

**Regina**

**-v-**

**James Anthony Healy**

**Judge Piers Grant**

1. The defendant was first arraigned on this Bill of Indictment on 8 February 2013 and pleaded not guilty to each of the two counts on the Bill:  
  
    Count 1 - Murder of James Christopher McGaughey contrary to Common Law;  
  
    Count 2 - Possession of an offensive weapon with intent to commit an indictable offence contrary to Section 93 of the Justice (Northern Ireland) Order 2011.
2. The trial of this indictment was listed for hearing before a jury at Coleraine Crown Court on 23 May 2013. I have been informed by both prosecution and defence that extensive discussions had taken place between the parties following the original arraignment which resulted in the presentation of an amended Bill which included a third count: Count 3 - possession of an offensive weapon contrary to Article 22(1) of the Public Order (Northern Ireland) Order 1987. Following application by defence counsel, Mr G Berry QC, the defendant was re-arraigned on the amended bill. In relation to the first count he pleaded not guilty to murder but guilty to manslaughter and pleaded guilty to the new third count. The prosecution applied, with the consent of both parties for the original second count to be allowed to remain on file. The pleas entered were acceptable to the prosecution and I ordered that Count 2 should be left on the books not be proceeded with without leave of the Crown Court or the Court of Appeal.

3. I directed a pre-sentence report and fixed the 6 September 2013 as the date for plea and sentence. The pre-sentence report assessed the defendant as presenting a risk of serious harm and accordingly the plea and sentence was adjourned to allow the defence to address this issue. The plea was considered on 2 October 2013.
4. Crown counsel Mr McCollum QC accepted that the defendant had earlier indicated a preparedness to enter a plea of guilty to Count 1 on the basis entered on re-arraignment. He further accepted that early in the police investigation, the defendant admitted inflicting the serious stab wound which resulted in the death of the deceased as well as possession of the knife used in this incident. It is clear from the agreed statement of facts, signed by the defendant, that he made important admissions to police, at the scene. Mr McCollum accepted that the defendant is entitled to full credit for the pleas entered. I accept that by his pleas the defendant has saved court time, admitted his guilt and in particular saved a number of witnesses, who were close to the deceased, from suffering the ordeal of the trial process. In the circumstances in which admissions of guilt were made and the pleas entered, I am satisfied that the defendant is entitled to full credit.
5. Mr McCollum read into the record the agreed statement of facts and I set this out below.

“On 30<sup>th</sup> October 2011 at 01.23 hours Ambulance Service reported to the police that they were responding to an incident in which a man had been stabbed outside 58 Hollymount Park, Londonderry. The man was subsequently identified as Christopher McGaughey. He was found sitting on the footpath outside Number 58. Ambulance staff observed that he had sustained a stab wound to the torso. He was brought by ambulance to Altnagelvin Hospital and subsequently pronounced dead at 01.56 hours.

The defendant was arrested at the scene and was subsequently identified as James Anthony Healy. He was cautioned and replied, “It was self-defence”. When asked about the knife used in the incident he replied, “It was never meant to be used, it was only a scare tactic”.

Subsequent police investigations indicated that earlier in the evening the defendant, who is the nephew of the deceased, had been at a party, where he had met his cousin, Christina McGaughey. He had seen bruising on her arm and was of the opinion that these were caused by her father, the deceased. He subsequently went to his mother’s house

where he obtained a baseball bat, then went to the home of the deceased. When the deceased came to the door a fight ensued between the two where blows were exchanged and the defendant subsequently ran from the premises. The defendant then returned to his mother's house at 58 Hollymount Park where he lifted 2 knives from the kitchen, then went outside and stood at the gate of the house. A short time later the deceased arrived with his son James. The deceased was in possession of the baseball bat which the defendant had left at his premises after the earlier altercation.

The two went towards each-other. The deceased swung the bat at the defendant and missed and the two came together. A struggle ensued during which the deceased sustained a single stab wound to the heart.

The defendant was interviewed by police and gave his account of what occurred. He went to a family party on 29 October 2011. He left the party to discuss an issue with the deceased. Prior to going he went to his own home and got a baseball bat. He met the deceased and they fought. It would appear the deceased got the better of the defendant and took the baseball bat off him or as the defendant says, he simply left the baseball bat behind. At some stage the defendant made his way to his mother's home. There he acquired 2 knives on his own account. He saw the deceased arrive with the baseball bat and says he saw the deceased strike his girlfriend with the bat. The deceased, the defendant says, swung the bat at the defendant before they collided. They both fell to the ground and when the defendant got to his feet he realised the deceased had been stabbed. The defendant told the police that he obtained the knives as a scare tactic or perhaps to defend himself but that the actual stabbing was an accident.

The Prosecution accept the real possibility that the defendant did not have the requisite intent for Murder."

6. At the conclusion of the reading of the agreed statement I raised my concern that the version of events described by the defendant to Ms Weir, the author of the pre-sentence report, varied in a material respect from the agreed statement. In the former the defendant asserts that the victim "had swung the baseball bat upon his approach and stuck (sic- struck) him prior to them both falling to the ground." In the latter the defendant accepts, "the deceased swung the bat at the defendant and missed and the two came together." Mr Berry QC confirmed that the defendant did not in any way challenge or resile from the agreed facts.

7. Although it is not referred to in the agreed facts it is clear that the defendant had consumed a considerable amount of alcohol that evening. In addition the pathologist's report gives the cause of death as a stab wound to the heart sac penetrating and compromising one of the main pumping chambers. Having examined two knives taken from the scene, Professor Crane is of the view that the fatal wound would have required no more than moderate force to inflict. Furthermore the pathologist notes a second but superficial stab wound to the front of the neck.
8. The defendant was born on the 11<sup>th</sup> June 1980 and was aged 31 years at the time of the offences. He is now aged 33 years. The defendant has previous relevant convictions for offences of violence:

4th June 2010- he was convicted of three counts of common assault and one count of threats to kill in Londonderry Crown Court. He was sentenced to imprisonment on each count – a total sentence of 6 months and 2 weeks. On the same day he was fined £100 in the Magistrates Court for aggravated assault on a female.

21<sup>st</sup> March 2011- disorderly behaviour -70 hours Community Service.

25<sup>th</sup> July 2011- breach of community based order -fine £50.

The pre-sentence report makes it clear that the criminal record is not complete. The report, which was not challenged, states that the defendant was subject to supervision, under licence, for a period of 11.5 months between 4<sup>th</sup> June 2010 and 18<sup>th</sup> May 2011. The defendant was required to address his propensity to domestic violence given that his previous offences were committed against female partners. Sadly the Domestic Violence programmes put in place did not bear fruit and the defendant failed to complete the course. When attending, he was hostile to staff, did not engage and blamed his victim. He lacked insight and little, if any, change in his attitude was noted. This attitude is reflected in other evidence in the papers. The description of that evening and his general approach to life given by his mother and others connected to him paints a disturbing picture of a volatile, angry and aggressive young man in whom violence bubbles very close to the surface.

9. I have read and take account of the victim impact reports prepared by Dr Michael Curran on behalf of Mrs Georgina McGaughey, wife of the deceased, and Christina and James McGaughey, their daughter and son. These reports are in balanced terms and express the deep sense of loss, shock, hurt and pain that they have suffered and will continue to suffer long into the future. It is clear that they have been greatly affected, have not yet come to terms with this

tragedy and will need professional help when they feel able to accept it. This court can do nothing to bring the deceased back to life but recognises the terrible loss that this family has suffered.

10. In R v Magee [2007] NICA 21 the Northern Ireland Court of Appeal in the judgement of Kerr LCJ referred to the use of gratuitous violence in the following passage:

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'.

These principles are directly applicable in this case.

The Court of Appeal added further guidance and said that where:

"... it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between 8 and 15 years imprisonment. This is, per force, the most general of guidelines."

11. It is clear from this latter passage that there will be cases which will fall outside this range.
12. Manslaughter is a serious offence under the provisions of the Criminal Justice (NI) Order 2008 ('the 2008 Order') and the provisions of Article 13 of the 2008 Order are engaged. I am therefore obliged to determine whether to impose (a) a life sentence or (b) an indeterminate sentence. If I am not satisfied that either such sentence is necessary, I must consider whether an extended sentence under Article 14 of the 2008 Order is required.
13. The first step is to determine whether the defendant is someone who presents a significant risk to members of the public of serious harm occasioned by the commission of further offences of the type specified in the 2008 Order. Is he dangerous?
14. In approaching this issue I must consider all the relevant factors which inform the degree of risk presented by the defendant. First I take account of the assessment made by the multi-agency risk management committee. This is set out and explained in the pre-sentence report. The defendant is assessed as posing a high likelihood of general offending and as posing a significant risk of serious harm. The factors informing that assessment are set out in the report and principally concern, attitudes supportive of aggression and violence, previous convictions for violence, particularly in the domestic context, escalation of violence, arming himself with weapons, poor response to previous disposals, lack of insight and alcohol abuse. I am satisfied that this assessment is well founded and I am satisfied that the defendant is dangerous. If one needed further support for this conclusion it can be found in the concerns expressed by his mother when she described her fears, that night, due to his general aggressive and violent character in all spheres of life.
15. Defence counsel very properly referred me to the report prepared by Dr Maria O'Kane who having examined the defendant found him to be suffering a moderate depressive reaction to the death of Mr McGaughey and his involvement in that death. He expressed remorse and a resolve to change his ways. Dr O'Kane concurs with the assessment expressed in the pre-sentence report.
16. The aggravating factors in this case are: (a) the use of a weapon, (b) the defendant instigated the violence by going to the deceased's home armed with a baseball bat, (c) the defendant's record for violent offending, (d) the defendant returned to his own home, had the opportunity to cool off but armed

himself with two lethal weapons and returned out into the street where he anticipated he would encounter the deceased.

17. The mitigating factors are; (a) the plea of guilty entered at the first opportunity and (b) some expression of remorse, first to the police and more recently through Dr O’Kane. I have considered the personal circumstances and family background set out in the pre-sentence report but do not consider that these amount to mitigating factors.
18. In R v Gallagher [2004] NICA 11 the Court of Appeal, approved the principles outlined in R -v- Hodgson (1967) 52 Cr App R 113 :

“When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.”

Applying those principles I am not satisfied that this case requires a life sentence to protect the public and punish the defendant.

19. Next I must consider whether an indeterminate custodial sentence is required or whether, under the provisions of Article 13 of the 2008 Order, an extended custodial sentence will provide adequate protection to the public. Mr McCollum QC does not argue on behalf of the Crown that either a life sentence or indeterminate sentence is required to ensure public protection. In my view the principal factors supporting the assessment of future risk of harm concern the defendant’s abuse of alcohol and his propensity to aggression and anger. The defendant has in the past shown little positive response to the limited supervision imposed upon him. He has demonstrated while in custody that he can behave and has expressed a desire to change his ways, aggressive attitudes and control his alcohol abuse. I am satisfied that an extended custodial sentence with strong licence conditions designed to address these offensive attitudes and behaviour will offer adequate protection to the public.
20. I consider that this case, under Count 1, falls towards the lower end of the range suggested by R-v-Magee. I consider that the appropriate starting point before allowing the defendant credit for his plea is a sentence of 9 years. Allowing credit for the mitigating factors in this case, I consider the

appropriate custodial term to be 6 years. After the defendant has served one half of that period the date of release will be determined by the Parole Commissioners. I consider that the extension period should be 3 years. After the defendant is released from custody this is the period that the defendant will be subject to licence conditions.

21. Under Count 2, I impose a determinate sentence of 2 years to run concurrently.