

Neutral Citation No. [2010] NICC 23

Ref: **HAR7878**

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

Delivered: **18/6/2010**

IN THE CROWN COURT IN NORTHERN IRELAND

**LONDONDERRY CROWN COURT
(SITTING AT BELFAST)**

THE QUEEN

-v-

**ROBERT DEAN PORTER AND NIALL REGAN
(No 2)**

HART J

[1] Robert Dean Porter and Niall Regan are before the court to be sentenced for their pleas of guilty to the manslaughter of Gregory Paul Woods in February 2008. These pleas were entered on 28 April and followed my giving an indication of sentence under the Rooney procedure on 27 April 2010. The reporting restriction on that hearing is now lifted.

[2] At approximately 3.00 am on the morning of Monday 4 February 2008 Niall Regan reported to the police that Gregory Woods was missing. On Tuesday 5 February 2008 Ciaran Woods found his brother's body lying on some bog land adjacent to a rough track leading into the Glenshane forest at an isolated spot overlooking the Glenshane Road at a point to the left of, and some distance from but in sight of, the Ponderosa Bar which is close to the summit of the Glenshane Pass. Professor Crane, the State Pathologist for Northern Ireland, concluded in his post mortem report that:-

“... The clothing he was wearing was sodden.

Death was due to hypothermia, a condition characterised by a progressive fall in the body temperature usually associated, as in this case, with exposure to adverse weather conditions. The development of hypothermia is progressive with increasing confusion, drowsiness and eventual loss of consciousness. In this case the

circumstances leading up to his death would support the diagnosis of hypothermia.

He was also quite heavily intoxicated when he died. The report of Forensic Science Northern Ireland shows that, at the time of his death, the concentration of alcohol in the bloodstream was 232 mg. per 100 mls. The very high urine concentration indicates that the blood alcohol level would have been even higher prior to his death. There is no doubt that this alcohol intoxication would have predisposed to the development of hypothermia and in view of this should be regarded as a contributory factor in his death.

...

There were no serious marks of violence. Some small abrasions on the face, streaky abrasions on the left forearm and an abrasion on the right thumb were probably caused by contact with a rough surface such as the ground. There were also some areas of bruising on the right buttock and the backs of the thighs but these appeared to be a few days old. There was nothing to indicate that he had been assaulted."

[3] In my earlier ruling on the No Bill application [2009] NICC 77 I described the location where Mr Woods' body was found in some detail, and I do not propose to repeat what I said in that ruling. It is sufficient for present purposes to say that Gregory Woods was abandoned by the defendants on a forest road in sight of, but over 400 yards from, the Glenshane Road where it passes the Ponderosa Bar. Where the body was found is 225 metres above sea level, and so is a considerable height above sea level. The prosecution evidence is that on the night of Sunday 3rd February and the morning of Monday 4th February it was cold in this general area. The air temperature recorded at the nearest weather station at Lough Fea shows that it was between 0.7 degrees Celsius and - 0.2 degrees Celsius that night.

[4] Porter collected Woods from his home in Castledawson on Sunday 3rd February 2008, and then took Woods to Porter's home in Main Street, Maghera where they spent some time drinking together. Porter and Regan then took Woods up to this remote spot where he was put out of Regan's car and left there. Porter admitted to the police that Woods had been drinking heavily with him, see page 434 of the interviews, and he said that later Woods and Regan headed off together.

[5] Robert Dawson, a taxi driver, picked up Porter twice on Monday 4 February 2008. During the first journey Porter talked about "hitting" Gregory Woods, and putting Woods out of the car. In the second journey Porter asked Dawson to take him to the top of the Glenshane, and when Dawson did so directed him onto an isolated moss road where he stopped. Porter then searched for something, using a cigarette lighter to provide a light as it was dark at that time. Judging by the description of the location this appears to have been the Coolnasillagh Road.

[6] Porter told the police in interview that when he heard that Regan or someone else had rung the police and said that Woods was on the Glenshane Pass, he went in Dawson's car to the Glenshane Pass to look for Woods. He kept an eye out to see if Woods would come walking along the road and, despite it being about 9.00 pm and dark, got out to search.

[7] There was also evidence from a number of witnesses showing that Porter had previously displayed animosity towards Woods. June Evans said that in the summer of 2007 she saw Porter punch Gregory Woods on the face for no reason. Adrian Chambers said that in October 2007 he saw Porter break Gregory Woods' finger by bending it back. Terence Woods, a cousin of Gregory Woods, alleged that when he told Porter that Porter could not beat Gregory Woods at boxing, Porter said "That he would beat him and that he was going to kill him". This was on the Thursday before Woods went missing. John Gallagher said that on 31 January 2008 Porter came to Terence Woods' home looking for Gregory Woods in an aggressive frame of mind, saying that he was going to "beat" Woods and "get him". On 2 February 2008 Norma Kane alleged that she heard Porter saying to her son Stephen on the telephone, "can you get your hands on a trigger?" and that Gregory Woods had to be caught because he had sexually abused A. Mr John McCrudden QC (who appears for the defendant with Mr Seamus McNeill) said that these allegations are not accepted. However, they are part of the prosecution case on the committal papers, and the defendant has not sought to have a Newton hearing to contest them. Whether or not each could be established in whole or in part, when looked at in their entirety their cumulative effect lends credence to Porter's actions on this night being motivated by hostility and animosity towards Mr Woods, and not just, as Mr McCrudden put it, a drunken enterprise and jape that went too far.

[8] On 2 February 2008 the police stopped a car in which Porter was travelling, and in the course of conversation Porter said to Constable Riddell, "I am going to kill Gregory Woods if I find him". No response was made to this statement by the police and it would therefore seem that they did not take it seriously. Constable Conway, who was also present, alleges that Porter said that Gregory Woods is a dirty old perverted bastard and that he hated the

bastard. It appears that the reason for these statements was that B, a friend of Porter's, alleged that he had been sexually assaulted by Woods.

[9] The evidence of Professor Crane shows that the deceased was considerably intoxicated. It was a very cold night, with the temperature in or around 0 degrees Celsius. The deceased was abandoned by both defendants in circumstances which were such, given the darkness, the cold, his considerable intoxication and his not wearing any clothing capable of providing him with adequate protection from the elements, as to place him in considerable danger because he could easily become disorientated and get lost in the forest, or end up stumbling across a bog towards lights in the distance, and in either event falling and dying from hypothermia.

[10] Although there are understandable concerns that Mr Woods may have been assaulted, it was stated by the prosecution during the Rooney hearing that

“... it has to be conceded that there was no sustained or thorough-going attack upon Woods, either on the admissions by either party to other people, or on the objective forensic or pathological evidence.”

When outlining the evidence for the prosecution at the sentencing hearing last week Mr Mateer QC (who appears with Mr Russell Connell) confirmed that

“the Pathologist found no evidence of any significant injuries, which would tend to suggest that if there was an assault it was of a minor nature and it certainly played no part in the deceased's death.”

The defendants have pleaded guilty to manslaughter on the basis that they were guilty of gross negligence by abandoning Mr Woods in a remote location when he was extremely drunk and not properly clothed to cope with the elements, that represents their culpability for Mr Woods death, and I sentence them on that basis.

[11] I have been provided with a comprehensive psychiatric report on several members of the deceased's family, and his former wife, prepared by Dr Christine Kennedy, a consultant psychiatrist, and I have also been provided with their victim impact statements as to the effect of these tragic events upon them. It is clear from their accounts to Dr Kennedy, and from their statements, that they have been significantly affected by these events. Some have had to receive medication; others have tried to cope with their loss as best they can. I do not wish to add to their grief by repeating all they have to say, but a number of matters require emphasis.

[12] Mrs Margaret Woods is the 65 year old mother of the deceased. She has already lost her husband and another son, and understandably says that it was harder to get back to work this time, she was depressed, weepy and felt that she was "entirely finished" after Gregory's death. In her statement she describes in simple and moving terms the continuing effect upon her of these events. Dr. Kennedy concludes that Mrs Woods

".. has significant depression and suicidal thinking in the context of a grief reaction. Her prognosis is likely to be poor given her age and the traumatic circumstances of her son's death. Her mental health impacts on her cardiac condition."

[13] Declan Woods is now 17. In his statement he describes his great sense of loss in simple, eloquent and poignant terms. He has frequently attended his GP since May 2009, as well as numerous casualty attendances and several out of hours emergency medical consultations. His symptoms were felt to be indicative of panic attacks, and he was prescribed medication which has changed over time, although as recently as 27 April 2010 he was again prescribed medication for control of anxiety. Dr Kennedy's opinion is that he

"has arguably suffered the most harm given the severity of his difficulties at a critical point in his development and with clear impact on his social and occupational functioning. His difficulties are now chronic being more than 2 years in duration and he is reliant on medication at the age of 17."

[14] Christopher Woods is now 21. In a short and dignified statement he expresses his sense of loss because of his father's death, and the sense of fear he and his family feel, and these are also referred to in Dr Kennedy's report. Her opinion is that

"Although Mr Christopher Woods presents himself as reasonably well, he minimises the impact on himself through reduced ability to socialise, lowered self-confidence; he also has a problem with the somatisation of distress i.e. his anxiety is manifest in the form of headache."

[15] Mrs Breege Woods is the widow of Gregory Woods. Mr Mateer explained that although they were divorced their relationship remained close, and she looked after her husband, for example ensuring that he got enough to eat. Mr Mateer QC summarised her victim impact statement, in which she said that she wouldn't really pass a day without waiting for her ex-husband

to come into the house. She recounted her symptoms to Dr Kennedy who concluded that

“Her ongoing anxiety/depression affects her arthritic condition and experience of pain adversely.”

[16] Mr Mateer also summarised the victim impact statement of Mrs Bernadette Woods Moore, the sister of Gregory Woods. Sadly, she was in the United States at the time of her brother’s death and because she was 39 weeks pregnant was unable to return home to be present at her brother’s funeral.

[17] The pre-sentence report on Porter, who is now 42, confirms what is obvious from the committal papers, namely that he is a heavy drinker. He says that he does not remember anything of the circumstances leading up to the death of Mr Woods because he had been drinking heavily for a number of days prior to that. The report also points out whilst on bail on this matter he breached the no-alcohol condition of his bail on several occasions. Despite this, the report states that Porter does not consider himself to be alcohol dependent, has not sought professional support to address his drinking, and asserts that he is managing with the support of the people around him. Not only has Porter breached his bail conditions, but he has done so again after I gave the advance indication of sentence in which I indicated that I considered that a custody probation order would be appropriate.

[18] On 30 May 2010 he was involved in an accident whilst riding a scooter and suffered a significant hand injury. He was breathalysed at the hospital and found to be over the legal limit for driving. Given that he has breached his bail because of his drinking Porter is obviously deluding himself as to his ability to control his drinking, and these breaches of his bail conditions, and in particular his further breach whilst awaiting sentence, show that he is unwilling to make the effort to control his drinking either. I consider that this further breach of his bail conditions constitutes a material change in circumstances since the advance indication of sentence was given and I no longer consider that a custody probation order is appropriate.

[19] I heard evidence from Mrs Jean McGonagle who has come to know Porter well in recent months. I entirely accept her evidence that she is willing to monitor his behaviour. Having heard her evidence I have the highest admiration for what she has done and what she is prepared to try and do to help Porter. Unfortunately, it is noteworthy that the latest breach of his no-alcohol bail condition occurred whilst at a barbeque organised by other members of her family who have also become friendly with him, and so I believe that despite her willingness to try to help Porter, he will not really make the necessary effort to really come to terms with his alcoholism.

[20] Porter has a substantial criminal record for petty offences, and whilst I do not consider that it amounts to an aggravating factor he cannot claim the credit that would be given for a clear record. I consider that the evidence of his previous animosity to which I have referred constitutes an aggravating factor. I consider that the only mitigating factor is that he pleaded guilty shortly before the trial was due to start, although the credit to be allowed for that must be reduced for the lateness of the plea.

[21] The medical report from Dr Trinick, a consultant chemical pathologist and general physician, recounts that at the time of this offence Porter was receiving medication for depression and pain relief, but I do not consider that his ill-health is such as to justify any reduction in his sentence.

[22] Regan had also been drinking at the time, it would appear that he has been severely addicted to Butane gas since he was 16, and continued his glue sniffing after this offence until he was recently remanded in custody. The pre-sentence report refers to his "chaotic lifestyle fuelled by his chronic addiction to Butane Gas", and it seems from the report prepared on his behalf by Professor Robin Davidson, a consultant clinical psychologist, that he has refused treatment for this addiction in the past. I agree with the conclusion in the pre-sentence report that his record, including an assault on his sister, shows that he is at a high risk of re-offending.

[23] Regan is now 31, and I consider that in some respects his role in these events was less culpable than Porter, as he drove the others up to where Mr Woods was abandoned. It is also to his credit that he contacted the police to report that Mr Woods was missing. Nevertheless, he should have done more to assert his authority as the driver of the car to prevent Mr Woods from being abandoned in the first place, and taking that into account I do not propose to make any distinction between the defendants in terms of their respective culpability for Mr Woods death.

[24] As has often been said 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 am not aware of cases in this jurisdiction comparable to the present case, but at the Rooney hearing I was referred to R v Ruffel [2003] 2 Cr. App. R (S.). In that case the defendant knew the deceased had injected himself with heroin and that he was unwell, but left the deceased outside the house in cold weather, and he died from hypothermia and opiate intoxication. The Court of Appeal reduced a sentence of three years imprisonment after conviction to two years.

[25] The circumstances of the present case are not exactly comparable to those of Ruffel, and the culpability of both defendants is greater because of the history of previous animosity towards the deceased on the part of Porter, and they deliberately took Mr Woods to a remote place and abandoned him there in circumstances where there was an obvious and considerable risk to his health and well-being.

[26] As this offence was committed at a time when the provisions of the Criminal Justice (NI) Order 1996 applied I am obliged to consider whether a custody probation order should be imposed upon either defendant. Although Porter's heavy and persistent drinking requires to be addressed, for the reasons I have given I am satisfied that he is unwilling to do so, and so a custody probation order will not serve any useful purpose in his case. In Regan's case I consider that, if he is prepared to consent, he could benefit from probation help to combat his addiction to Butane gas, although given the long-standing nature of his addiction there is an obvious risk that he may break his probation.

[27] I sentence Porter to three years imprisonment. I sentence Regan to 18 months imprisonment to be followed by eighteen months probation subject to the three conditions recommended in the pre-sentence report. The sentence in his case would otherwise have been three year's imprisonment.