

Neutral Citation no. [2007] NICC 19

Ref: **HARC5857**

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

Delivered: **8/6/2007**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

v

RYAN KENNETH McBRIDE

Icos No 07/024385

HART I

[1] The defendant has pleaded guilty to a single count of arson contrary to Article 3(2) and (3) of the Criminal Damage (Northern Ireland) Order 1977, alleging that he damaged a dwelling house at 326 Castlereagh Road, Belfast "being reckless as to whether the lives of persons therein would be thereby endangered". The prosecution accepted this plea and the remaining count of arson intending to endanger the lives of the persons in 326 Castlereagh Road was ordered to lie on the file.

[2] In the early hours of 12 August 2006 the dwelling house at 326 Castlereagh Road, Belfast contained seven Polish people, a number of men, and, it seems from the evidence of Rhana Galway who lived next door, a female. A number of the men returned from a nightclub at about 1.30am and became aware that the defendant, who lived at 323 Castlereagh Road, diagonally across the road from 326, was shouting at them. As will become apparent later the defendant was grossly intoxicated, and, due no doubt in part to that and to the language difficulty, it was difficult for the Polish men to understand exactly what the defendant was saying. The defendant was heard to remark "I've been living here for over 20 years". He then crossed the road to 326, knocked at the door and rang the doorbell. There was an exchange with one of the occupants of the house who found it difficult to

understand exactly what the defendant was saying. The defendant then said "I'll be back" and left.

[3] The defendant admitted to the police that he then made his way along Ladas Drive to the BP Filling Station where he purchased a container and a quantity of petrol. He made his way back to 326 and proceeded to pour the petrol over the doorway and set it alight. Some of the occupants at 326 were still up and heard the sound of breaking glass. Almost immediately smoke started to spread through the building, the flames spread rapidly and, as can be seen from the photographs, the interior of the hallway suffered considerable fire damage and smoke started to spread upstairs. The occupants fled from the house, some through an upstairs window. Three were in an upstairs bedroom, and had to wrench a double-glazed window off its hinges and escape through the window onto a sloping roof at the rear of the adjoining premises. They were rescued from there by the Fire Service. The remaining occupants escaped through the rear door on the ground floor, but at least one jumped from the upper landing over the banister and burnt his leg and bruised his ribs in doing so.

[4] The police were called to the scene and found the defendant nearby. There was a strong smell of petrol from him and he was arrested. At the scene after caution he made an unsolicited comment stating "fucking Poles shouldn't be here".

[5] Although he denied lighting the flames in a remark he made on the way to the police station, when questioned he immediately admitted that he had bought the petrol and set fire to the building. In the light of what he said to the police at the scene he was naturally questioned very closely as to whether or not there was a racist motive for this attack. The defendant claimed that he did not know that there were Polish people living at 326, and maintained that during the altercation at the doorway the person speaking to him said that he knew where the defendant lived and the defendant took that as a threat towards him and his mother. He then went round to the garage and bought the petrol. He said that he had done this

"...just to try and put the frighteners up him. I didn't mean I didn't, well obviously with fire you don't know what way it's going to go but I didn't expect obviously the fire that started and then after that I went I just sort of got off side".

[6] The defendant admitted that his comment was a racist comment, but denied that he had acted with any racist motive, saying that it was taken out of context.

[7] Ms McDermott QC on behalf of the defendant accepted that this was a racially offensive remark, but said that the defendant's only explanation for what he did was because of what he had perceived to be a threat against himself and his mother. Mr Murphy QC on behalf of the prosecution said that the prosecution could not put the matter any further than the remark itself.

[8] The defendant's comments clearly give rise to considerable suspicion that he acted as he did because of a racial motive. However, the defendant worked in the Docks and his employer provided a reference in which he explained that from time to time the company regularly required additional manpower supplied by a labour agency, and that this had included Polish workers. The reference continues:

"Race relations within the workforce had never been an issue. Neither I, nor any of our employees, are aware of any friction between Ryan and any other employee, whether a foreign nation or local."

The defendant was examined on a number of occasions by Dr Loughrey, a Consultant Psychiatrist, and in a letter to the defendant's solicitors of 12 September 2006 he said:

"Based on my evaluation of Ryan McBride I can find no evidence that this attack was racially motivated. I can find no evidence that Mr McBride is predisposed to racism, although my evaluation of this is limited to a psychiatric evaluation. That is to say, I elicited no ideas of psychiatric significance, such as paranoid ideas, in relation to members of the immigrant community or other racial groups."

Dr Loughrey also found that there was no evidence that the defendant was likely to re-offend in terms of fire raising. He reaffirmed this view in his later report.

[9] In the light of all of the evidence, whilst there is a strong suspicion that the defendant was racially motivated when he made this attack, I am not satisfied beyond reasonable doubt that was the case in the light of the evidence of his employer. I therefore sentence the accused on the basis that although his attack was plainly motivated by resentment and what he wrongly perceived to be the attitude towards himself and his mother expressed by the occupants of 326, this was not a racist attack as such.

[10] This was an extremely grave incident. As the photographs demonstrate, the fire took hold rapidly and smoke spread throughout the building. There were seven people in the building at the time, three of whom had to escape through an upstairs window. Some appear to have been asleep at the time, and one woke because he smelt smoke and was having problems in breathing. There was plainly a very considerable danger that had the occupants, particularly those upstairs, not been able to escape from the building several could have been killed. I consider that the number of people whose lives were endangered by the defendant's action represents an aggravating factor of considerable significance in the present case.

[11] The defendant is 25 and has a completely clear record. He admitted what he had done when questioned by the police and pleaded guilty at the first opportunity. He is therefore entitled to the maximum degree of credit for his early plea of guilty and acceptance of responsibility for his actions. He has expressed remorse for his behaviour and I accept that that is genuine. It is clear from the references which have been placed before the court that he is a hardworking young man of previous good character. I am satisfied that he acted out of character when he committed this offence. Unfortunately, he had developed the habit of drinking excessively at weekends. On this occasion he had been drinking after work and it appears from his own account that he had in the region of four pints of lager and 10-12 Bacardis and Coke. He was plainly grossly intoxicated.

[12] The pre-sentence report referred to the possibility of a lengthy suspended sentence as an alternative to a custodial sentence. Ms McDermott urged me to treat this as an exceptional case and referred me to a number of authorities indicating the appropriate range of sentence in cases of this type. She referred me to the Attorney General's Reference No 35 of 1996 (Hoyle) [1997] 1 Cr. App. R. (S.) 350, and the Attorney General's Reference No 61 of 1996 (McGregor) [1997] 2 Cr. App. R. (S.) 316. These cases, and the cases referred to in those judgments, suggest that sentences of 3-4 years imprisonment have been imposed in cases where one life was endangered. However, there are a number of other cases referred to in Butterworth's Sentencing Practice that suggest the range of sentence is normally between 3-6 years, with the sentences predominantly falling in the range of 5-6 years. See Potts (1996) 2 Cr. App. R. (S.) 291; the Attorney General's Reference No 1 of 1997 (Wheeler) [1998] 1 Cr. App. R. (S.) 54; Reynolds (1999) 2 Cr. App. R. (S.) 5; Gerrard [2004] 2 Cr. App. R. (S.) 11, and the Attorney General's Reference No 50 of 2005 (Joe Boniface Andrews) [2006] 1 Cr. App. R. (S.).

[13] Despite the defendant's clear record and early plea of guilty, his expression of remorse, and the fact that this attack was, I am satisfied, out of character for him, nevertheless the lives of seven people were put in very considerable danger by his actions. That he went some hundreds of yards to collect the petrol and return shows that he was determined to carry this attack

through. That he was grossly intoxicated may explain, but certainly cannot excuse, his conduct. I do not consider that a suspended sentence would be appropriate in a case of this gravity.

[14] As the sentence I am about to impose exceeds 12 months imprisonment I am obliged to consider whether a custody probation order would be appropriate. The pre-sentence report expresses the view that statutory supervision is not considered necessary in the defendant's case and I agree with that. The defendant has a clear record, his offence was out of character, and the pre-sentence report states that he is resolved to ensure that he maintains controlled drinking in the future and that he leads a positive and productive lifestyle in other aspects of his life. In those circumstances I do not consider that there is anything to be gained by incorporating a probation element in the defendant's sentence and I do not consider a custody probation order is appropriate.

[15] I sentence the accused to 5 years imprisonment.