

**IN THE CROWN COURT IN NORTHERN IRELAND**

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

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**THE QUEEN**

**-v-**

**WESLEY SMYLIE**

**ICOS No: 07/056877**

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**HART I**

[1] The defendant is before the court to be sentenced on his plea of guilty to wounding Lee McLaughlin with intent to do him grievous bodily harm on 25 December 2006, contrary to Section 18 of the Offences Against the Person Act 1861.

[2] Lee McLaughlin was a workmate of the defendant and formed a relationship with the defendant's estranged wife. They were spending the night together in the early hours of Christmas Day 2006 at McLaughlin's house in Holywood and were awakened at about 4.00 am by the sound of someone knocking or kicking the front door as if they were trying to get in. McLaughlin suspected that it was the defendant, and made his way downstairs and turned on the hall light.

[3] In his police statement he described how he could see the defendant outside the front door punching the glass in and shouting, "She's in there, I know I am going to kill you". He went on to describe how he went to the front door, shouting at Smylie and asking him what he thought he was at, when "The next thing I saw was his hand through the broken glass and suddenly I felt blood pumping from my chest and when I looked down I saw the blood squirting out." It transpired that after breaking the window the accused had stabbed Mr McLaughlin through the broken window.

[4] When questioned by the police the defendant admitted that he had used a knife he had taken from the boot of his car. This was plainly a premeditated attack upon Mr McLaughlin because the defendant sent a text message to his wife at 10.38 pm on Christmas Eve in which he said "Enjoy him while u can! Davy told me the truth Ur a whore! Lee will be on the news on xmas day!".

[5] It appears the defendant suspected that his wife was associating with Lee McLaughlin prior to this, but his suspicions were not confirmed until he learnt that this was the case when he was out drinking on Christmas Eve. The defendant had a considerable amount to drink, in interview he said that he had six or seven pints, together with three or four shots. He went home and slept for a few hours, and then got up and made his way to Hollywood and carried out this attack.

[6] Mr McLaughlin was seen at the Accident and Emergency Department of the Ulster Hospital, and was found to have a single wound approximately 3 centimetres in length on the left side of his neck. He suffered a right-sided pneumothorax. A chest drain had to be inserted into his right thorax and the wound was sutured under local anaesthetic. He gradually made a satisfactory recovery and was discharged on 2 January 2007. This was potentially a very grave injury, but fortunately he appears to have made a satisfactory physical recovery, although a psychiatric report from Dr Loughrey following examination of Mr McLaughlin on 13 November 2007 records that he still experiences shortness of breath.

[7] The report shows that the psychiatric and other consequences for Mr McLaughlin have been considerable. He felt unable to return to work and as a result lost his job. He describes how he feels unable to leave the house and has panic attacks. He suffers from disturbed sleep, is alert to noise and is awoken by dreams and flashbacks. He has resorted to drinking to improve his sleep, and describes being depressed and low in his mood. He has been prescribed anti-depressant and other medication by his general practitioner.

[8] In his summary and opinion Dr Loughrey refers to Mr McLaughlin's reaction to date, and the prognosis, in the following passage:

This 30 year old man was stabbed at his home almost a year ago. He was very alarmed at the time, so much so that he feared death. Although there had been some unpleasantness from this man, he never expected anything like this to happen. He lost his job, because of his medical problems, although he feels he is making a recovery as time goes by.

He describes a stable family background and a steady education and work record. Family life is happy, his personality is stable and there is no past psychiatric history.

Following this incident he gives an account of an adjustment disorder, which is quite severe in nature and which features many of the key features of PTSD. His problems include anxious preoccupation, sleep disturbance, situational anxiety, hyper-vigilance, heavy drinking, generalised anxiety and depression. He is on a complex range of treatments from his GP, including medication and also psychotherapeutic intentions, and this reflects the severity and the persistence of his problems. The fact that this man may yet come after him preoccupies him greatly, and he will remain sensitive to reminders for a long period of time into the future. Notwithstanding the treatment input, and the advisability of this man taking his alcohol consumption in hand, the main determinant of the prognosis is the course of events, as far as recurrence or reprisal is concerned. It is probably the case that getting back into work would lift his spirits and distract him.

[9] From this account it is apparent that the effect upon Mr McLaughlin of this attack has been considerable, and I regard that as an aggravating feature of the case. The defendant has a minor record, and I do not regard his record as an aggravating feature of the case.

[10] I have had the benefit of a number of reports upon the defendant, including one by Dr Helen Harbinson, a consultant psychiatrist, setting out his history in considerable detail. In her conclusion she deals with these matters in the following passage:

There are a number of factors of aetiological significance in his offence behaviour. He was born very prematurely. He weighed just 3 lbs 10 oz at birth. He was both hypoglycaemic and hypocalcaemic. He spent the first six weeks of his life in hospital. It would not be surprising if he sustained a minor degree of brain damage as a consequence of his prematurity. This would go some way towards explaining his poor impulse control evidenced by his repeated self harm from his teens onwards. In

addition he had a difficult relationship with his father who was physically violent to him. His parents had frequent arguments and their marriage was not happy. He first saw a psychiatrist at the age of 16. Since that time he has had a number of difficulties. He has been assaulted twice, hijacked and kidnapped. These incidents left him traumatised, afraid to go out and afraid of being attacked. He has had a series of unsatisfactory relationships with the opposite sex. He has had difficulties at work and financial problems. He has taken a number of overdoses. Antidepressant medication has been prescribed for him and he has also self medicated with alcohol. It was on that background that he committed the offence with which he is presently charged. He was depressed, under the influence of alcohol and cocaine, and had just discovered that his wife was in fact having another affair, something which he had suspected but which she had denied. He is adamant that he did not set out to kill Lee McLaughlin. He admits he "wanted to give him a good hiding." He intended to frighten him with the knife, not to injure him with it. His history prior to that was of violence to himself, not violence to others.

[11] I also have the benefit of a pre-sentence report which refers, amongst other matters, to the defendant's drug use prior to this offence and to his having taken cocaine on the night in question, something which he confirmed to Dr Harbinson as can be seen from the above quotation from her report.

[12] Positive mitigating factors in the defendant's favour are that he pleaded guilty and that he has expressed remorse for this attack. So far as his plea of guilty is concerned, he was originally charged with attempted murder, but in due course the prosecution added the present count to the indictment and when the defendant was arraigned upon that count he pleaded guilty to it. That plea was accepted by the prosecution. I therefore propose to sentence the defendant upon the basis that he pleaded guilty to this charge at the earliest opportunity. It should also be said on his behalf that he effectively handed himself in to the police when they contacted him and he became aware that they were looking for him. During interview he gave a full account of his conduct.

[13] This was undoubtedly a serious attack upon Mr McLaughlin which could have resulted in very grave and permanent injuries, if not death. It is clear from the defendant's account that he went to Hollywood with the

intention of inflicting physical injury upon Mr McLaughlin. He equipped himself with a knife and used that knife in the course of the attack.

[14] Mr Russell on behalf of the prosecution suggested that the appropriate range of sentence for cases of this nature was between 3 to 8 years on a plea of guilty, and Mr McCollum QC on behalf of the defendant did not dissent from that as the appropriate range. In addition Mr Russell helpfully referred me to a number of decisions in the English courts which are to be found gathered together in Banks on Sentence, Second Edition, at pages 606 to 610. I was also referred to a number of sentences in other cases in this jurisdiction. I do not propose to refer to each decision, the courts have repeatedly emphasised that each case must be viewed in the light of the circumstances of that case, although the court must have regard to the appropriate guidelines applicable to offences of the type with which the accused is charged.

[15] It is significant that in Banks at page 610 the learned author observes that “sentences have risen following the court’s change in attitude to knives”. Regrettably the Crown Court in this jurisdiction and elsewhere in the United Kingdom has been faced in recent years with the consequences of the increased readiness of individuals to resort to knives in particular in order to inflict violence on their victims. It is a feature of the great majority of such cases that alcohol and/or drugs have been consumed by the defendant. In *R v Magee* [2007] NICA 21 the Court of Appeal referred to this problem in the context of manslaughter charges, but the following remarks are equally applicable to cases of this type.

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".

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.

[16] Taking into account the aggravating and mitigating circumstances to which I have referred I consider that, subject to the question of the imposition of a custody probation order to which I shall refer, the appropriate sentence would otherwise have been one of 7 years imprisonment.

[17] Because the sentence imposed exceeds 12 months imprisonment I am obliged to consider whether a custody probation order should be imposed in this case. The pre-sentence report assesses the likelihood of further offending to be in the medium category, and the author of the report says that in order to reduce this the defendant needs to address the following issues:

- Alcohol and drugs
- Dealing with relationship issues and conflicts
- Emotional instability and understanding of family background influences
- Poor victim awareness
- Development of responsibility and being able to use strategies to deal with stress without resorting to alcohol and drugs
- Impulsive/risk taking behaviour
- Aggression/temper mainly in a relationship context

[18] I consider that a custody probation order is appropriate in this case in order that the defendant's problems identified by the pre-sentence report can be addressed in order to seek to prevent further offending by him, and, subject to the defendant's consent, I therefore propose to impose a sentence of 5 years' imprisonment to be followed by 2 years' probation, the probation order to have two additional requirements to be attached to it.

(1) That he shall present himself in accordance with instructions given by the Probation Officer to participate for eight sessions on the Drug Treatment Programme, at NICAS, and while there comply with the instructions given by, or under the authority of, the person in charge. He must also attend any further drug treatment as directed by the Probation Officer.

(2) He shall present himself in accordance with the instructions given by the Probation Officer to Probation premises, to participate in the Men Overcoming Domestic Violence Programme for twenty-three sessions of two hours per session and while there comply with instructions given by, or under authority of, the person in charge.