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Judgment: approved by the Court for handing down | *Delivered:* **23/5/2008**

*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

v

JONATHAN GERARD PATRICK JAMES TURLEY

HART J

[1] The defendant is before the court to be sentenced on his pleas of guilty on count 2, the unlawful wounding of Anthony Braniff with intent to do him grievous bodily harm contrary to Section 18 of the Offences Against the Person Act 1861; count 3, intimidation of Joleen Drummond, contrary to Article 47(1) of the Criminal Justice (Northern Ireland) Order 1996; count 7, threatening to kill Sally Drummond, and count 8, threatening to kill Joseph Drummond, both contrary to Section 16 of the Offences Against the Person Act 1861. The defendant was originally charged with the attempted murder of Anthony Braniff and a number of other offences, but the prosecution were content to accept his pleas to the above counts and the remaining counts were ordered to lie on the file, not to be proceeded with without leave of the Crown Court or the Court of Appeal.

[2] Anthony Braniff was at a party which started on New Years Eve, 2006. Sometime after midnight he got into an argument with the defendant in the kitchen of the house in which the party was being held. It seems that the cause of the argument was that Braniff picked up a scarf belonging to the defendant believing that it was a towel, and used it to mop his hair which was wet from the rain. The defendant took offence at this, but notwithstanding Braniff's apology there then ensued a scuffle between the

two men. Philip Cairns, one of the other guests, described how he intervened to try and stop the two men arguing, but moments later saw Braniff head-butt the defendant, and Mr Cairns again intervened. However, the tension continued, and the defendant came past Cairns and attacked Braniff. Moments later a good deal of blood appeared and it was obvious that Braniff had been injured. Joleen Drummond was also present at the party, and when Braniff and the defendant were separated she saw that the defendant had a kitchen knife in his hand.

[3] Braniff was clearly seriously injured and was helped to the nearby Oldpark Police Station by Aisling Burns, who was also at the party. He collapsed at the gate of the police station, the police went to his aid and he was taken to the Royal Victoria Hospital.

[4] Braniff's injuries are described in considerable detail in the witness statement made by Mr Keith Gardiner, a Consultant General and Colorectal Surgeon in the Royal Victoria Hospital, and I will summarize the injuries later in this judgment.

[5] Almost immediately after 1 January 2007 the defendant embarked upon what can only be described as a campaign of threats and intimidation directed towards Joleen Drummond, her mother Sally Drummond, and her father Joseph Drummond. These threats were made by telephone. He was well-known to Joleen Drummond and her family and they were able to recognise his voice. In her statement Joleen Drummond said:

> "He started to talk about me making a statement against him. He said something like `you think you can make statements against me, well I'm going to burn your house down with you and your son in it'. I believed that this would happen and I moved me and my 2 year old son in with my parents' house for a while because I was traumatised as a result of seeing my friend being stabbed and this was making it worse. I was having panic attacks and had to see the doctor. I am still seeing the doctor. … I did not want to make a statement until Jonathan Turley was in police custody as I am aware of what he is capable of. I am terrified if he gets out, I am on medication to help me cope with this. As Jonathan knows

> where I live he blames me for giving a statement and thinks it is my statement that is keeping him inside. I would fear for my life and my son's life. He is scaring me by threatening my child."

[6] Mrs Sally Drummond described the threats that were made to her.

> "He would say to me things like I am coming up to kill you, your time is up now and then one night about 6-8 weeks ago before he went into the hospital I was in the house and my husband was away for the weekend I answered the phone and it was Jonathan Turley. I recognised his voice. He said to me, `your time is up'. He said `listen to this'. I could hear the sound of what I thought was a gun clicking. I was on my own, I was that scared that I had to leave the house right away with me and my daughter and stay at a friend's because I was scared and believed that he was going to be coming round. I believe that he did this to terrify me as he knows I would be really scared. As a result of this I have had to go to my doctor to get help. I believe that he would kill me."

[7] Mr Joseph Drummond described the threats that were made to him in this way.

> "He made numerous threats to myself, my wife and my children on the phone. He said, `I know I am going down for attempted murder, and I am going out in style, it does not matter what I do as I am going to jail anyway'. The threats consisted of burning the house down, killing me, killing my wife, killing my children. He would mention Joleen and would mention Anthony Braniff. He would say Joleen will not be making no statement against me and neither will Anthony Braniff cause I will make sure of it. He would constantly phone up and make threats about this. He would at times phone up to 10 times a day sometimes more. I would answer the phone and he would be on the

> line. At no time did I respond to it. Even when he was at Knockbracken he phoned me up and said, `I'll be getting out of here soon enough and I'll be coming to see you' he said this in a threatening manner."

[8] The defendant is now 26 and has a substantial record starting with offences committed the day after his 14th birthday. These cover a range of offences of dishonesty such as theft, taking and driving away other people's motor cars, handling stolen goods, no insurance and driving whilst disqualified. Of particular significance are a number of convictions for violent offences and offences of a related nature.

(1) On 14 October 1995 he committed offences of assault occasioning actual bodily harm and possessing an offensive weapon in a public place. He was sentenced to a Training School Order.

(2) On 12 March 1999 at Craigavon Crown Court he was sentenced to a Custody Probation Order of 2 years and 12 months probation for a robbery on 23 April 1998.

(3) On 19 May 1999 at Belfast Crown Court he was put on probation for 2 years for possession of a firearm with intent to cause fear or violence. This offence was committed on 15 January 1999, when he must have been on bail, or at least waiting to be returned for trial on, the robbery charge referred to at (2) above. It is noteworthy that on release from serving the robbery sentence he was on licence until 8 August 2000, notwithstanding that his record shows that he committed a number of road traffic offences in February and April 2000.

(4) At Belfast Magistrates' Court on 29 March 2001 he was sentenced to 6 months detention for an assault occasioning actual bodily harm committed on 26 August 2000.

(5) On 23 March 2004 at Lisburn Magistrates' Court it seems that he was sentenced to 4 months imprisonment for causing his mother to fear violence on 28 March 2002.

(6) At Belfast Crown Court on 25 May 2004 he received a custody probation order of 18 months imprisonment and 18 months probation for a wounding on 13 December 2001, and a robbery on 10 January 2002. These

offences were committed within days of his receiving suspended sentences at Belfast Magistrates' Court on 5 December 2001 for handling stolen property and driving whilst disqualified. The wounding of 13 December 2001 involved his striking a security guard at a hostel with a wooden pole, the security guard required 7 stitches as a result.

(7) It is also noteworthy that on 16 March 2005 his custody probation order was revoked and he was sentenced to 12 months imprisonment for the offences of 25 May 2004.

[9] I have dealt with the defendant's record in some detail because it is apparent that he is a violent and dangerous young man who has no compunction about resorting to violence or threats of violence, even against his mother. Despite being given a number of suspended sentences or custody probation orders in the past he has proved singularly resistant to any form of sentence which will divert him from crime in general, and violent crime in particular.

[10] On many occasions in recent years the courts in this jurisdiction and elsewhere in the United Kingdom have emphasised the need for severe sentences where individuals resort to the use of knives, particularly where they have previous convictions for violence. 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."

Sentences for this type of offence fall within the range of three to eight years imprisonment as can be seen from the cases collected in Banks on Sentencing, second edition, pages 606-610.

[11] Mr Braniff sustained serious injuries as a result of the defendant's resorting to the use of a knife. The subsequent effects of his injuries are described by Mr Braniff in a witness statement he has prepared, but when the case was initially listed for the plea to be heard Mr Gallagher QC on behalf of the defendant objected to reliance being placed on this statement in the absence of up to date medical evidence to support Mr Braniff's assertions as to the serious and permanent effect of his injuries. I accordingly adjourned the matter to see if up to date evidence could be provided. I have been informed by the prosecution that it has not been possible to obtain full reports, and I have been provided with an undated letter from his GP, together with discharge letters and subsequent correspondence by various specialists which accompanied that letter.

[12] When a court comes to sentence an accused for an offence of a violent or sexual nature it is extremely important that the court be provided by the prosecution with as much up to date information as possible about the effect of the offence upon the victim so that the sentence can properly reflect this. For approximately 20 years in the Crown Court in this jurisdiction the prosecution have sought to provide such information wherever possible. This often takes the form of a statement from the victim, or it may consist of reports from the relevant medical or allied professionals. These are referred to generically as Victim Impact Reports. On some occasions for a variety of reasons such reports cannot be obtained,

or they may be incomplete, perhaps because the effect upon the victim of the events in question cannot yet be finally determined, or because the victim may not wish to undergo further examinations. In such circumstances the court has to rely on such evidence as is available to it, its experience of similar injuries and the facts of the case, and then make the best assessment it can of the effect of the crime upon the victim. If there are reasonable grounds for doubt about the nature and extent of the effect of any injuries then the defendant should be given the benefit of any such doubt. I propose to take that course in the present case.

[13] Dr McKee, Mr Braniff's GP, writes:

> "Whilst his physical injuries have largely healed he remains with altered sensation in his arm. More importantly he has major post traumatic stress disorders for which he attends a psychiatric team. His current medication-Temazepam, Fluoxitine, Diazepam-mental health. Tramadol, Lyrica-pain relief."

[14] In addition to the undated report from Dr McKee and the witness statement from Mr Gardiner FRCS there are letters from various specialists dealing with his physical injuries which cover the period from his discharge from hospital until 10 December 2007; and the later of the two letters from the consultant psychiatrists is dated 23 January 2008. From these the following picture emerges.

(1) He sustained multiple stab wounds to his chest, abdomen and right arm. These comprised a stab wound in the left upper quadrant of the abdomen; a superficial stab wound to the right anterior chest wall; a stab wound to the right flank posteriorly; and a stab wound to the right posterior aspect of the chest.

(2) An emergency laparotomy was performed which revealed an injury to his colon. The remaining wounds were cleaned and closed.

(3) There was an almost complete laceration of the brachial artery in the right arm, and a short segment of saphenous vein was taken from the right groin and used to repair the brachial artery.

(4) He was discharged on 9 January 2007 but had to be readmitted on 12 January complaining of vomiting, abdominal pain and constipation. He was again discharged on 17 January.

(5) Subsequently he complained of sensory loss affecting the right index and middle fingers, and the right thumb. He also had discomfort in the right femoral nerve distribution. When reviewed by Mr McKinley FRCS on 7 December 2007 Mr McKinley's opinion was that sensation in his fingers had improved significantly, although the sensation in his thumb remained numb. Mr McKinley was hopeful of further improvement with time.

(6) There was also discomfort which was suggestive of neuropraxia in the right femoral nerve distribution, which Mr McKinley believed was a result of the removal of vein from his right groin for the brachial artery repair.

(7) Mr McKinley prescribed Lyrica and was to arrange attendance at a pain clinic to deal with this problem, and arranged to review him in six months time.

(8) The reports from the consultant psychiatrists show that Mr Braniff was referred to them by Dr McKee, and was diagnosed as suffering from Post Traumatic Stress Disorder characterized by a painful recollection of the incident; being over alert and fearful; he developed phobic avoidance and avoids going outside, especially anywhere near where the attack occurred. He was prescribed the medications described by Dr McKee, and subsequently referred to a Trauma Team.

[15] There are references in some of these letters to Mr Braniff having played football and being in full time employment for six months before this attack, and in his witness statement of 16 April 2008 he says that he is unable to work as the result of his injuries, and he can no longer play football, or go for walks because of the pain in his leg.

[16] I am satisfied that Mr Braniff has received severe injuries as a result of this attack, and that the long term consequences for his physical and mental health, and for his employment, will be considerable, and may be permanent.

[17] It is regrettably the case that offences of intimidation of witnesses are all too prevalent. As those concerned with the criminal justice system are well aware, there are many occasions on which witnesses are pressurised or intimidated into withdrawing their statements because of a fear of the consequences from the defendant or the defendant's associates if the witness is willing, or thought to be willing, to give evidence against the accused. These concerns are not confined to Northern Ireland. As Rougier J observed in R v Watmore [1998] 2 Cr. App. R. (S.) 46:

> "… This offence of intimidating witnesses either before or after they have given evidence is, as the learned sentencing judge pointed out, becoming endemic and it is getting worse. There seems to be a belief among violent young thugs that they can avoid justice by threatening witnesses who are only prepared to do their public duty and the sooner this appellant and any others like him discover their mistake the better".

[18] In R v Chiney [2002] 2 Cr. App. R.(S.) 55 Bennett J said:

> "The offences for which the defendant was convicted are very serious offences. Witnesses who are witnesses to criminal offences are indispensable to the conviction of the guilty and the acquittal of the innocent. They must not in any way be pressurised into not giving evidence. In particular witnesses must not be intimidated through threats that they might be subject to physical violence. … In our judgment offences of intimidating witnesses invariably contain an element of deterrence for the reason that witnesses must feel entirely free to give evidence and must not be subject to threats".

[18] The maximum punishment for such offences is 5 years imprisonment, and the decided cases in Butterworth's Current Sentencing Practice at B8-23A show the range of sentences imposed is from 6 months to 4 years imprisonment. Cases involving threats to kill are equally grave. Such offences carry a maximum penalty of 10 years imprisonment. In R v Tucknott [2001] 1 Cr. App. R. (S.) 318 the court observed that:

> "While at first instance courts have passed sentences of in excess of five years, so far it appears that this Court on appeal has not approved a sentence of more than five years for this offence on a plea of guilty. It may be that a higher sentence could be justified in a special case, but the reason for the general position is plain: concern lest at higher figures the offence of threats is placed too high in the scale of violent crime. . . judges have to consider the safety of the public".

[19] As can be seen from the accounts given by Joleen Drummond, Sally Drummond and Joseph Drummond, the threats were all directed to preventing Joleen Drummond from giving evidence by threatening retribution upon her and her family if she had the temerity to perform her public duty by giving evidence against the accused. Such was the degree of repetition of these threats that they can only be described as a campaign of intimidation against the Drummond family. They are to be commended for resisting this sustained intimidation.

[20] In her report on the defendant Dr Weir, a consultant psychologist, recounts how he had been heavily abusing alcohol and drugs, particularly cocaine, for some ten years before this incident, and had done so that night. Even whilst on remand in prison he claims he had access to cocaine, and consumed two oz costing £2,500. If correct this is a deplorable state of affairs, and that he did overdose on cocaine at that time appears to be born out by his being placed in the hospital wing for two months where he experienced severe withdrawal symptoms.

[21] There are a number of aggravating factors of this case. The first is that Mr Braniff was stabbed several times. The second is that he suffered very serious injuries, the consequences of which may well remain with him for the rest of his life, even if there should be some amelioration of his pain in the future. The third is that the defendant has a very bad record for offences of violence. The fourth is that the defendant engaged in a campaign of intimidation and threats as a result of his arrest.

[22] So far as mitigation is concerned, I accept that there was a degree of provocation in that it appears from the witness statements that Mr Braniff was all too willing to fight the defendant. However, that cannot in any

way excuse the defendant's willingness to resort to using a knife, and his record shows that he is all too ready to engage in violence. The accused pleaded guilty, but his plea was only entered at the last pre-trial review on the Friday before his case was due to start on the following Monday. In the pre-sentence report it is recorded that the defendant does not accept that he intimidated or threatened members of the Drummond family, but Mr Gallagher QC informed me that the defendant now accepts that their evidence must be correct although he has no recollection of these conversations. Throughout interview he declined to answer any material question. As the Court of Appeal emphasised in Attorney General's Reference (No 1 of 2006) (McDonald & Ors) [2006] NICA 4 at [18]:

> "If a defendant wishes to avail of the maximum discount in respect of a particular offence on account of his guilty plea he should be in a position to demonstrate that he pleaded guilty in respect of that offence at the earliest opportunity. It will not excuse a failure to plead guilty to a particular offence if the reason for delay in making the plea was that the defendant was not prepared to plead guilty to a different charge that was subsequently withdrawn or not proceeded with."

[23] Therefore in this case the defendant cannot rely on the fact that there was a charge of attempted murder on the indictment when he pleaded not guilty to all charges upon arraignment. It is true that he had been detained in a psychiatric hospital for a considerable period of time, but as the report from Dr Bownes relied upon by the defence makes clear, this was because he had been consuming illicit substances and he was therefore the author of his own misfortune in that respect. I do not consider that someone can take refuge from facing up to the charges against them by relying upon a psychiatric condition created by their consuming illicit substances.

[24] It is clear from R v Watmore and R v Chiney that cases of intimidation, and I consider threats to kill fall within the same principle, should result in sentences being imposed that are consecutive to the sentence for the principal charge, although one must have regard to the totality principle in order to ensure that the total of the sentence is not disproportionate to the overall criminality of the accused.

[25] I am required to consider whether a custody probation order should be imposed in the present case as the sentence will exceed more than 12 months imprisonment. As is apparent from the defendant's record he has been given several opportunities to respond to probation supervision and guidance in the past and he has not availed of those opportunities.

[26] The defendant's failure to respond to probation assistance in the past suggests that he is unlikely to do so in future. However, Dr Bownes has diagnosed a complex psychiatric condition demonstrating features of what he describes as the Emotionally Unstable and Dissocial Personality Types. Dr Bownes has suggested a disposition that may provide a means of treatment which, if successful, could, it seems, at least reduce the danger to the public of the defendant committing further crimes of violence upon his release. This treatment is not available in Northern Ireland, and would involve the defendant agreeing to be transferred to prison in England and then being transferred to a Forensic Psychiatric Unit specialising in the treatment of Personality Disorder. This would be followed by a period of statutory supervision by the Probation Service upon release. The defendant has agreed to this, and therefore arrangements can be made to transfer him voluntarily to Cheswold Park Hospital, Doncaster, or an equivalent institution.

[27] Given the defendant's record and personality I consider that such an option should be encouraged. It will require the defendant to make a number of decisions on a voluntary basis, but as the law presently stands the only way in which a period of probation supervision could be achieved would be to make a custody probation order so that upon the defendant's release he is subject to a period of probation supervision. The pre-sentence report states that

> "Taking into account the serious nature of the current offences and given Dr Bownes assessment of Personality Disorder PBNI are not in a position to manage the high risk of harm currently posed by the defendant. The court may therefore deem it appropriate to consider the recommendation outlined by Dr Bownes namely that Mr Turley be enabled to be treated in a specialist forensic psychiatrist unit."

[28] I will therefore impose a custody probation order so as to ensure that upon his release the defendant is subject to a period of supervision. Neither Dr Bownes nor the pre-sentence report suggest how long that period should be.

[29] I sentence the accused as follows. Count 2, 7½ years imprisonment. On counts 3, 7 and 8 3½ years imprisonment concurrent on each count, but consecutive to the sentence on count 2, making a total of 11 years imprisonment, for which I will then substitute a custody probation order of 10 years imprisonment followed by one year's probation by reducing the sentences on counts 3,7 and 8. The total sentence would otherwise have been 11 years imprisonment.