

IN THE CROWN COURT IN NORTHERN IRELAND
BELFAST CROWN COURT

THE QUEEN

v

GARRY JAMES JOHN MEENAN & NADINE KELLY

(NO.2)

HART J

[1] The defendants have pleaded guilty to a number of counts relating to events on 23 and 24 June 2008 which culminated in the death of Emmet Shiels. He died in the early hours of 24 June when shots were fired by at least two gunmen in the group which Emmet Shiels was chasing. He was struck by a 9 mm round fired from a "Glock" type pistol, the bullet striking him on the front of the upper abdomen and passing backwards, slightly downwards and to the right, perforating the left lobe of the liver, the stomach and the aorta. This wound caused massive bleeding into the back wall of the abdomen and was responsible for his fairly rapid death.

[2] In order to explain the events immediately preceding the death of Emmet Shiels it is necessary to go back to events which occurred earlier that night. About 11.30 pm on 23 June Aaron Thornton and Eugene Doherty were sitting in Thornton's car which was parked in Abbots Walk in the Bogside district of Londonderry. A group of masked men ran towards the car, they appeared to be armed, and Thornton stated that they began shooting in the direction of his car, whereupon Thornton drove off. He went to a nearby neighbour's house but was unable to gain entrance. Thornton did not appear to give evidence at the trial and Mr Terence Mooney QC (who appears for the prosecution with Mrs McKay) said that no other witness said that shots were fired at that stage.

[3] Emmet Shiels was driving a pizza delivery van in the area. He stopped his van at Thornton's car and they discussed what had happened. It appears that Shiels was accompanied by a number of passengers who had themselves been confronted by an armed group in the area a short time before.

[4] The occupants of the two vehicles decided to separate in order to try to find the members of the armed group who they believed were still in the area. After Shiels had driven off, Thornton alleges that he saw the armed men again, and the gang opened fire in his direction for a second time. A taxi driver who arrived on the scene spoke to Thornton and also saw the masked group. Another man, Gareth Conaghan who is the subject of Count 6, was parked in Abbots Walk at the time of the first incident. Four masked men ran at Conaghan's vehicle and all of them appeared to be armed, one of the gunmen pointed his gun at Conaghan's head, told him to remain where he was, whilst the other three gunmen ran towards Thornton's car which then reversed away at speed.

[5] Not long after Thornton and Doherty escaped from the gunman for the first time in Abbots Walk, another group of young men was confronted by a gang of armed men. The group confronted on this occasion included Martin Whoriskey, Caolan Harris and Kealan Curtis. Because this group was not prepared to be restrained nor intimidated by the armed group, they resisted verbally and physically, and Whoriskey was struck with a metal bar. In order to impress upon the group that the men were armed with real weapons, some of the armed men showed bullets to Whoriskey's group, and it is alleged that shots were fired into the ground near the young men. On this occasion, although the armed group were masked, the mask worn by Meenan was so ineffectual that two of the group purported to recognise him. The gang then retreated.

[6] The second group of young men, including Whoriskey, then walked to Limewood Street and came in contact with Emmet Shiels driving his van. There was a discussion, whereupon Shiels invited some of the young men into his vehicle and they drove round the area in an attempt to identify the group. They met Aaron Thornton in his car as described earlier. There was a discussion, and then the two vehicles separated and drove off in different directions in an attempt to cut off the armed gang.

[7] It appears that Emmet Shiels drove to Eastway and parked his van close to the junction of Eastway and Bligh's Lane. His group saw the gunmen walking along Bligh's Lane, and it appears that they witnessed the second occasion when, according to Thornton, his vehicle was fired upon.

[8] Meenan was identified as one of the group of gunmen because at that point he was unmasked. The group including Emmet Shiels confronted Meenan who claimed that he "was only joking and carrying on".

[9] Meenan and the other members of his gang then ran past Emmet Shiels and his group and across the grassy embankment, and it was during that stage of the events that the fatal confrontation occurred. At least two gunmen fired shots at their pursuers, and one of those shots was the bullet which struck Emmet Shiels and caused his death. The gunmen then escaped in the general direction of St Mary's Church, which was across Eastway from the grassy area where the confrontation and the shooting had taken place.

[10] At the time Meenan lived at 78 Bishop Street, a short distance from the Bogside. Although regarded as a good workman who was reliable and a good timekeeper, he unexpectedly left his work on the morning of 24 June 2008, and there is no evidence as to his whereabouts until he came to Strand Road PSNI station of his own volition on 30 June. During interviews he refused to answer any questions relating to his alleged participation in the shooting of Emmet Shiels.

[11] On 26 June Nadine Kelly made a witness statement to the police in which she said that Meenan came to her house at about 6.30 in the evening of Monday 23 June, he left later to go to band practice, but returned to her home between 9.30 and 9.45 pm on Monday 23rd. She claimed that he remained in her house until she rang for a taxi for him between 1.30 and 2.00 am on the morning of 24th. This alibi was plainly false because, although there was evidence that Meenan had been collected from Nadine Kelly's house at approximately 1.30 am on 24 June, as he now admits he was one of the group involved in the events which have already been described culminating in the shooting of Emmet Shiels which occurred about 12.30 am.

[12] In the course of the investigations into the death of Emmet Shiels the police examined CCTV pictures from several locations in this general area. One sequence showed four men in camouflage clothing carrying items consistent with the appearance of handguns. This is consistent in both time and place to the confrontation of the armed men with Thornton, Whoriskey and his companions, and the later confrontation with Shiels.

[13] There is therefore ample evidence that Meenan was one of a group of armed men moving around the Bogside area on the night of 23/24 June dressed in paramilitary camouflage clothing and wearing masks. I am entirely satisfied that, as Meenan's pleas to these charges accepts, this group was intent on asserting unlawful authority over the area by inflicting injury on those of whose activities they disapproved. That Meenan was an active participant in this endeavour is clear from his pleas to the counts of assault on Thornton, Whoriskey and Conaghan, and that he knew his companions were armed is confirmed by his plea of guilty to the charge of possessing a firearm with intent to cause fear of violence. However, Mr Mooney QC stated that the prosecution were prepared to accept Meenan's plea of guilty to

manslaughter on the basis that, although he was part of a joint enterprise involving the use of firearms, the prosecution could not exclude the possibility that Meenan did not realise that any member of the gang would use the firearm to kill or cause serious bodily harm, either of which had to be established to prove the charge of murder.

[14] I have been provided with victim impact reports from Dr Fred Browne, a consultant psychiatrist, on Kevin Moore, a cousin of Emmet Sheils, and Petrina Bradley, Emmet Sheil's girlfriend. I have also received victim impact statements in the form of dignified and poignant letters from other members of his family, namely Mr and Mrs Moore; Breege McFadden, Maureen Wilkinson and Sean Moore. Mr and Mrs Moore were Emmet Sheils' grandparents but brought him up as one of their own children from a very early age, and so they and their children Kevin, Sean, Breege and Maureen were even closer to Emmet Sheils than their biological relationship might otherwise suggest.

[15] In different ways the reports and letters reveal the effect of his death upon each of them, and each displays an acute sense of loss and deprivation. They describe an extremely hard-working young man who was a credit to his family, and who was just about to become a father at the time of his death. Petrina Bradley was pregnant with his child, indeed the baby was overdue when she learnt of his death, and words cannot fully convey the shattering effect upon a young mother to be who learns of the death of her child's father in such circumstances a few days before the child is born. It is to her credit that despite the effect these events have had upon her health and career, that, in Dr Browne's opinion, "she has dealt well with this most traumatic situation". I have no doubt that she, and the members of the Moore family, will continue to experience that acute sense of loss, "a void" in their lives as some of them describe it, for a long time.

[16] I have been provided with a pre-sentence report on the accused Kelly. She is now 20 and was just 18 at the time of these offences. She has a clear record and is the mother of a four year old child, although not by the defendant. She foolishly lent herself to a deliberate attempt to pervert the course of justice by giving Meenan a false alibi. Those who behave in such a fashion undermine the whole system of justice by doing what they can to protect others from the consequences of criminal activity.

[17] I agree with the author of the pre-sentence report who writes that "the main motivation for this offence, in my view, was the defendant's misguided loyalty to her boyfriend and her desire to protect her family unit regardless of the consequences for others". Nevertheless, providing a false alibi is a serious offence and requires an appropriate sentence. In her favour are her clear record and plea of guilty, although this was not entered until the trial started. I have also taken into account the references handed in on her behalf which

speaking well of her. In view of these factors, and her parental responsibilities, I do not consider that it is necessary to impose an immediate prison sentence. I sentence her to 12 months imprisonment, suspended for two years.

[18] It has been repeatedly stated that manslaughter may be committed in a very wide, indeed potentially limitless, variety of factual situations. As the Court of Appeal pointed out in R v Magee [2007] NICA 21 at [26]:

“... 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 8 and 15 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. Indeed, in some cases an indeterminate sentence will be appropriate.”

[19] These events involved an armed gang seeking to assert unlawful domination of this area, and to replace the lawful authority of the state. When those taking part in such behaviour are armed with loaded weapons there is every risk that challenges to their purported authority may be met with force, and that may result in loss of life, as happened on this occasion. Such conduct must result in heavy sentences in an attempt to deter those who may be tempted to become involved in such conduct from doing so, and to bring home to them and others the consequences of such behaviour. Those who take part, whether they fire the fatal shot or not, by their presence lend support and encouragement to others who are members of the same armed gang. Therefore, whilst the heaviest punishment must be reserved for the person who fired the fatal shot, nevertheless others who are part of the group must also expect severe sentences.

[20] I have been provided with a pre-sentence report on Meenan, as well as a number of references on his behalf. I also heard evidence from Edward Bowen, who is the principal of St Patrick's High School and was principal when Meenan was a pupil. He said that there had been no problems with Meenan's behaviour, and he had an excellent attendance record at the school. He expressed his amazement that a boy with such an exceptional school record could be caught up in incidents such as these, and this was also the tenor of written references handed in on Meenan's behalf by Miss McDermott QC (who appears on behalf of Meenan with Mr Brolly). He has no previous convictions and was 18 at the time of these events. He is now 20 and the pre-

sentence report states that he appears to have matured in the two years since these events. His clear record and his plea of guilty are further mitigating factors in his favour.

[21] An immediate custodial sentence is inevitable in this case, and as this is a serious offence under the Criminal Justice Order (NI) 2008 (the 2008 Order) I am obliged to consider whether a life sentence, an indeterminate sentence or an extended custodial sentence is required. Grave though the consequences of these events were, and although the defendant took an active part in the events of that night, it is accepted that he did not fire the fatal shot. I do not consider that any of the three forms of sentence to which I have referred would be appropriate. The accused has an otherwise clear record, and there is no evidence to suggest that there will be significant risk of harm to members of the public from him in the future.

[22] These offences were committed by Meenan before 1 April 2009, and so the provisions of Article 5 of the 2008 Order do not apply. Miss McDermott properly conceded that this was not a case where a custody probation order was appropriate as there is no evidence to suggest that he would benefit from supervision upon his release.

[23] I sentence him to eight years' imprisonment on count one, six years on count two, and six months imprisonment on counts four, five and six. All the sentences will be concurrent.