

IN THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

v

ROBERT JOHN FLANAGAN AND EAMON FLANAGAN

Bill No. 524/04

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WEIR J

[1] Robert John Flanagan you have pleaded guilty to the manslaughter of Richard Caldwell and you, Eamon Flanagan have pleaded guilty to affray, both contrary to common law. The circumstances of these offences which culminated in the death of Mr Caldwell have previously been described to the Court in very considerable detail by Mr Adair QC on behalf of the prosecution and therefore I shall now merely summarise them. The deceased was the partner of your sister Jennifer and had been living with her since about July 2003. Their relationship appears to have had it ups and downs, especially when the couple had been drinking which seems to have been fairly often. On the evening of Saturday 29 May 2004, following a week when matters seemed to have been going well between them, they began to have a silly argument about a photograph in a mobile phone. Again it seems that they had been drinking. The argument was patched up and more alcohol was purchased and consumed in the home of your mother. It seems the earlier argument was rekindled there and a glass was thrown hitting Richard and he and Jennifer went back home where they continued their dispute. Later Richard left the house and Jennifer returned in some upset to her mother's house. You Eamon arrived at your mother's house and seemed to have felt aggrieved at the row between your sister and Richard although Jennifer played down whatever disagreement there had been and told you not to get involved.

[2] Most regrettably you did not take your sister's advice but set off in search of Richard. Jennifer and a neighbour, Stephen McAuley, followed in the hope of preventing trouble. When they arrived in the area of St James

Street and Antrim Road they saw a struggle in process between you Eamon and Richard and they tried to pull you apart. As it was by now the early hours of Sunday the commotion wakened nearby residents who have been able to tell the police what they saw as the fight progressed. The incident was also captured by CCTV cameras at the nearby Girdwood Barracks and witnessed by soldiers on duty there. You Eamon were then seen to use your mobile phone and shortly thereafter you Robert appeared and without warning or hesitation stabbed Richard repeatedly. When Stephen tried to pull you away you turned on him saying "Stay the fuck out of it, it's none of your business." Richard was seen to be in a bad way, his shirt was turning red and Jennifer tried to help him away toward Carlisle Circus but he collapsed and although he was taken to the Mater Hospital and strenuous efforts made there to save him he died at 6.00 am that Sunday.

[3] Dr Crane, the State Pathologist, found at autopsy that Richard had been stabbed eight times, five wounds were on the right side of the chest with two perforating the lung and another penetrating the liver. It was these particular wounds that caused his death while undergoing emergency surgery. He also had multiple other injuries of less significance. Meanwhile you Robert had been seen walking calmly away along the Antrim Road. You had the presence of mind to visit a friend's home at about 3.00 am on that Sunday where you washed and changed, disposed of a knife and a pair of boots, all with Richard's blood on them, in a rubbish chute and left again. The knife matched one missing from a set in your father's house where you lived. After that you disappeared for more than a week despite efforts by the police to find you until you came to a Police Station accompanied by a solicitor and equipped with a statement that he had already taken from you. You claimed to have been living somewhere on "the Loughshore" during the intervening period. You also claimed that you did not realise that you had the knife with you until you put your hand in your pocket at the scene and discovered it having put it there at some time earlier for self protection following a previous altercation with others unconnected to this case.

[4] I have received a considerable number of psychiatric reports and also probation reports all have been of great assistance to me and I shall refer later to particular points from some of them. I have also had the benefit of a very moving and well-expressed letter from the family of Richard Caldwell. It brings home starkly the far-reaching consequences for the family of this senseless, thoughtless and brutal killing for which there was not a shred of justification.

[5] I propose to deal firstly with you Eamon. You were the catalyst for all that happened in this incident. You took it on yourself to interfere following an argument between your sister and Richard although she asked you not to. You followed Richard and began fighting with him. You resisted your sister's efforts and those of a friend to stop the fight. When it did not go as you

hoped you committed the cowardly act of telephoning your brother Robert, whom you must have well known was not at that time mentally stable, to enlist his help. The idea that you phoned home in the middle of this fight for any other purpose is frankly incredible. I do not find that you knew or suspected that he would arrive armed with a knife or that he would stab Richard but had it not been for your actions Richard would be alive today.

[6] I have already said that I can discern no mitigating factor whatsoever in relation to the offence itself. So far as you personally are concerned, you were at the time 20 years of age and had a negligible criminal record which I disregard. You did not plead guilty at the first opportunity but you had given an account of your involvement to the police when you were arrested and interviewed so that I will not penalise you for that. However I cannot avoid concluding that this was a case in which no visible defence was ever available to you; the evidence against you from the combination of sources was over whelming. I respectfully agree with and adopt the observations of the Lord Chief Justice in R v Pollock [2005] NICA 43 were, at para 18 he says:

“We consider that a strong case can still be made in this jurisdiction for distinguishing between those cases where the offender is caught red-handed and those where a viable defence is available. The incentive to plead guilty in the latter category of case should in our view continue to be enhanced in this jurisdiction. It follows that the discount in cases where the offender has been caught red-handed should not generally be as great as in those cases where a workable defence is possible.”

In the present case no workable defence has or could have been suggested and the discount will be reduced accordingly.

[7] I have been told by senior counsel for the prosecution that he and Mr Terence McDonald QC, who has ably represented you, agree that the appropriate range of sentence is two and a half years to four years. I consider that the circumstances of this case place it at or above the upper end of that scale. Mr McDonald has urged me to consider the imposition of a custody-probation order so as to afford you the opportunity, upon your release from prison, of receiving professional help and support for your alcohol problem which seems, from the observations, of the probation officer, to be escalating to a serious extent especially given your young age. I am conscious that the Court of Appeal expects there to be evidence both of a risk of future harm to the community and some feature of the proposed probation intervention upon release that would lower that risk before such a sentence is imposed. In your case there are clearly serious issues connected with your drinking that need to be addressed and while the probation officer does not assess you as

currently presenting a high risk of harm to the public. It seems to me that such risk as exists would be lowered by your successfully addressing your alcohol problem.

[8] Accordingly I intend to offer you the opportunity to have a custody-probation order made in your case. Such an order would require you to serve the immediate custodial sentence which I am satisfied is required in your case and then, on your release from custody, to be under the supervision of a probation officer for a further period.

[9] I want to make it clear to you that a custody-probation order is not an easy option. If you agree to accept such an order you will have to follow any directions that the probation officer may give you and attend any counselling, courses or appointments that may be arranged for you. If you fail to do you will be in breach of the order and will be liable to be punished accordingly.

[10] If you do not wish to accept a custody-probation order I shall impose a sentence of four years' imprisonment upon you. If you do wish to accept custody-probation the sentence will be three years' imprisonment together with one year's probation supervision to commence upon your release from prison.

[11] Do you agree to the making of a custody-probation order? Very well Eamon Flanagan, as you agree to a custody-probation order I sentence you to three years' imprisonment together with one year's probation supervision to commence upon your release from prison.

[12] I now turn to deal with you Robert. Your central part in this killing has already been described and, as in the case of Eamon, I see no mitigating factor in your favour arising from the crime. Your pre-incident medical background is very fully described in the report of Dr O'Kane of 6 April 2005 which is all the more valuable because she was personally dealing with your case at the time. It appears that from about September 2003 you had been exhibiting symptoms of a deteriorating mental state with suspicions of others, delusional feelings of persecution and hallucinations. By December 2003 the Doctor was suggesting to you that you should be admitted as an in-patient but you and your father were opposed to the idea and felt you could cope at home. In the early months of 2004 your condition did not improve rather deteriorated. You failed to take your medication regularly, failed to attend at out-patient appointments and further efforts in March 2004 to persuade you and your father to agree to an in-patient admission also failed. Thereafter you did not attend a significant number of out-patient appointments. The last appointment which you did attend before this incident was on 26 May 2004 when your father reported that you were overly suspicious of others and were still hearing voices. Dr O'Kane diagnoses you as suffering from Paranoid Schizophrenia at the time of Richard Caldwell's killing with a

heightened sense of persecution and Paranoid Psychosis at the time and a prevailing fear that you yourself were under attack. She concludes that at the time of the killing you were suffering from a medical abnormality that it substantially impaired your mental responsibility for the killing. That diagnosis and conclusion is supported by Dr Christine Kennedy, Consultant Psychiatrist, who examined you on behalf of the prosecution and it was on the basis of that agreement between the psychiatrists that the prosecution accepted your plea to manslaughter and did not proceed with the charge of murder.

[13] In prison your mental state has been stabilised. As Dr Bownes explained in his helpful evidence to the Court, you are currently compliant, have organisation and structure to your day and have been cooperating with the prison psychiatrist and forensic nursing staff. You are complying with your medication. You have been examined while in prison by Dr Myatt, a Consultant Forensic Psychiatrist at Carstairs Hospital who, while agreeing with the diagnosis of psychiatric illness, probably Paranoid Schizophrenia, also considers that while your mental illness is adequately managed on your current drug regime and you are settled in prison there is no need for you to be transferred to mental hospital at the present time. He considers however that your condition should be kept under review while in prison in case your mental state should deteriorate.

[14] In the light of those coincident medical opinions there is a large measure of agreement between prosecution and defence as to what sentence might be appropriate. It is agreed that a hospital order is not at present indicated and that the choice lies between a determinate sentence of imprisonment, possibly with an added element of probation on the one hand and a discretionary life sentence on the other. Your senior counsel, Mr O'Donohue QC, has in the course of his spirited submissions urged me to choose a sentence of custody/probation. I now deal with that submission.

[15] In the course of his oral evidence Dr Bownes said in reply to Mr O'Donohue that he could not predict how things would be in five years' time if you were then still in prison. He would have to see how things turned out and consider the most up-to-date information available. To make that forecast now "would be a leap of faith". You presently have to take powerful medication several times a day and if you are not to take it a mental health professional would speak to you. If you failed to take it for more than a week you might pose a threat.

[16] We know that prior to this killing you had not been attending your appointments, not taking your medication properly and abusing other substances, you refused to go into hospital. The result of all that was that you killed Richard Caldwell at a time when you were not considered ill enough to compel you to enter a psychiatric hospital. My crucial concern which I

debated at length with your counsel and Dr Bownes that a determinate sentence would place no check on your suitability for release from prison when the custodial term expired whereas a discretionary life sentence will oblige the Life Sentence Review Commission, composed of a psychiatrist and psychologist among others, to review your medical circumstances and the plans for your aftercare on release from prison before you will be released into the community following any minimum term that I might impose. Mr O'Donohue urged me to take what Dr Bownes had called "a leap of faith" but after careful reflection I consider that I cannot in your case do so as the potential consequences of your being released into the community in a way that is not carefully structured and arranged in advance might be very serious. I intend no criticism of the Probation Service when I say that their ability to prevent your causing harm to others if you were to be again at large in the community while non compliant with medication, abusing substances, failing to attend medical appointments and refusing to become a voluntary in-patient (or some combination of these) are such as not to make me feel able to take that course unless the law were to oblige me to.

[17] The decisions of the English Court of Appeal in R v Hodgson [1967] 52 Cr App R 113 and Attorney General's Reference No 32 of 1996 (Whittaker) [1997] 1 Cr App R (S) 261 were considered with approval by the Court of Appeal in R v Gallagher (2003). From those decisions I distil the following tests to be met before a discretionary life sentence should be imposed.

- (1) The offensive must be grave enough in itself to require a very long sentence.
- (2) It must appear from the nature of the offence or the defendant's history that his a person of unstable character likely to commit such offences in the future.
- (3) There are good grounds for believing that the offender may remain a serious danger to the public for a period than cannot be reliably estimated at the date of sentence.

[18] I consider that each of those tests is amply met here and I therefore intend to pass a sentence of life imprisonment upon you. The next question is the length of the minimum term that you will be required to serve in prison before you will become eligible to have your case referred to the Life Sentence Review Commissioners. I approach that question by first assessing the length of determinate sentence that I would have imposed had I been persuaded by O'Donohue's submissions. Again in relation to this there was a striking degree of agreement between prosecution and defence as to the range which they placed at between 10 and 14 years. I give you credit for your age at the time of this offence and your clear criminal record and some limited credit for your plea to this charge at what the prosecution concede was your first

opportunity but limited because, as in the case of Eamon, you had no viable defence other than that of impaired mental responsibility for which credit is already reflected in the reduction from murder to manslaughter. Taking account of these considerations I would have imposed a determinate sentence of 12 years. In view of the fact that remission would reduce the effective length of that sentence to one of six years actually spent in prison I fix the minimum period at that same figure because it will not attract any remission.

[19] I therefore impose upon you, Robert Flanagan, a sentence of life imprisonment and erected the minimum that you will serve in prison before you will first become eligible to have your case referred to the Life Sentence Review Commissioners for consideration as to whether and if so when you are to be released on licence is one of six years. The period that you have already spent in prison on this charge and on the previous charge of murder will be deducted from that period.

[20] Finally, that if and when you are in the future released on licence you will for the remainder of your life be liable to be recalled to prison if at any time you do not comply with the terms of that licence.