

IN THE CROWN COURT IN NORTHERN IRELAND

OMAGH CROWN COURT (SITTING AT BELFAST)

THE QUEEN

-v-

VAIDOTAS STIRBYS
AND
RICARDAS STONKUS

HART J

[1] The defendants were originally charged with the murder of Donatas Velicka on 6 November 2007 and pleaded not guilty upon arraignment on 26 September 2008. Their trial was listed for 8 December 2008 but on 21 November 2008 they asked to be re-arraigned. Stonkus pleaded guilty to manslaughter which was accepted by the Crown, and Stirbys pleaded guilty to a new count of assault occasioning actual bodily harm of Mr Velicka which was accepted by the prosecution.

[2] All three were Lithuanians and worked in Dungannon. The deceased was born on 7 August 1987. Stirbys was born on 24 April 1989, and Stonkus was born on 10 May 1987.

[3] The events of that night commenced in a nightclub in Dungannon where it appears that Stirbys allegedly assaulted another Lithuanian man called Miroslavas Sidor in the toilets of the nightclub. One of the bouncers, Damien Magee, came into the toilets and came upon the aftermath of what was clearly a fight and decided to eject Stirbys from the nightclub. He later picked out Stirbys at a VIPER identification as the person whom Mr Sidor identified to him as his assailant in the toilet. Stirbys has not been charged with any offence in respect of the events in the toilet, but they suggest that at the very least he was in an argumentative frame of mind that night.

[4] Mr Magee decided that Stirbys should be ejected from the nightclub and entrusted this task to another bouncer, a Lithuanian called Paulius

Drevinskas who, as it happened, lived in the same house as Stirbys and worked with both Stirbys and Stonkus.

[5] After Stirbys was ejected from the nightclub there occurred the first of two separate attacks upon the deceased Mr Velicka during which he was struck three times. The first attack took place in Scotch Street and involved two blows. This attack was captured on CCTV which shows Stirbys and Stonkus walk to a group of people nearby. Stirbys is then seen to place his arm on the deceased's chest, and some 13 seconds later punches the deceased who falls to the ground. This is the first blow. The deceased tries to get to his feet whereupon Stonkus kicks the deceased to the head. This is the second blow and the end of the first attack. The deceased is seen to get to his feet and staggers in front of a passing car and then disappears from the CCTV.

[6] A number of witnesses who were passing in Scotch Street appear to have witnessed the immediate aftermath of these blows because the deceased was seen by Gary Gillespie to fall with his hands out in front of him as if he had been pushed onto the road. The deceased got up and made off as he was being pursued by a man in a black and white top. It is clear from the description that the deceased's attacker was Stonkus.

[7] At this point the CCTV captured another incident involving both defendants and yet another Lithuanian man. There are no charges relating to this episode because when this man was later interviewed he said that he had no recollection of the events of that night and made no complaint. However, the CCTV shows both defendants punching this man who then falls to the ground where he is kicked by Stonkus.

[8] Stonkus then followed the deceased into Union Place and shortly afterwards several witnesses saw the deceased being attacked by a man answering Stonkus' description. This is the second attack. Shauna Abernethy, a 16 year old girl who was a rear seat passenger in a car driven by Emma Mullen, described seeing one man being chased by another. The pursuer, who answers the description of Stonkus as he was wearing a white top, was described by Shauna Abernethy as taking "a leaping jump and kicked the man running in front on the back of the head at which point the man in front fell to the ground, he just dropped motionless." This was clearly the deceased.

[9] Emma Mullan described the attacker as kicking the male in the red T-shirt, who was clearly the deceased, but does not mention "a leaping jump" in her statement. Niamh Mullan was a front seat passenger in the car and thought that the pursuer hit the deceased "with either his hands or his feet before he fell to the ground".

[10] The second attack was also witnessed by Una Foley and Kathleen Hart who were passing in their car. They were student nurses. Una Foley said that she saw the man who was clearly Stonkus "raising his right arm and striking the staggering male on the back of the head". Kathleen Hart, who was looking in her rear view mirror, said that "the second male in the white shirt jumped at/on to the male in the red jumper". Because she was concerned at the force with which the deceased went down when the blow was struck Kathleen Hart returned to the scene in her car and they found the deceased lying in Union Place. They went to the aid of the deceased and rang 999 for an ambulance. They are both to be commended for their public-spirited action in going to the aid of the deceased, but unfortunately his injuries were of such gravity that he later died in hospital.

[11] It is accepted that after Stonkus pursued the deceased he then struck him a single blow, as a result of which he fell to the ground and sustained a fracture of the skull, and in the words of Dr Ingram, the assistant state pathologist,

'...there had been considerable bleeding over the surface of the underlying brain, of two types known as subdural and subarachnoid haemorrhage, as well as several areas of bruising on the surface of the brain. As a result of the surface bleeding and the bruising, the brain had undergone reactive swelling, termed cerebral oedema, and this was further complicated by the development of acute degenerative changes within the brain and secondary haemorrhage in the brainstem...It was the effects of this head injury which were responsible for his death some 2 ½ days after his admission to hospital.'

The second blow struck by Stonkus was the third blow inflicted upon the deceased, and it was the fall and impact of the deceased's head on the ground resulting from this blow that caused the death of the deceased, and it is accepted by the prosecution that neither of the first two blows caused or contributed to the death of the deceased.

[12] A police patrol was in the area and had seen the deceased stagger past their car. Constable Brannigan was concerned about his condition and got out of the vehicle and went in search of him. Not long afterwards he came upon Stirbys and Stonkus and when they saw him they ran off, however he was able to stop Stonkus. Constable Brannigan then went with Stonkus and another male to where the deceased was lying and being attended by Una Foley and Kathleen Hart. The deceased was taken to Craigavon Area Hospital.

[13] In his interviews Stonkus claimed that although he had a few beers he was sober, and that the deceased called him a 'kebab', saying 'did he want problems'? Mr Mateer QC (who appears for the prosecution with Mr Reid), explained that 'Kebab' is a derogatory term in the defendant's workplace. When Stonkus was shown the CCTV he accepted that it showed him, but said that the deceased verbally abused and provoked him, and that was why he kicked the deceased on the ground. He also accepted that he assaulted the second Lithuanian man who has not made a complaint, but was not able to say why he had done so. He denied deliberately following the deceased into Union Place, saying that they had simply gone in the same direction. He accepted that he had pushed the deceased on the shoulder and that the deceased then fell heavily, saying that he pushed him because of the derogatory remarks that led to him attacking the deceased earlier.

[14] Stirbys was not arrested until 3.00 pm that afternoon. During interview he said that he had only consumed one Vodka and Red Bull and was not drunk. He said that he met two men outside the nightclub and because they were aggressive, asking him where he was from and one of them pushed him he became frightened, giving one of them a slap but that person did not fall to the ground. However, despite having given this account, when shown the CCTV he conceded that he did strike the first of the three blows against the deceased.

[15] I have received a victim impact statement from the mother of the deceased, Regina Velickiene. In moving language she described how the deceased dreamt of becoming an engineer and came to Northern Ireland to earn some money for his studies and to improve his life. She continues:

"He promised us, his parents, not to leave us alone in our old age. So these criminals ruined our life, as well as brought much distress to our relatives and friends. They caused us immense pain that is still tearing my heart after my son's death."

[16] I have received a pre-sentence report on Stonkus. He has been in custody since his arrest. He is now 21 and has no previous convictions in this jurisdiction or in Lithuania. The report describes his attitude towards his involvement in these events as somewhat dismissive, and assesses the risk of re-offending as possibly high. The defendant has expressed his intention to return to Lithuania upon his release, and Mr Harvey QC (who appears for the defendant with Mr Charles MacCreanor) has confirmed that is still his client's intention. He has, through Mr Harvey QC, expressed his remorse for his conduct, and it may be that the unfavourable impression he made upon the probation officer may have been due, in part at least, to the difficulties involved in relying upon an interpreter.

[17] So far as Stonkus is concerned, there are a number of aggravating features of the case. (i) The amount of force with which he struck the deceased the second time. As Mr Harvey QC pointed out, the various eye-witness accounts are contradictory and confused as to how, and with what degree of force, Stonkus struck the blow which led to the fall resulting in the fatal injury to the head of the deceased. Nevertheless, it is clear that he struck the deceased with considerable force, even if it was not a running kick of the type described by Shauna Abernethy, because it prompted Una Foley and Kathleen Hart to come to the aid of the deceased because of their concern at the force of the blow. (ii) He kicked the deceased as he lay on the ground at the end of the first confrontation. (iii) He pursued the deceased from Scotch Street into Union Place and confronted him a second time. (iv) He attacked another man between the two confrontations with the deceased. Whilst there is no charge in respect of this, it demonstrates that Stonkus was in an aggressive frame of mind that night. (v) Both attacks on the deceased (and indeed on the other man in respect of whom there are no charges) took place in the public street. Fighting in the street by drunken men has become much more frequent in recent years. Not only does it involve a breach of the peace and place heavy demands on the police who have to maintain public order, but it frightens many innocent onlookers.

[18] The mitigating features are. (i) His plea of guilty. Although this was not made at the first opportunity it was made some time before trial and he is entitled to appropriate credit for that. (ii) His previous good character. (iii) His remorse.

[19] In R v Quinn [2006] NICA 27 the Court of Appeal determined that manslaughter cases of this type should result in a sentence of between 2 and 6 years upon a plea of guilty. Taking into account the aggravating and mitigating features of the case against Stonkus to which I have referred I sentence him to 4 years' imprisonment.

[20] I am obliged to consider whether I should impose a custody probation order in the case of Stonkus. Given that he has no previous convictions and intends to return to Lithuania upon his release from custody I do not consider that a custody probation order would serve any useful purpose.

[21] I received a pre-sentence report on Stirbys. He is now 19 and has lived in Northern Ireland for some two years since coming here to work. During that time he has been employed by a local engineering firm and the references from his employers speak well of him. He has a 9 month old child and lives with the mother of the child, who is also Lithuanian, and has four older brothers and three older sisters also living in the Dungannon area. The defendant has no previous convictions in this jurisdiction or in Lithuania. The pre-sentence report assesses the likelihood of re-offending as low, and notes

that the defendant expresses his regret for what occurred. Mr Colton QC (who appears for the defendant with Mr McHugh) reminded me that when Stirbys was interviewed for the first time after it became known that the deceased had died he expressed his regret at what had happened, and he repeated this at the end of that interview.

[22] So far as Stirbys is concerned the prosecution have accepted his plea to assault occasioning actual bodily harm of the deceased. This was a single blow and did not lead to the tragic consequences of the blows which Stonkus has admitted by his plea. The aggravating features of the case are. (i) He was behaving in an aggressive manner towards a number of people that night, and not just to the deceased. (ii) The attack on the deceased took place in public. The mitigating factors are. (i) He pleaded guilty to this charge at the earliest opportunity open to him. (ii) His previous good character. (iii) His remorse.

[23] The aggression Stirbys displayed by attacking the deceased was deplorable, and he is very fortunate that he is not facing charges in respect of the other assaults he appears to have committed that night. If he were, he would receive an immediate custodial sentence. However, it is important to remember that he played no part in the second attack on the deceased. Taking into account that he was only 18 at the time, that he spent some days in custody before he was granted bail, and his good character and family responsibilities, I consider that I should impose a sentence that will have the effect of requiring him to make some restitution to the community.

[24] The pre-sentence report does not consider his suitability for community service, but Article 13(4) (a) of the Criminal Justice (NI) Order 1996 permits me to impose such an order without such an opinion. Given all that I have heard about this young man I see no reason why he should not be considered suitable for community service, although his limited command of English may make this somewhat more difficult to organise. However, no doubt one of his brothers and sisters can assist with interpretation where necessary. I sentence him to 240 hours community service.

[25] Each has been served with a notice under the Immigration Act 1971, and so I am obliged to consider whether I should make a recommendation that they be deported. As stated earlier both are Lithuanian nationals and as such citizens of the European Union. As the Court of Appeal in England pointed out in R v Bogoslov [2008] EWCA Crim 676, as a citizen of the EU a defendant's rights of residence in this country

'can only be derogated from in strictly confined circumstances according to the principles of community law reflected in both the legislation and the case law of the European Court of Justice'.

The Court of Appeal also said

‘As this court has confirmed in the case of Carmona [2006] 2 Cr App R (S) 662 the criminal courts cannot make a recommendation for deportation in respect of an EU national, which would conflict with those criteria of community law.’

[26] The relevant principles of community law are now set out in Directive 2004 38/EC which came into effect on 30 April 2006. The relevant provisions of the Directive are paragraphs 27(2) and 28 (1).

27(2) ‘Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

28(1) Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural intergration (sic) into the host Member State and the extent of his/her links with the country of origin’.

[27] Deportation of criminals is now subject to Part V of the UK Borders Act 2007. This applies to Northern Ireland and whilst it provides for automatic deportation of ‘foreign criminals’, which includes a person who has been sentenced to a period of imprisonment of at least twelve months and is not a British citizen, that does not apply where the removal of such a person from the UK will breach their rights under the community treaties, which obviously requires the Secretary of State to have regard to the

provisions of the EU directive to which I have referred. The court still has a discretion to recommend deportation and so I must still consider the circumstances of each defendant and the other considerations contained in the EU Directive.

[28] So far as Stonkus is concerned, he has been sentenced to four year's imprisonment and is therefore liable to automatic deportation. His links with this jurisdiction are insubstantial and in any event he wishes to return to Lithuania upon completion of his sentence. I consider that I should recommend him for deportation and I do so.

[29] Stirbys has been living and working in Northern Ireland for two years, and has a partner and young child who also live in Northern Ireland and other family members living here. His connections with this jurisdiction are such that I do not consider that I should recommend his deportation.