

IN THE CROWN COURT OF NORTHERN IRELAND

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THE QUEEN

v

ROBERT GERARD McCAMLEY

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STEPHENS J

**Introduction**

[1] Robert Gerard McCamley, on 8 December 2006 you were arraigned on two counts on an indictment charging that on 12 November 2005 you attempted to murder Barry Shields or in the alternative that you unlawfully and maliciously wounded him with intent to cause him grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861. At that stage you pleaded not guilty to the first count of attempted murder. On the second count you pleaded guilty to the lesser offence under Section 20 of the Offences Against the Persons Act 1861. The prosecution did not accept that plea and the matter proceeded to trial.

[2] The trial was due to commence on 18 June 2007 and after a jury had been sworn your counsel asked for you to be re-arraigned on the second count. You then pleaded guilty to the offence of unlawfully and maliciously wounding Barry Shields with intent to cause him grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861. The Crown accepted that plea and did not proceed with the charge of attempted murder which was left on the books not to be proceeded with without the leave of this court or the Court of Appeal.

[3] Mr Lavery QC, who appeared for the prosecution, has informed the court of two matters in relation to your plea of guilty. First that in the view of the prosecution it should be treated by the court as made at the earliest opportunity. Mr Lavery had just received instructions not to proceed with the charge of attempted murder if you pleaded guilty to the offence under Section 18 of the Offences Against the Persons Act 1861. Secondly that the

plea was of great assistance to the prosecution in light of the apprehensions of the victim and necessary witness at the trial, Barry Shields. He had consumed alcohol and drugs on the day that the offence was committed. He had some concerns about the evidence which he was required to give at trial and the prosecution had concerns as the reliability of that evidence. I now state in open court in accordance with the requirement set out in Article 33 of the Criminal Justice (Northern Ireland) Order 1996 that in view of the fact that you have pleaded guilty I am imposing on you a punishment which is less severe than the punishment I would otherwise have imposed.

[4] In this judgment I will indicate whether I accept that the plea of guilty was entered at the earliest opportunity. However at this stage I make it clear that I give you credit for your plea of guilty which amongst other benefits avoided the need for the victim to give evidence at the trial.

### **Factual background.**

[5] The plea of guilty was entered on the basis of the factual circumstances set out in the prosecution statements. The circumstances giving rise to your offence have already been outlined at some length by Ms. Ievers on behalf of the prosecution. You are a first cousin of your victim, Barry Shields. It is apparent that you and your victim both have major addictions to alcohol and drugs. You had consumed a considerable quantity of alcohol from approximately 7.00 pm onwards on 11 November 2005. You had in addition consumed drugs. As a result you were heavily intoxicated with drink and drugs. Barry Shields your victim was also grossly intoxicated. You were both in your house at 30 O'Donoghue Park, Bessbrook. A dispute then arose between you and Barry Shields in which you accused him of breaking your window. This dispute spilled out onto the street outside your house at approximately 2.30 am. Once outside your house you continued to argue for a period of approximately 2 hours. This involved not only shouting at each other but also pushing and shoving. This escalated when you punched Barry Shields on the face. He fell to the ground and you started to kick him. At this stage your victim got up. He attempted to escape by going down an entry beside the house. You then went back into your house and almost instantly came back out holding a knife. This was a kitchen knife with a serrated blade approximately 8 inches – 9 inches long. You were swinging this knife about. You followed your victim up the entry with the knife. You stabbed him in the left upper chest area. This caused a deep stab wound. You left him where he collapsed. You were then seen coming out of the entry still carrying the knife and shouting "I hope you die". You were also heard saying "He broke my window and I stabbed him". You appeared to be acting tough and said "Look at me, look what I've done". You also said "He deserved to be stabbed. He broke my window".

[6] As I have indicated you initially were heard declaring that you had stabbed Barry Shields and purporting to justify doing so on the basis that he had broken your window. However subsequently you attempted to evade responsibility for what you had done. To one witness at the scene you said "I didn't do nothing. It wasn't me." To the arresting police officer you said "I had my window broke. My cousin and I chased after them. Why would I stab my cousin?" Later you put forward a different excuse "He came at me with a knife but he tripped and he dropped the knife. Then I picked it up and I went for him". Later again you said "Somebody threw something at my window right and I went out the other way and he went that way and I came back round and my window was broke and when I came back I seen him lying in blood and I, I went and told people to ring them the police like and I went over to him right". It is quite apparent that you did not give a full and frank description of what occurred at the earliest opportunity when you were interviewed by the police. Rather you attempted to evade responsibility for what had occurred.

**Personal background of the offender.**

[7] You are 23 years of age having been born on 11 October 1983. You are unemployed and single though you have a four year old son by a previous relationship. You originate from Bessbrook growing up there in the care of your father and stepmother. You commenced smoking Cannabis at the age of 14. You progressed to the use of harder drugs such as Ecstasy, Speed and eventually Cocaine and Heroin. At the time of this offence you were daily using Class A drugs. You were opiate dependent. At the age of 16 you left school and commenced training as a bricklayer at a training centre in Newry. After some months you were recruited by a local contractor with whom you were employed as a bricklayer for over a year. Unfortunately you progressed into serious and sustained drug use as a consequence you ceased working and have not been employed since then.

**Attitude of the offender to the offence and risk of further offending.**

[8] I have read and considered the report from Stephen Hamilton, Probation Officer, dated 8 August 2007. It is apparent that when you were interviewed by Mr Hamilton on behalf of the Probation Board you were vague in relation to your account of this incident. Mr Hamilton has concluded that this lack of clarity appeared to be due to a combination of your state of intoxication on the night in question and also an unwillingness to reflect on the gravity of the offence. He considers that you do not appear to have grasped the longer term implications of your actions on your victim.

[9] This offence has indicated that you have a propensity to use violence to cause harm with no regard for the consequences or the impact on your victim. I accept however that the situation was influenced by drug use. Accordingly

if you are able to refrain from drug use then the risk of re-offending will be reduced. In that respect I note that during your period of incarceration on remand since November 2005 you have broken the destructive cycle of drug use that you were in. I accept the Probation Office view that you are a medium risk of re-offending.

### **Injuries sustained by the victim and the victim impact.**

[10] The deep stab wound to Barry Shields' chest could have been fatal. He lost a massive volume of blood. The effects of this stab wound were accentuated by the fact that he was lying in the cold for a period of time. As a result of his massive blood loss Barry Shields suffered a lack of blood supply, and therefore oxygen, to his brain causing hypoxic brain damage. He has in fact recovered from the injury to his chest and chest wall but he is still seriously affected by the brain injury. He was unconscious for approximately 2-3 weeks. After his initial treatment he was unable to move his arms or legs in any coordinated manner. His speech was affected and he had difficulty swallowing. According to the evidence of Mrs Geraldine Boyce movement in his arms and legs has improved but he is left with a tight stiff left leg and a poorly functional left upper limb. He is unsteady and vulnerable to falls. I set out parts of the victim impact report dated 16 August 2007. This report was prepared by Mrs Geraldine Boyce Senior Practitioner, Social Work Specialist. It is clear that there has and will remain a lifetime impact on Barry Shields.

“2.2 As a result of the assault, Mr Shields sustained serious physical and brain injuries, which has resulted in significant incapacitation and many emotional and psychological effects.

3.1 Mr Shields is a 28 year old single man. He has one younger brother, aged 24 years.

3.2 Previously he had lived in his own accommodation, however, since the physical assault he has resided with his mother as he is now unable to live independently due to the levels of incapacitation experienced.

3.3 Mr Shields has stated that he was unemployed at the time of the assault but had previously worked in joinery and as a labourer. The extent of his injuries has resulted in him being unable to resume any type of manual work at present or in the future.

3.4 Mr Shields has described previously engaging in a number of activities including playing soccer and socialising with friends, going on holidays, etc. At present his lifestyle is considerably restricted and he is unable to engage in any of the leisure or social activities he previously enjoyed.

4.4 These include impaired function to his left side which causes him to be unsteady when walking, impaired function to his left arm, muscle spasm, difficulty in cognitive ability and processing information, memory lapses, lack of concentration, agitation, slurred speech, loss of appetite and night-time enuresis.

4.5 The aforementioned physical symptoms have also resulted in a level of incapacitation for this young man. He has described how he requires assistance with aspects of care, such as dressing, undressing, getting into and out of the bath, having his meals prepared, assistance with laundry, supervision both indoors and outdoors as a result of impaired function to left side and also as a result of memory lapse, having to be reminded of appointments and assistance with medication, etc.

5.2 He has described high levels of anxiety, and his accounts also suggest increased aroused state and hyper-vigilance triggered by noises or loud bangs.

5.3 He has also spoken of experiencing difficulty with sleeping frequently encountering periods of disruptive sleep, nightmares and flashbacks about being stabbed. Such responses are again consistent with extreme psychological stress and unresolved trauma.

5.4 His lifestyle and functioning are also characterised by frequent mood swings, oscillating between anger and frustration to periods of low mood and hopelessness.

## **7. IMPACT ON FAMILY**

7.1 The impact of the physical assault on Mr Shields has also been experienced by his family, particularly his mother.

7.2 Mrs Shields' accounts suggest that she has been greatly affected. She has described initial feelings of shock, anxiety and concern for her son as a result of the serious and critical injuries sustained.

7.3 She has also confirmed her son's accounts of the significant physical incapacitation, loss of independence and emotional and psychological effects experienced by him at present.

7.4 For Mrs Shields this has resulted in her having to attend to many aspects of her son's care and supervision on a daily basis. She is also exposed to her son's anxiety and mood swings and is often awakened at night as a result of his disruptive sleeps and nightmares.

7.5 Like her son, she is also uncertain about his future and the prognosis for him."

[11] I also take into account the rest of the medical evidence together with the statement dated 25<sup>th</sup> June 2007 of Sean Curran, senior physiotherapist. He concluded that your victim's left upper limb function had improved well, allowing him to take care of all his activities of daily living. That Barry Shields however continued to demonstrate a left sided weakness and decreased fine motor control of his left upper limb and hand. That he had an ongoing upper limb associated reaction, meaning that as he fatigues his left arm tightens up into flexion. In so far as the description of the physical consequences of the injuries are concerned, I prefer the evidence of Sean Curran, senior physiotherapist, to the evidence of Geraldine Boyce, Social Worker.

#### **Procedural requirements for the custodial sentences.**

[12] A pre sentence report has been made available to me and I have considered it in accordance with the provisions of Article 21 of the Criminal Justice (Northern Ireland) Order 1996. In determining your sentence I have borne in mind the provisions of Article 19(2)(a)(b) and Article 19(4) of the Criminal Justice (Northern Ireland) Order 1996. I consider that the offence before me now is so serious in its content that only a custodial sentence is justified and that, given that your offence was a violent offence I also consider that only such a sentence will be adequate to protect the public from serious harm from you. I am of that opinion for the reasons set out in this judgment.

I emphasise that you have committed a most serious offence. You are a danger and a risk to others.

**Sentencing guidelines in relation to an offence under Section 18 of the Offences against the Persons Act 1861.**

[13] In *Attorney General's Reference No. 18 of 2002 (Christopher Simon Hughes)* [2002] EWCA Crim 1127 the Court of Appeal in England and Wales stated that a sentence in the bracket of three to eight years was appropriate for offences contrary to section 18 of the Offences against the Person Act 1861. I also bear in mind paragraph B2.42 of Blackstone's Criminal Practice, 2007 where it is stated that the normal sentencing range is in the bracket of three to eight years although sentences over eight years are upheld in particularly grave cases.

[14] In *R v Stephen Magee* NICA 15/6/07 Kerr LCJ stated at paragraphs 23 and 24:-

“[23] It is the experience of this court that offences of wanton violence among young males (while by no means a new problem in our society) are becoming even more prevalent in recent years. Unfortunately, the use of a weapon – often a knife, sometimes a bottle or baseball bat – is all too frequently a feature of these cases. Shocking instances of gratuitous violence by kicking defenceless victims while they are on the ground are also common in the criminal courts. These offences are typically committed when the perpetrator is under the influence of drink or drugs or both. The level of violence meted out goes well beyond that which might have been prompted by the initial dispute. Those who inflict the violence display a chilling indifference to the severity of the injury that their victims will suffer. Typically, great regret is expressed when the offender has to confront the consequences of his behaviour but, as this court observed in *R v Ryan Quinn* [2006] NICA 27 “it is frequently difficult to distinguish authentic regret for one's actions from unhappiness and distress for one's plight as a result of those actions”.

[24] The courts must react to these circumstances by the imposition of sentences that sufficiently mark society's utter rejection of such offences and send a clear signal to those who might engage in this type of violence that the consequence of conviction of these

crimes will be condign punishment. We put it thus in *Ryan Quinn*: -

“... it is now, sadly, common experience that serious assaults involving young men leading to grave injury and, far too often, death occur after offenders and victims have been drinking heavily. The courts must respond to this experience by the imposition of penalties not only for the purpose of deterrence but also to mark our society’s abhorrence and rejection of the phenomenon. Those sentences must also reflect the devastation wrought by the death of a young man ...”

[15] I was referred to the decision of Weir J in *R v Barry Simpson* WEIF5472. and to the decision of Coghlin J in *R v Vance and others* (2007) NICC 24. In that latter case at paragraph [11] Coghlin J said:-

“Counsel have helpfully furnished me with a number of relevant decisions from the courts in England and Wales together with the most up to date sentencing guidelines from the Sentencing Advisory Council. I have also consulted the useful guidelines provided by the Northern Ireland Judicial Studies Board which relate to sentencing in this separate jurisdiction. Reference to other cases and to guidelines is encouraged to promote consistency in sentencing but guidelines are guidelines and consistency is only one component of the overall task of the court which is to do justice in all the circumstances of the individual case taking account of the various interests involved including the accused, the victims and the public. In doing so I remind myself of the words of Kerr J, as he then was, 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.”



The Court of Appeal in Northern Ireland has frequently observed that attempting to fix a sentence by reference to previous cases as if using a logarithmic table is not a fruitful approach”.

**Aggravating features relating to the offender.**

[16] You have 31 previous convictions but 18 of those are for road traffic offences. In the context of this offence the only previous convictions of significance are those involving violence. Your most recent court appearance was on 14 June 2006 and this was the first offences of violence namely aggravated assault and common assault for which you received a term of imprisonment. I take into account your previous record in that respect as an aggravating factor, but in the context of this case not a serious aggravating factor.

**Aggravating features relating to the offence.**

[17] You caused the serious and enduring injuries that I have outlined. I accept that those injuries are not catastrophic. However I consider that the injuries that you inflicted are a serious aggravating factor.

[18] You used a knife. The prosecution have accepted that you did not intend to kill Barry Shields and I will sentence you on that basis. However it is clear that you took a wicked risk with the life of Barry Shields by using a knife in these circumstances. The fact that you used a knife is an aggravating factor.

[19] You committed this offence whilst under the influence of alcohol and drugs. Ordinarily I would consider this to be an aggravating feature. See paragraph 1.22 of the Sentencing Guidelines Council Guideline entitled “Overarching Principles: Seriousness” dated December 2004. However in your case you are addicted to drink and drugs. I consider that your case is different from a person who has a choice as to whether to consume drink and drugs in the knowledge that potentially they are exposing others to erratic behaviour which behaviour is far more dangerous for the victim. In your case I accept that you were the subject of an addiction and accordingly in your case I treat this as a neutral feature.

**Mitigating features relating to the offender.**

[20] I take into account your personal circumstances but on a strictly limited basis. I bear in mind that in cases of this gravity your personal circumstances are of limited effect in the choice of sentence see *Attorney General's Ref (No 7 of 2004) (Gary Edward Holmes) (2004) NICA 42* and *Attorney General's Ref (No 6 of 2004) (Conor Gerard Doyle) (2004) NICA 33*.

[21] I take into account the remorse that has been expressed on your behalf by counsel during the plea in mitigation. I also take into account as evidence of remorse that at the scene you asked various witnesses to obtain an ambulance for your victim and that at your arraignment you pleaded guilty to the section 20 Offence and therefore accepted that you stabbed your victim. However I do not see any particularly clear evidence in the probation report of regret or remorse nor is there any real recognition in that report by you of the really serious injuries that you have caused to your victim Barry Shields. I accept in part that there is a degree of remorse but there is also an element of indifference to the severity of injury that your victim has suffered.

[22] I take into account as a mitigating factor your age at the time that these offences were committed but I do so on a strictly limited basis see *Attorney General's Reference (No 3 of 2006) (Michael John Gilbert)* [2006] NICA 36 at paragraph [25].

#### **Mitigating features in relation to the offence.**

[23] At the time that these offences were committed you were heavily intoxicated with drink and drugs. Your perception of events may accordingly have been badly distorted. The offence was not premeditated or planned. I do not consider this to be a mitigating feature. I consider that the lack of premeditation through the consumption of drink and drugs is a neutral feature. I consider that your intoxication with drink and drugs in the particular circumstances of this case is a neutral feature.

[24] I take into account the mitigating factor that you have pleaded guilty. I make it clear that the sentence I am now imposing is less than I would have imposed had you not pleaded guilty at the stage which you did. However I refer to the judgment of Kerr LCJ in *Attorney General's Ref (No 1 of 2006) (McDonald and Maternaghan)* (2006) NICA 4 where he said:-

“[18] If a defendant wishes to avail of the maximum discount in respect of a particular offence on account of his guilty plea he should be in a position to demonstrate that he pleaded guilty *in respect of that offence* 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 subsequently withdrawn or not proceeded with.

[19] To benefit from the maximum discount on the penalty appropriate to any specific charge a

defendant must have admitted his guilt of that charge at the earliest opportunity. In this regard the attitude of the offender during interview is relevant. The greatest discount is reserved for those cases where a defendant admits his guilt at the outset.”

[25] In this case you did not admit your guilt during interview. Indeed the version of events that you gave to the police was clearly unreliable. You did not offer a plea of guilty to the Section 18 offence prior to the commencement of trial. This is not a case where the evidence had to be tested at trial before the prosecution was prepared to accept a plea of guilty to the Section 18 offence. A plea of guilty was not entered in your case until the jury was sworn and the trial was about to commence. I do not propose to treat you as having pleaded guilty to the Section 18 offence at the first available opportunity. Accordingly I have not given the full element of discount which I would have accorded to an earlier plea on your behalf.

[26] A plea of guilty relieves victims from the strain and distress of facing the ordeal of giving evidence. In this case it relieved your victim, Barry Shields, of giving evidence against his first cousin in front of his family in a public courtroom. It also relieved him from the trauma of dealing with his own condition on the night that this offence was committed. Mr Lavery has recognised, and I accept, that your victim faced considerable apprehensions in giving evidence at trial. Ordinarily if a plea of guilty is entered at the last minute the victim is only spared some of the strain and distress but by no means to the extent that he should be relieved of it if a plea of guilty was entered at the earliest opportunity. Accordingly a late plea of guilty ordinarily only relieves some of the stress and strain on the victim and accordingly there should be a lesser discount in recognition of a lesser benefit to the victim. However in your case your victim would not have been relieved of the stress of appearing to give evidence by virtue of the fact that the prosecution were intent on proceeding with a charge of attempted murder until the very morning of trial quite irrespective of whether you had pleaded guilty to the Section 18 offence at an earlier stage. Accordingly I consider that even if you had pleaded guilty at an earlier stage to the Section 18 offence your victim would still have had to suffer the strain and distress of preparing for trial by virtue of the fact that the prosecution were proceeding with a charge of attempted murder. Accordingly insofar as your plea of guilty has relieved your victim of the strain and distress of giving evidence in court I consider that relief was achieved by you at the earliest opportunity. Accordingly I give you a greater discount than would ordinarily apply to a guilty plea entered at the door of the court.

[27] In arriving at the discount for your plea of guilty I have also taken into account the concerns expressed by Mr Lavery on behalf of the prosecution in relation to the reliability of the evidence of your victim. He was a necessary witness at the trial. It is open to this court to give a greater discount for a plea

of guilty if the prosecution face difficulties in establishing your guilt at trial. See *R v Gavin David McCartan* (2004) NICA 43 at paragraph (13). However in view of the other evidence that was available to the prosecution, in addition to the evidence of your victim, I do not consider that this is an aspect which would materially affect the discount available to you for your guilty plea. Indeed I have given consideration to the question as to whether the discount should be reduced in view of the strength of the evidence against you in accordance with the proposition that there should be a lesser discount where a defendant is caught red-handed, see *R v Pollock* (2005) NICA 43. In the event I have decided not to do so in view of the fact that two witnesses on behalf of the prosecution had withdrawn their statements. It was open to you to brazen it out to determine whether other witnesses would also withdraw their statements. You decided not to do so.

[28] In arriving at the discount for your plea of guilty I also bear in mind the submissions that were made to me today by Mr Berry Q.C. on your behalf that after you had pleaded guilty to the Section 20 offence it was most likely that your victim would not have had to have given evidence. Rather it was likely that his statement would have been read in evidence at the trial. That the real substance of the dispute related to the medical evidence as to intent. However your victim was unaware of that and no final decisions had been made in that regard.

### **Custody probation.**

[29] As you must receive a substantial period of imprisonment in excess of 12 months I am required by statute to consider whether I should impose a custody probation order. In view of the contents of the probation report I have concluded that you would benefit from probation at the conclusion of a period of custody in view of your abuse of alcohol and drugs prior to the commission of this offence and the previous lack of stability in your life.

[30] In fixing your sentence I have born in mind the totality principle and in doing that I bear in mind that I have also to deal with an earlier suspended sentence of five months imprisonment and as to whether to remove the suspension and if I do so then whether the sentences should be consecutive or concurrent.

[31] For the section 18 offence if you consent to a custody probation order I will sentence you to 5 years and 7 months imprisonment followed by 2 years' probation. It will be a requirement of the probation order that you shall present yourself in accordance with the instructions given by the probation officer to a designated probation office to participate in an anger management programme on nine sessions during the probation period and while there comply with instructions given by, or under authority of, the person in charge. It will also be a requirement of the probation order that you shall undertake

drug focused treatment and/or testing as directed by your supervising probation officer during the probation period.

[32] If you do not consent to custody probation I will sentence you to 6 years and 7 months years' imprisonment.

[33] I make it clear that the 2 year probation period does not equate to the reduction in the period that you will spend in custody. I consider that you require 2 years' probation to enable you to reintegrate into society and because of the risk that you would otherwise pose. In short, that you need that length of probation in view of your history of alcohol and drug addiction.

[34] I must now enquire from you as to whether you consent to a custody probation order. Do you consent to a custody probation order being made?

[35] I understand that you consent. Accordingly I sentence you for the section 18 offence to 5 years and 7 months imprisonment followed by 2 years' probation. It will be a requirement of the probation order that you shall present yourself in accordance with the instructions given by the probation officer to a designated probation office to participate in an anger management programme on nine sessions during the probation period and while there comply with instructions given by, or under authority of, the person in charge. It will also be a requirement of the probation order that you shall undertake drug focused treatment and/or testing as directed by your supervising probation officer during the probation period.

**Suspended sentence.**

[36] There is then the matter of the suspended sentences. At the time that you committed this offence suspended sentences totalling 5 months imprisonment had been imposed on you by Newry Magistrate court. I remove the suspensions so that you will now serve 5 months for those previous offences. I have considered whether that period should be consecutive or concurrent to the sentence that I have already imposed in respect of the Section 18 offence. In considering that question I have borne in mind the totality principle. I order that the periods should be consecutive.

[37] Accordingly the total period of imprisonment will be 6 years followed by two years probation.