

IN THE CROWN COURT IN NORTHERN IRELAND

OMAGH CROWN COURT SITTING AT BELFAST

THE QUEEN

-v-

RAYMOND JOHNSTON

Bill No 13/043811

WEIR J

[1] Raymond Johnston, you have pleaded guilty to the manslaughter of your brother David on 13 July 2012 and for that I must now pass sentence upon you.

[2] The background is not in dispute and can be shortly stated. On 12 July you called at your brother's new home before each of you went your separate ways to enjoy the public holiday. One common feature was that in the course of that day and that evening you both had a considerable amount to drink. Late on the evening of 12 July you again met up at your brother's house where you continued to drink. Had you known when it was time to stop drinking this terrible event would have been avoided but instead you jointly decided to continue the "party" at your home and set off there along with your brother's girlfriend. It seems there was some debate en route as to which of you was in the better state to drive which resulted in your brother taking over the wheel from you but that does not seem to have produced any animosity.

[3] However, after you had arrived at your home a row broke out between you and your brother. There is no reliable independent evidence as to what caused it as your brother's girlfriend had also been drinking while your partner and child were already asleep upstairs in your home. When she, roused by the sound of raised voices, came downstairs she saw you with a knife and a fight in progress between you and your brother. His girlfriend tried to persuade you to stop but you pursued your brother outside where there was a further struggle. In due course you returned

to the house, naked from the waist up and heavily blood stained. You then referred to the fight as a “wee row” and it was clear from what you then said that you expected your brother to return to the house shortly. Your brother did not come back in. He collapsed outside in a laneway owing to loss of blood. At some point after the fight had ended he contacted your mother on his mobile phone and said he had been stabbed and thought he was dying. The pattern of blood staining found in the lane by police indicates that he had been staggering about, no doubt as the combined result of his injuries and the level of his intoxication. Your mother came immediately by car to the scene and tried desperately to find your brother in the darkness but by the time she succeeded it was too late.

[4] There is no evidence as to whether further stab wounds were caused outside after those inflicted within the house. Pathology reports have been provided by Professor Crane, the State Pathologist, for the prosecution and by Professor Marshall, his predecessor, for your defence. Both agree that:

- The wounds are consistent with having been inflicted during a struggle or fight when both persons were under the influence of alcohol and one had a knife in his hand.
- The scattered nature of the stab wounds, their different directions in the skin and their unusually superficial tracks in the body do not suggest a deliberate attack with intent to cause fatal injuries. No great force was required to inflict them with the knife that was used.
- The actual wounds would not have seriously incapacitated the deceased.
- The deceased’s intoxication coupled with the exertions of the fight would have been likely to increase the blood loss which was profuse from the beginning.

[5] You have never denied that you inflicted the wounds from which your brother died and the only issue has been whether your actions constituted murder or manslaughter. You pleaded guilty to manslaughter at your first opportunity in June 2013 but that plea was not at the time accepted by the prosecution. It was only on the morning fixed for the first day of your trial in December 2013 that the prosecution accepted your plea to unlawful act manslaughter. Accordingly I treat you as having admitted your guilt at the first possible opportunity.

[6] Mr Mooney QC for the prosecution, in the course of what Mr John McCrudden QC, your counsel, rightly acknowledged to be his very measured submissions, explained with some care why the prosecution had altered its view as to the correct plea. It had concluded that this was not a case in which, on the totality of the material available to it by December last, it could establish the necessary intent for murder to the requisite standard. This material included:

- The evidence of the two professors of forensic pathology discussed above.

- The fact that while you were heard to express an intention to kill your brother you did so in anger resulting from an offensive remark you say he made about your partner and child and while you were intoxicated.
- The fact that you ultimately disengaged from the fight and returned speaking of a “wee row” is consistent with a belief on your part that you had not inflicted life-threatening wounds.
- The evidence of Dr Loughrey, consultant psychiatrist, that in view of your history of alcohol abuse including alcohol induced blackouts your claimed amnesia for the events of this night after the point at which your brother made the offensive remark is probably genuine. Therefore the prosecution could not properly pursue its prior view that your assertion that you could not remember the stabbing was untrue and an attempt to evade responsibility. It was reinforced in this conclusion by the view of Dr Fred Browne, a consultant psychiatrist retained on behalf of the prosecution who agreed with Dr Loughrey on this point.

[7] It is clear from the helpful pre-sentence report provided by the Probation Board and from the very balanced reference from your former employers that you are capable of being a talented, hardworking and intelligent metal worker whose services, when you are attending properly to work, are much valued. Your downfall in both your working and personal environments has been an addiction to alcohol and illicit drugs which has led in the past to loss of employment and damage to relationships. To put it bluntly, your addictions have seriously damaged your life and now resulted in the loss of your brother's. You have many excellent personal qualities as movingly attested to in the references from your partner, your grandmother, mother, father and sister and your former employers. All of those qualities have been diluted or suppressed by your addictions. I have been told that you have now ceased drinking and taking drugs and have sought the help of the church. I hope that you can maintain that position because it is plain that you have been brought to a crossroads in life and only you can decide which road to take for the future. On one approach you may yet salvage something from this family catastrophe that, as you rightly told Dr Loughrey, “happened through drink”. If you relapse on release from prison then the outlook for you and those who have supported you despite their own grief is bleak. The choice will be yours but I strongly advise you to take advantage of your time in prison to obtain whatever help you can there to acquire the relapse management techniques that you will need on your eventual release.

[8] The Probation Board, having applied its assessment tool, has not assessed you as meeting the “dangerousness” criteria and the prosecution accepts that assessment. It also accepts that your remorse is not grounded in self-pity but is a genuine expression of regret for the consequences of your actions. Both you and the deceased have criminal records but I do not judge them to be relevant to this matter and I leave them out of account.

[9] Sentencing in cases of manslaughter is notoriously difficult because of the fact that they cover “a wide factual spectrum” see R v Magee [2007] NICA 21, the leading authority on the subject. I have derived much assistance in this and in other cases from a paper prepared for the Judicial Studies Board for Northern Ireland entitled “Sentencing in Cases of Manslaughter, Attempted Murder and Wounding with Intent” by Sir Anthony Hart and delivered by him on 13 September 2013. In it he seeks to identify a number of broad categories of cases and to give reported examples of each by way of illustration. Your case appears to fall within the group discussed at paragraph [14] of the paper under the heading “Use of Knives in Circumstances of Provocation and Domestic Violence” as to which Sir Anthony observes by way of introduction:

“Cases of manslaughter due to the use of knives during fights, whether during an affray or during domestic arguments, are common. In both situations there is often an element of provocation by the deceased which falls short of being sufficient to amount to self-defence. In these cases sentences range from 4 to 7 years with the majority attracting sentences of 5 years [on a plea of guilty].”

[10] Your senior counsel, who has urged with moderation everything that might properly be said on your behalf, accepted that the authorities indicate a range of 4 to 5 years on a plea of guilty but asked me to consider a sentence below that level. Mr Mooney QC submitted that the cases support a mesne figure of about 5 years. I have taken some days to carefully consider all the helpful submissions of both counsel both written and oral and have concluded that all the circumstances and consequences of this case do not support a sentence of less than the 5 year figure. Accordingly your sentence is one of 5 years which means that you will serve 2½ years in prison, for which you will receive no remission, followed by the same period of 2½ years on licence in the community.

[11] I wish to explain for the benefit of the public and, judged by some previous comments on other cases, certain members of the press and local politicians that I am obliged by legislation to make the licence portion of the sentence not less than one half of the overall sentence and it is for that reason that I do so.