stuck in him". She later said that she "was just holding it and he still, just went straight for me", that the knife was pointing "just straight ahead I think". At one point the police queried whether he had his fist raised and she said "Gary had his fist up". She later said that she grabbed the knife "just to scare him, just to get him to stop shouting and to go home just". When asked about the force of the blow she said that she thought it came from the deceased coming "just straight on to it". The police asked her again about this and she said that she did not know whether he walked or ran straight into the knife, and she was emphatic that she just wanted to scare him. She made the case that she thought that he was going to hit her as he had done so before.

[12] Her case as she made it to the police at page 195 was to reiterate what she had said before, namely:

> "I was afraid of him, I was, I knew what I was going to get I was protecting myself. I just wanted to scare him off".

[13] In her defence statement the defendant asserted that she had acted in self defence, that she had lifted the knife in reaction to an imminent assault in order to frighten the deceased and to stop that assault, and that stabbing the deceased was a wholly accidental act in the course of attempting to defend herself from what she believed was an imminent assault.

[14] It is abundantly clear from not merely the defendant's own account of the relationship between herself and the deceased, but from the accounts given by a number of friends and relatives, that both were in the habit of drinking heavily. They regularly drank at the defendant's home at the weekend because, as a number of the witnesses recounted, the deceased was barred from most or all of the local bars in Irvinestown. Not only did both drink heavily, but the relationship was a volatile one and they would frequently argue when both were drunk.

[15] One of the witnesses, Stacey Monaghan, described how on one occasion she had seen the defendant strike the deceased with the pointed end of a screwdriver, swinging her right hand from above her shoulder and striking him on the chest. The deceased subsequently showed Stacey Monaghan the bruise it caused on his chest, although no complaint was made to the police in respect of this allegation, and there was no objective evidence of any injury.

[16] One matter in respect of which there was objective evidence was that on 15 April 2007 Constable Lee noted that there were two or three finger-tip bruises on the defendant's arms which she alleged were caused by the deceased, but she did not wish to make a formal complaint.

[17] There was a further incident on 17 July 2007 when after a row between them, the deceased called at the defendant's house, was verbally abusive and damaged her front door by smashing a pane of glass in the door. The police attended at the defendant's request and she made a statement of complaint which she later withdrew.

[18] Witnesses who knew the couple stated that they would often joke and laugh about the arguments which occurred between them.

[19] At the time of his death the deceased was on police bail for various offences including common assault on a male, resisting arrest and assault on the police, all allegedly committed on 14 September 2007. The conditions attached to the police bail meant that he was subject to a curfew between 10.00

pm and 7.00 am, was not to consume alcohol or to be on licensed premises, and was to reside at 32 Townhill Park, Irvinestown.

[20] An examination of the deceased's blood alcohol levels showed a concentration of 216 milligrames of alcohol per 100 millilitres of blood indicating that he was moderately intoxicated when he died. His blood was also found to contain 0.26 milligrams of MDMA, commonly known as "ecstasy", a concentration consistent with recreational use. A sample of the defendant's blood taken at 3.20 am the following morning showed a reading of 100 milligrames of alcohol per 100 millilitres of blood.

[21] As indicated above the defendant made the case even before she was formally questioned that the defendant lunged at her and that she lifted the knife. The prosecution case was that the defendant deliberately inflicted the stab wound in the manner already referred to, namely an over arm downward blow, rather than holding the knife in a defensive position as she had alleged. However, the prosecution accept that there is insufficient evidence to establish the necessary intention on the part of the defendant either to inflict grievous bodily harm or to kill which has to be established beyond a reasonable doubt to result in a conviction for murder. The prosecution have accepted the plea to manslaughter because they accept that the defendant may have initially picked up the knife in self defence, or to ward the deceased away, but that the defendant in using the knife to deliver a blow went beyond reasonable self defence in all of the circumstances.

[22] I have been provided with a number of reports prepared upon the defendant which cast some light upon her background. In her report of 19 November 2007 Dr Helen Harbinson, a consultant psychiatrist, gives a detailed account of the defendant's upbringing and background, a number of aspects of which are verified by the general practitioner's notes and records which Dr Harbinson had at the time. The defendant was born on 29 March 1982 and there are six recorded episodes where she overdosed on alcohol, or on prescription or illicit drugs.

(1) On 27 March 1996, when she was not quite 14, it appears she took two deliberate overdoses in the previous week.

(2) On 8 February 1999, when she was 16 and 10 months, she took an overdose of antidepressants.

(3) On 20 June 1999, by which time she was now a little over 17, she took an overdose of alcohol and ecstasy tablets.

(4) In July 2005, when she was 23, she took an overdose of Prozac.

(5) In November 2005, also when she was 23, she was taken to hospital when it was thought she had suffered an epileptic seizure. She had been drinking vodka and Red Bull.

(6) In January 2006 she was admitted to the Coronary Care Unit of the Erne Hospital after taking a cocktail of medication.

[23] The history the defendant gave to Dr Harbinson confirms that not only had the defendant drunk some six vodkas on the day of this offence, but she was in the habit of regularly drinking a bottle of vodka over a weekend. Dr Harbinson concluded that the defendant was depressed, abused and fearful at the time of the killing. In a follow up report dated 18 May 2009 (although this must be an error as the report refers to a consultation on 18 June and to the defendant's plea of guilty to manslaughter, which, as already noted, was entered on 4 June) Dr Harbinson states that the defendant says that she is abstinent from alcohol, has had counselling for her alcohol consumption and other problems, and "has shown herself committed to her children and her welfare". As she observes, "a custodial sentence will separate them from their mother and will inevitably affect them adversely. It will also pose problems for her especially in relation to her bonding with her baby". Dr Harbinson suggests that the defendant would benefit from probation supervision and support, and in her opinion the defendant does not pose "a serious risk of physical harm to anyone in the future".

[24] A report from Dr Carol Weir, a consultant psychologist, recounts that the defendant had two previous children, one of whom died as the result of a cot death in July 2005. The defendant has had a further child since these events and so is now the mother of two children. Dr Weir observed that the defendant appeared to be a detached and vulnerable girl who suffered a constant level of psychological pain. She considered that it may have been the case that the defendant was particularly "down" at the time of the offence because it was the day before the birthday of the child who had died.

[25] In a further recent report dated 20 July 2009 Dr Weir describes how the defendant has been receiving psychotherapy and counselling for her alcohol use. Dr Weir states that the defendant asserts that she has not had any alcohol since April 2008. She concludes that the defendant's life has improved markedly since Dr Weir first saw her. She has concluded that

> "Since this young woman was assessed 20 months ago her life has improved markedly. Her mental health has improved, she no longer consumes alcohol, she is not receiving any medication and she is in a happy and loving relationship and has recently married."

[26] I have been provided with a pre sentence report which assesses the risk of the defendant re-offending "as being at the low end of medium likelihood of re-offending in the next two years based upon her alcohol misuse and reckless impulsive behaviour".

[27] I have also been provided with a victim impact statement by Patricia Elliott, the mother of the deceased, in which she speaks movingly of the effect that the loss of her son has had upon her, and the effect of that loss upon her everyday life. A victim impact statement from Mrs Georgena Elliott, the mother of Patricia Elliott, describes in equally eloquent terms what she refers to as "the devastating effect on myself and my family" of the death of her grandson. Nothing the court can say can remove that sense of loss, although they, and the public at large, should be reassured that the courts are acutely aware of the effect of such actions upon the relatives of victims, and take those effects into account when deciding what is the proper sentence in cases of this sort.

[28] Manslaughter cases in particular always provide the court with a task of considerable difficulty in arriving at the appropriate sentence, because cases of manslaughter can vary greatly in terms of the defendant's culpability, ranging from some cases where the death has come about by little more than an accident, to those at the other end of the spectrum which are barely distinguishable from murder. In R v. Magee [2007] NICA 21 Sir Brian Kerr LCJ stated that:

> "We consider that the time has now arrived where, in the case of manslaughter where the charge is being 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 a deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should between 8 and 15 years imprisonment."

[29] Amongst the aggravating factors identified by the Court of Appeal in Magee, the only one which is present here is that a weapon was used.

[30] There are a number of mitigating features of the case. The first is that the defendant pleaded guilty. She did not plead guilty at the first opportunity but entered her plea of guilty to manslaughter on the opening day of the trial before the jury was selected. In the normal way, the courts have made it clear on many occasions that the maximum benefit to be given to a defendant for a plea of guilty should be confined to those who have admitted their guilt at the earliest opportunity, namely when being questioned by the police. In the present case although the defendant admitted that she had inflicted the injury that led to the death of the deceased by holding a knife, she denied that she had

deliberately killed him. As I have already pointed out, in her defence statement, she said that she had acted in self defence, lifted the knife in reaction to an imminent assault to frighten the deceased and stop that assault, and that the stabbing was a wholly accidental act in the course of attempting to defend herself from what she believed was an imminent assault. It was therefore open to her to argue that she was not guilty of any offence because she had been acting in self defence. The defendant had served a notice seeking to adduce evidence of the bad character of the deceased relying upon a number of offences of a violent nature had the case proceeded to trial. His record shows that he committed offences on a number of occasions in the past.

(1) On 28 August 2004 when he was 16 he was guilty of wounding and common assault.

(2) On 26 March 2005 when he was 17 he was guilty of assault occasioning actual bodily harm.

(3) On 5 August 2005, again when aged 17, he was guilty of assault on the police and common assault.

(4) On 25 January 2006 when 18 he was guilty of common assault and disorderly behaviour.

These offences are in addition to those to which I have already referred.

[31] It will therefore be apparent from the deceased's record that there was material to support the defendant's assertion that at the time of the row the deceased behaved in an aggressive fashion towards her, and that consequently there was a basis upon which she could allege that she had acted in self defence. It would then be for the prosecution to prove beyond reasonable doubt that she did not act in self defence, and if the prosecution failed to disprove that the defendant would be entitled to be acquitted. As against that, there was evidence that the defendant herself was not merely of a volatile but sometimes of an aggressive nature. There were allegations from other witnesses that she had assaulted them in addition to the matter involving the screwdriver to which earlier reference has been made.

[32] In R v. Harwood [2007] NICA 49 at [19] the Court of Appeal accepted that in some circumstances a defendant charged with murder who seeks to put forward a defence of self defence should not be penalized for not entering an early plea to manslaughter.

> "While it is correct to say that it is always open to a defendant to enter a plea of manslaughter on a charge of murder at an earlier stage, for this appellant to do so, before prosecuting counsel had indicated that such

> a plea would be accepted, would have denied him the opportunity of maintaining the defence of self defence, which had been foreshadowed in his defence statement, should the prosecution decline to accept his plea. In appropriate circumstances allowance should be made for cases in which deferral of a plea of guilty is objectively justified. Thus there is some merit in counsel's submission that this appellant pleaded guilty at the first available opportunity, that is, when he knew his plea to manslaughter would be accepted on the murder charge. To have done so earlier would have thrown away his defence of self defence."

[33] At the trial Mr John Orr QC (who appears for the prosecution with Mr Steer) confirmed that the prosecution only indicated a willingness to accept a plea of manslaughter at a relatively late stage, and in those circumstances I consider that this case is indistinguishable from that of Harwood. I therefore regard the defendant as entitled to the maximum credit for an early plea of guilty even though it was only entered at the commencement of the trial.

[34] At the time of this offence the defendant had no previous convictions, although she has subsequently been convicted for driving with excess alcohol and careless driving on 1 February 2007. I do not consider that this can be regarded as an aggravating feature of the case, and I consider that I should treat her as having an effectively clear record, although that conviction is confirmation of this young woman's serious alcohol problems.

[35] There are the documented instances of allegations of previous domestic violence perpetrated towards her by the deceased in April and July 2007 to which I have already referred.

[36] Finally, and of considerable significance, is the extremely unhappy history of the defendant. I do not consider it necessary to refer again to the history of depression and numerous overdoses that I have described earlier in this judgment. I should also record that she was herself the subject of a serious sexual assault which occurred in 1996, when she was only 13, and she has also lost a child at a very young age. I consider that her unhappy background represents a substantial mitigating factor in this case. I have also had regard to the references handed in on her behalf.

[37] Mr Gallagher QC (who appears for the defendant with Mr Fahy) submitted that this is a case where a non custodial penalty could be considered, but I do not consider that the circumstances of this case can be regarded as exceptional, and, despite her personal circumstances, the sentence must involve a custodial element to reflect the fact that she took a human life. Despite the

defendant's assertion to Dr Weir that she has not consumed alcohol for a considerable period, and notwithstanding the happier and more stable relationship that she now has following her marriage, I accept the suggestion made in the pre-sentence report that she would benefit from probation supervision after her release, and from treatment to try to deal with her depression and tendency to excessive consumption of alcohol. Because the sentence in this case must inevitably exceed 12 months imprisonment I am required to consider whether she should be subject to a custody probation order as this offence was committed at a time when the law provided for such a penalty. For the reasons given above I consider that the defendant would benefit from being made subject to the following conditions upon her release:

(1) To attend and participate in a substance abuse treatment programme as directed by PBNI.
(2) To attend and participate in relevant programmes, and counselling, as directed by PBNI.
(3) To reside at an address approved by PBNI.

[38] Were it not for the question of probation I consider that the appropriate sentence, taking into account her plea of guilty and the other mitigating factors, would be one of 5 years' imprisonment. I therefore propose, subject to her agreeing, to impose a custody probation order of 3 years' imprisonment to be followed by 2 years' probation subject to those conditions set out above. The sentence would otherwise have been one of 5 years' imprisonment.