

Neutral Citation No: [2023] NICC 34

Ref: OHA12357

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 20/052326

Delivered: 08/12/2023

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE**

THE KING

v

SEBASTIAN NOWAK

**Mr Weir KC with Mr G McCrudden (instructed by the PPS) for the Crown
Mr Duffy SC with Mr McStay (instructed by McCourt & Maguire, Solicitors) for the
Defendant**

SENTENCING REMARKS

O'HARA J

Introduction

[1] Mr Brian Coulter was 62 years old when he was found dead in his own home in Magherafelt on 18 October 2021 by his sister, Belinda Wilson. Her horrific discovery, shortly after noon that day, became even worse for her as the circumstances of his death emerged and, particularly, as the events which occurred after his death were revealed.

[2] Despite an earlier productive life serving the community as a police officer, Mr Coulter's life had gone down hill over many years. He was an alcoholic who was weak and frail and had many health problems. As a result of seizures he had lost power in his right hand and had an associated weakness on his right side. Ms Wilson had taken on what was in effect a caring role for him, calling in once or twice a week to check on him and help him with basic functions like groceries, medication, washing and cleaning.

[3] When she last saw him alive in his home on 12 October, she found the place a mess. A Polish man and a local woman were there. Ms Wilson got the man to help her tidy and clean. To her dismay her brother had bruising to his face and a black

eye which she thought may have been caused by a fall. In her police statement she said, "I didn't think anything of this as he was continuously falling due to him drinking heavily and also as a result when he took seizures from not drinking."

[4] Police enquiries after 18 October uncovered CCTV footage of Mr Coulter and the defendant entering his home on the evening of 13 October. That was the last time Mr Coulter was seen alive. The defendant was seen coming and going from the house on 14 and 15 October on his own.

[5] When Ms Wilson arrived on 18 October, she entered the house and found, once again, that it was a complete mess. She went to her brother's bedroom and found not her brother, but the defendant. On going to the other bedroom she discovered her brother who was lying in a twisted position but obviously dead with a swollen head. No sooner had she found him than she was confronted by the defendant roaring aggressively at her with his fists clenched. Realising that she was in danger she ran out of the house and rang 999. The defendant followed her but only to the door. A few minutes later the defendant left her brother's home walking fast and ignoring her as she called out to him. She took a picture of him on her phone and then waited for the police to arrive.

[6] About two hours later police searching for the defendant found him in a car park. As he was being arrested, he had to be restrained because he assaulted and attempted to headbutt an officer. In addition, he gave a false name.

[7] A forensic examination of Mr Coulter's home found blood in many areas including the living room, hallway, bathroom and shower, with the blood matching Mr Coulter's DNA. There was also blood from Mr Coulter on a hammer shaft and on the defendant's coat. From wet towels, a mop and wet clothes, Ms Tumelty of the Forensic Science Service has deduced that an effort was made to clean up blood after Mr Coulter had been injured, although the amount of blood suggested that there had been bleeding from an open wound for some time before death.

[8] Dr Turner, the Assistant State Pathologist, carried out an autopsy; she found that the cause of death was blunt force injuries to his head, neck and chest, but because the body had decomposed over a number of days her findings were a little circumspect. A reading of Mr Coulter's blood alcohol content showed that he was more than 2½ times over the limit for driving at 211mgs per 100ml.

[9] Dr Turner's principal conclusions were that Mr Coulter had subdural haemorrhage on both sides of the brain and extensive bruising over right side of the head and cheek. These could reflect multiple impacts or falls but would also be consistent with blows from punches or feet or weapons. Blunt trauma to the neck, including fractures to the structure of the larynx with associated bruising to the right side of the neck. This was most consistent with a blow or blows; it would be unusual in a fall and would be more typical of an assault. There were areas of bruising over the right side of the chest and multiple areas on the back reflecting

multiple impacts or falls but could also be as a result of multiple blows. There were areas of bruising at each wrist, left hand and arm which would be consistent with defensive injuries as well as other potential explanations. The findings indicated that Mr Coulter had likely been dead for some days and perhaps since not long after he was last known to be alive.

[10] When interviewed by the police the defendant effectively said nothing over a series of interviews until the last interview when, in a prepared statement, he said that he knew Brian Coulter and that Mr Coulter had invited him to the flat where they were both drinking, that an argument developed, and that Mr Coulter had hit him and that he hit him back possibly twice in self-defence. When he checked he found no pulse on Mr Coulter. He added that he continued to drink in the flat over a two to three day period, that he had moved the body to a bedroom and that he remembered Ms Wilson coming to the house and him shouting at her, but he denied assaulting her.

[11] The defence of self-defence was repeated in the defence statement dated 20 March 2023, 17 months after arrest and the charge of murder.

[12] This contention of self-defence was never ever going to stand up to scrutiny. The defendant was 29 and had no injuries, whereas the deceased was a weak vulnerable drunk 62 year old man. Only belatedly in summer 2023 did the defence suggest that the defendant would plead guilty to manslaughter rather than murder. That offer was considered by the Public Prosecution Service and accepted primarily on the basis that given the deceased's pre-existing injuries and medical history, it might not have been possible to prove the connection between the attack by the defendant and the death, a connection which is necessary to prove murder. The exact mechanism of death was uncertain.

[13] I endorse and accept the plea of manslaughter in this case. I note, however, that in the defence statement the defendant not only denied the murder charge, to which he ultimately pleaded guilty on 6 October, but he also denied assaulting Ms Wilson, assaulting the police and obstructing the police.

[14] I have read a moving victim impact statement presented by Ms Wilson. Her brother Brian was her only sibling. Despite all the vulnerabilities which he had, she was devoted to him and was resolute in her care of him. His killing by the defendant was in her own words "distressing and heartbreaking" and understandably she continues to be troubled greatly when she recalls finding his body and she says "the trauma, pain and grief of losing my brother will remain with me forever.

[15] I have also received a report from Dr Edel Fitzpatrick, psychologist, about the effect which Mr Coulter's killing had on his daughter who is in her early forties. It appears from this report that she had a complex and difficult relationship with her father over the years because some of his conduct was difficult for her to cope with.

Notwithstanding that fact, his death at the hands of the defendant has had a huge negative impact on her, on her family and on her work. No matter how complex and difficult he was, Mr Coulter was her father, and she grieves his death greatly.

[16] What then of the defendant? He is now 29 and was 27 at the time he killed Mr Coulter. He is reported to suffer from alcohol addiction. He is Polish and appears from the pre-sentence report, helpfully provided by the Probation Board, to have had a difficult life in his homeland before moving to Northern Ireland in 2019. From Poland he has a criminal record including robbery, burglary and various levels of assaults. After coming to Northern Ireland he accrued a further criminal record prior to the killing of Mr Coulter in October 2021, but that was at the level of the magistrates' court.

[17] On his behalf, Mr Duffy submitted that I should equate this killing to other one or two punch killings in which following the paper written helpfully by Sir Anthony Hart, sentences range between two years and five and a half years, with sentences at the upper end reserved for cases where there are many aggravating factors and few mitigating factors.

[18] He further submitted that the defendant should get considerable credit for his guilty plea, and he took issue with some of the factors advanced by the prosecution as aggravating factors.

[19] I accept that Mr Coulter and the defendant were drinking in Mr Coulter's home when perhaps some minor quarrel started which ended up with the defendant striking Mr Coulter twice and killing him. It was likely not a premeditated act in the sense that it was planned in any way. There was no history of acrimony between the men who were essentially strangers to each other.

[20] That having been said, the following aggravating factors are present in my judgment:

- (i) Mr Coulter was a frail vulnerable man.
- (ii) Mr Coulter was drunk.
- (iii) The defendant, on his own version, was not drunk; he told the Probation Board that he only had two beers.
- (iv) The defendant sought no medical help for Mr Coulter.
- (v) Mr Coulter died in his own home where he should have been safe.
- (vi) The defendant moved the body to a bedroom and lived on in the house as if nothing had happened from 14-18 October when Ms Wilson arrived.

- (vii) In the pre-sentence report, the defendant blamed Mr Coulter for instigating the confrontation, rather ignoring the fact that given their respective ages, health and condition, the term 'confrontation' is strikingly inappropriate.
- (viii) The defendant assaulted Ms Wilson by roaring at her aggressively.
- (ix) The defendant assaulted and obstructed the police.
- (x) The defendant has a significant criminal record especially for a youngish man.
- (xi) The defendant had been released on bail on 12 October just days before the killing and was in breach of his bail conditions by being at Mr Coulter's home at all.

[21] However unintended the defendant's killing of Mr Coulter was and however much other injuries or conditions caused or contributed to Mr Coulter's death, the striking detail in this case is the defendant's utter inhumanity and the complete absence of civilised conduct on his part.

[22] I am bound to give him some credit for his guilty plea but that will be limited for two reasons. The first is that it was delayed for almost two years and the second is that he was, in effect, caught red-handed.

[23] I have considered the authorities referred to on behalf of the defendant. It is clear from them that the range of factors in manslaughter cases is almost endless, so that true comparators are difficult to find. It is also clear that aggravating and mitigating factors are not counted numerically; it is the degree of aggravation or mitigation which matters, not the numbers.

[24] I am also bound to recognise that the pre-sentence report correctly and indisputably indicated that the defendant poses a significant risk of serious harm to the public for reasons which are set out in the report and chime with what I have set out above.

[25] I also consider that the dangerousness threshold has been met applying the test set out in the Criminal Justice (Northern Ireland) Order 2008 which is different from the test applied by the Probation Board in the pre-sentence report. That leaves open to me the option of imposing an extended sentence to protect the public rather than punish the defendant. Article 14 para 8 of the 2008 Order provides that the extended sentence can be for no more than five years.

[26] In all the circumstances, I sentence the defendant as follows. I take as a starting point the term of four years' imprisonment. I consider the almost unique set of very serious aggravating features of this case justifies increasing that sentence to 10 years. I consider that there are almost no mitigating features for the reasons which are set out above and in the pre-sentence report. There are no protective

identified factors. The only mitigating feature is the guilty plea but for the reasons which I have set out above, I give it very limited weight in the circumstances of this particular case and, I therefore, reduce the sentence to nine years of which fifty per cent will be spent in custody and fifty per cent on licence. I impose sentences of six months each on the three lesser charges of assault on Ms Wilson, assault on the police and obstruction of the police. Those will run concurrently with the nine year sentence because I have treated them as aggravating factors in the manslaughter aspect of the case and cannot count them again separately.

[27] There is one other significant feature which is relevant. I have been invited to recommend that the defendant is deported when he has served his sentence. The defendant could have argued against that recommendation but chose not to do so. The truth is that the defendant's life in Northern Ireland has been a disaster for him personally over and above his killing of Mr Coulter. He has contributed nothing to life in this jurisdiction, in which his unhappy earlier life in Poland did not improve. There is no reason not to recommend his deportation and I do so recommend.

[28] If I believed that the defendant might stay in Northern Ireland, I would have considered making a VOPO and I would also have considered making an extended sentence. They seem unnecessary in light of the recommendation about deportation and Mr Novak's consent to that. Similarly, the licence conditions suggested in the pre-sentence report may not be required, but if somehow there is a period of licence such conditions as were suggested in the report seem to me to be appropriate.