

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT BELFAST

THE QUEEN

v

ALAN PETER IRVINE AND ELIZABETH IRVINE

WEIR J

Introduction

[1] Alan Peter Irvine you have pleaded guilty to the murder of George Gray and I have previously sentenced you to life imprisonment which is the only sentence permitted by law for that offence. It is now my responsibility to fix the minimum period that you will have to serve in prison before you will first become eligible for consideration for release by the Parole Commissioners. I make clear to you and to the public that you will be entitled to no remission of the period that I will fix and that you will serve the entirety of it.

[2] The circumstances surrounding this murder were both brutal and senseless. Between 28 and 30 August 2012 you and a friend, whom I shall call M, were drinking together in the friend's flat at Cregagh Road in Belfast. At some time during this drinking spree the deceased, who lived in a flat in the same block, became included in your activities and drinking continued in his apartment. At various points more drink was obtained and the deceased was last seen alive on CCTV at 3:53 am on 30 August outside his apartment receiving a delivery of what subsequent enquiries revealed was a bottle of vodka. Sometime later that morning another neighbour, whose flat adjoined that of the deceased, heard loud voices, which appeared to be those of males, coming through his wall. Listening at the wall he heard someone saying "that's enough, leave him alone" and heard the words "paedophile" and "how would you like it if that was your two children" being shouted. He then heard what sounded like banging on the wall and then nothing more.

[3] On 31 August a friend of the deceased who had been trying unsuccessfully to telephone him went round to his flat where she found the door ajar and the deceased lying on his back on the living room floor. The emergency services were called and the deceased was found to be dead. The room was in disarray with furniture and other items scattered about and a considerable amount of blood spatter on the walls and furniture.

[4] The deceased has suffered very extensive injuries all over his body. They are described in detail by the Assistant State Pathologist, Dr Lyness, in his commentary as follows:

“There were multiple bruises and abrasions on the head, in particular on the face on the left side and back of the scalp. There were also lacerations of the eyebrows, the left upper eyelid, both of the cheeks, the left ear and the nose. The external and internal surfaces of the lips were also lacerated and heavily bruised. Internally, the injuries were associated with extensive bruising of the under surface of the scalp and fractures of the nasal bones and upper jaw. There was also slight haemorrhage over the surface of the brain and reactive swelling and early degeneration of the brain substance, indicating that he had survived for a period of time after the injuries had been inflicted. In addition, the injuries to the mouth and nose had caused heavy bleeding into the oral cavity and windpipe, with evidence of blood having been aspirated into the lungs. Such haemorrhage would have obstructed the flow of air into the lungs and severely impaired his ability to breathe, a potentially life threatening condition.

Whilst some the head injuries could have been sustained as a result of punching, it seems more likely that the majority were caused by kicking, stamping or a combination. Indeed, patterned bruising on the left side of the scalp, towards the back, was suggestive of a footwear mark. Furthermore, an area of stippled abrasion on the right side of the back of the scalp was consistent with having been caused by counter-pressure and indicates that at least some of the blows to the head were inflicted whilst he was lying on the floor.

There was also bruising and abrasion on the front and sides of the neck, in association with heavy bruising of the underlying muscles and fractures of the delicate structures of the voice box. Whilst the possibility of his

neck having been forcibly grasped cannot be completely excluded, the extent and severity of these injuries would favour that they had occurred as a result of blunt force trauma, such as kicking or stamping. These injuries would have compromised the integrity of the upper airway, further reducing his ability to breathe.

In addition, there were multiple bruises and abrasions on the chest, abdomen and back, in keeping with having occurred as a result of blunt trauma during the assault. Of particular note there was a U-shaped bruise on the left side of the front of the chest consistent with having been caused by a shod foot. Internally these injuries were associated with bruising of underlying muscles and fractures of least 7 of the left ribs and 9 of the right ribs which would have further compromised his ability to breathe.

There were also multiple bruises and abrasions on all four of the limbs. Some of these may have been caused by his having raised his arms in an attempt to protect his head, but the majority were relatively non-specific. There were also abrasions and heavy bruising on the back of the right hand. Whilst the possibility of his having thrown a punch cannot be completely excluded, the nature of these injuries would be more in keeping with his hand having been stamped upon.

He had also been stabbed twice. These wounds were consistent with having been caused by a bladed weapon, such as a knife. One was on the left side of the front of the chest and had entered the left chest cavity causing a puncture wound of the left lung. The second stab wound was identified on the back of the body, just below the left side of the base of the neck, and had passed into the underlying muscles. However, neither of these stab wounds would have been immediately life - threatening and played no significant part in the fatal sequence.

The report of Forensic Science Northern Ireland showed that at the time of his death there was a considerable amount of alcohol in the body. The concentration detected in the blood stream, 317 milligrams per 100 ml, is just under 4 times the current legal limit for driving and indicates that he was severely intoxicated when he died. Indeed, the degree of intoxication would have decreased

his co-ordination and reflexes, potentially reducing his ability to protect himself. Furthermore, whilst the severity of his injuries was such that they were likely to have caused his death on their own, the alcohol intoxication would have rendered him more susceptible to the effects of any head injury including the inhalation of blood into the air passages. ... From the findings at autopsy it is not possible to state the order that the injuries were sustained or over what length of time."

[5] You at first attempted to deny any involvement in this murder by claiming that you and M had left the deceased in his flat and gone back to drinking upstairs in M's flat. However, the police noted what looked like blood stains on M's clothing and you and he were both arrested and detained for questioning. Unfortunately, M died of natural causes while in police custody so that the only available version of what occurred in the deceased's flat comes from you. You initially attempted to deny any involvement in these events, claiming that on 29 August you had returned home to your mother's house on the bus and gone to bed at 9 pm. You continued to prevaricate even when confronted by various elements of evidence that contradicted your lying account.

[6] Fortunately, the police were able to retrieve significant CCTV evidence from a camera at the front of the flats. It showed, inter alia, you returning to the flats with M at 8:36 pm on 29 August with an off-licence plastic bag, you and M leaving again at 9:29 pm and returning at 10:59 pm by which time you had claimed to be in bed at your mother's house, at 3:53 am on 30 August Mr Gray collecting the vodka delivery, at 5:26 am you leaving the entrance to the flats and looking through the front window of the deceased's flat before going back in by the entrance, and significantly, you at 7:57 am coming out again from the communal entrance and placing something in a rubbish bin. At 8:22 am you were seen getting into a taxi outside the flats.

[7] Police later found the item in the bin to be a plastic bag in which was a knife bearing the blood of the deceased and your DNA on the handle. They also traced the taxi and found that it had taken you to your mother's home. Mobile phone traffic was examined and it was found that you had phoned your mother at 8:06 am from the flats, that you phoned for the taxi at 8:17 am and phoned your brother at 8:21 am. You also had a total of 23 telephone or text contacts with M between leaving the flats at 8:22 am on 30 August and being arrested about midday on the following day.

[8] This was a merciless and sustained attack upon a man who was hopelessly incapacitated due to his level of intoxication and who would have been quite unable to defend himself or to escape from his attackers. A disreputable attempt has been made to justify or explain the attack by the suggestion that the deceased was a paedophile. You claim that M made the suggestion and that that caused you to join

in the attack because of some experience you had had in childhood. I entertain the gravest doubt as to whether it was M who said anything of the kind and I am informed by Mr O'Donaghue QC for the prosecution that the police have looked into the suggestion and can find no basis for it whatsoever. Even had it been true it would not have constituted any valid excuse or justification for any attack upon the deceased never mind the dreadful and prolonged violence to which he was subjected.

[9] The deceased was aged 52 years and lived alone in his Housing Executive flat. At the time of his death he was unemployed and suffering from a number of medical complaints. He appears, like you and M, to have had a problem with alcohol dependence. I have received very full victim impact statements from a brother and on behalf of the children of the deceased and it is clear that they have all in their different ways been very much affected by the death of their sibling and father in such a mindless and brutal fashion. They particularly emphasise and with good reason that after the assault nothing whatever was done to summon help for the deceased who was left for dead while you set about trying to save yourself. It is of course impossible to know whether prompt medical attention would or might have saved him but your callous behaviour in abandoning the deceased, especially when you knew he lived alone, is impossible to comprehend especially when I have been told by your counsel that your intention was not to kill him.

[10] You are now 31 years of age and were 29 at the date of this offence, much younger than your victim. It is clear from the probation report that you endured a difficult early life in a home where you were exposed to drunkenness and domestic violence and, possibly, though details are sketchy, to some sexual abuse from within the family. You were placed in care at the young age of seven and experienced multiple moves within the care and juvenile justice settings to which you did not react well. At 14 you were returned to the care of your mother and thereafter appear to have avoided criminal activity until the present offence. You have a small number of fairly minor convictions, the last of which related to events in November 1997 when you were aged 14. I therefore do not propose to take those convictions into account against you in this case.

[11] It is clear from the probation report that you have a serious problem with the misuse of alcohol and other illicit substances. You are prone to binge drinking as you had been doing at the time of this crime and have in the past had alcohol-related hospital admissions. You appear to have no insight into your condition although your addictions have ruled your life for many years and have now helped to destroy that of the deceased and caused you to be imprisoned for many years to come. Unless you reflect upon your past while in prison and set about changing your approach to alcohol and substance misuse I fear the outlook for you will be bleak. The probation officer assesses you as being at high risk of re-offending and as a significant risk of serious harm to others in the future. You will have to satisfy the Parole Commissioners that you have made serious changes to your outlook on

addictive substances if you hope to be released after you have served the tariff which I am about to impose.

[12] I have a very thorough and detailed report upon you from Dr Pollock, Consultant Forensic Clinical Psychologist, and another report from Dr Bunn, Consultant in Forensic Psychiatry. Neither provides any excuse or explanation other than intoxication for what you did. The picture that emerges of you is the unfortunately now common one of a feckless individual who lives for alcohol and drugs and who becomes violent when sufficiently fuelled, as you were, by both.

[13] I intend to sentence you in accordance with the principles established by the Court of Appeal in R v McCandless [2004] NICA 1. The first question that arises is whether this case attracts the normal starting point of 12 years with a higher starting point of 15/16 years. The prosecution contended for the latter while your counsel, Mr O'Rourke QC, urged me to adopt the former. The higher point applies to those cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position and where the case is characterised by a feature which makes the crime especially serious. Examples of such features appear in the guidance and in my judgment two such apply to this case:

- (i) The victim was exceptionally vulnerable having consumed about 4 times the legal driving limit of alcohol at the time of the attack.
- (ii) The injuries inflicted on your victim could not be described as other than multiple and extensive.

I therefore take as my starting point a term of 16 years.

[14] Mr O'Donoghue urged upon me that that starting point ought to be increased by a number of aggravating factors. One such quoted in the guidance and upon which he relied was what he described as "the destruction of the crime scene" by, he submitted, taking away the knife and putting it in the dustbin outside and disposing of your boots and clothing. I do not consider that those actions constituted "destruction of the crime scene" which was otherwise intact and I do not take account of them as constituting an aggravating factor.

[15] It was further submitted on behalf of the prosecution that you had armed yourself with the knife from the upstairs apartment of M and that you committed the stabbing but that is not established by the admissible evidence. Mr O'Donoghue fairly conceded that where a belief on the part of the prosecution could not be established by admissible evidence then the benefit of doubt must be accorded to you and I consider that position to be correct. I therefore do not increase my 16 year higher starting point by reason of any aggravating factor.

[16] As to mitigation, I accept Mr O'Rourke's submission that it has not been established that there was an intention to kill as opposed to the causing of grievous

bodily harm. I have already referred to the neighbour overhearing a man say “that’s enough, leave him alone” and, just as with the obtaining and use of the knife, there is no evidence as to whether you or M spoke those words. True it is that you left the grievously wounded deceased to his fate but I cannot infer from that fact that you intended to kill him. Therefore, giving you the benefit of the doubt as Mr O’Donoghue enjoined me to do, I sentence you on the basis that your intention was to cause grievous bodily harm.

[17] A further mitigating factor is that you did eventually plead guilty and, as Mr O’Rourke points out, well before then had acknowledged the truth of the basic facts of the prosecution case after being confronted with the formidable evidence that the police had gathered in order to contradict your lying story. Your legal advisers thought it appropriate to investigate your mental state by obtaining the reports of Doctors Pollock and Bunn and I consider that it was reasonable for them to do so before you entered your plea of guilty to the murder charge. I also note that you have expressed remorse for your actions but, as the Court of Appeal has pointed out in the past, it is not easy to distinguish between genuine remorse for the victim and his family and regret for the position in which the perpetrator finds himself when facing a long period in prison.

[18] Taking account of all the mitigating factors I have identified I reduce the starting point from 16 years to a minimum term of 12 years which, as I have earlier said, you will serve in full without any remission.

[19] I turn now to you Elizabeth Irvine. You are now almost 65 years of age and have pleaded guilty to two counts, one of perverting the course of justice by providing both a verbal and a written alibi for your son in respect of his whereabouts at the material time and the other of withholding the information from the police that your son had told you that he had beaten the deceased.

[20] The law rightly regards offences of this sort as most serious because it looks to members of the public to assist the police in detecting crimes and those responsible for them and not to conceal them, or worse assist offenders by providing false alibis. You must have known very well before you made your false written statement that your son had been involved in an assault following which a man had died. I find it impossible to comprehend how, knowing that, you could lend yourself to such a misguided deception.

[21] Your counsel, Mr Tom McCreanor, readily acknowledged that your position is serious and that the authorities establish that crimes of this sort will attract sentences of imprisonment. That most experienced criminal judge, Hart J, explained it thus in R v Kernohan and others [2011] NICC 9 at [14]:

“Those who mislead the police, or withhold information, about serious crimes are at risk of immediate prison

sentences unless there are strong mitigating personal or other circumstances.”

[22] Your counsel acknowledged that your case may appropriately be compared with that of Veronica Deery who was one of the defendants in Kernohan. I do not consider that there are any mitigating factors attaching to your contemptible offence and I therefore impose upon you a sentence of two years imprisonment on each count to be served concurrently.

[23] The question is whether, as in Deery's case, there are personal circumstances pertaining to you that would warrant the suspension of your sentences? I have a detailed probation report which affords you little assistance as you appear not to have yet understood the seriousness of what you did and indeed you told the probation officer that you did not intend to mislead the police in their investigation. It is impossible to understand what else you thought you were doing by providing your son with a false alibi which, given the fact that he had disposed of the knife, boots and clothing, the death of M and of the deceased might well have been effective to wrongly protect your son had not the police had the CCTV evidence with which to contradict it. There is however, information in the report on you by Dr Bownes, Consultant Psychiatrist, that causes me to pause in requiring you to serve your sentences immediately. Having examined you and considered your general practitioner's notes and records, Dr Bownes finds that you had been displaying mental health problems during the 25 years prior to your arrest and you have been treated with anxiety-lowering and sedative drugs throughout that period. As early as 1996 you were found to have difficulty in coping with everyday demands and responsibilities. He concludes that:

“The nature of the psychological reaction produced by adjustment to the custodial setting is liable to be particularly marked in individuals with a prior history of stress-related mental health problems” and that “your mental wellbeing is significantly more likely to deteriorate on exposure to the prison environment than most women of a similar age and background.”

I observe that Dr Bownes is particularly well placed to make that judgment given his experience as a psychiatrist providing services within the prison setting. I am conscious that one of the victim impact statements expresses doubt about your need for the wheelchair which you have used when coming to this court and claims that you have been seen walking in public. I do not feel that I need to resolve that issue as Dr Bownes' assessment is based not upon your physical state but upon your well-documented mental and emotional fragility.

[24] Accordingly, and not without hesitation as I regard your actions as disgraceful, I have decided to suspend the operation of both your sentences for a period of three years. That means that if you keep out of trouble for that period you

will hear no more about this matter. If on the other hand you were to commit a further offence during that time the court that deals with you for that may implement these custodial sentences in addition to whatever sentence it imposes for that further offence.