

**Neutral Citation: [2011] NICC 22**

Ref:

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

Delivered: **12/05/11**

**IN THE CROWN COURT FOR NORTHERN IRELAND**

**10/119736**

**THE QUEEN**

**-v-**

**ALAN ARCHIBALD**

**Her Honour Judge Patricia Smyth**

1. You have pleaded guilty to causing the death of Mark Proctor by driving without due care and attention.
2. This is a truly tragic case. Had it not been for the fact that Mr Proctor had put petrol in his wife's diesel car by mistake the previous night, and wanted to sort out the problem before leaving for work, he would not have been on his motorbike that morning, but would have been picked up by a colleague in a work van.
3. I have been provided with a statement of agreed facts from the prosecution and defence which have already been read out in public and are attached to these sentencing remarks. These remarks should be read in conjunction with those agreed facts.

4. Mark Proctor was 37 years old. I have been provided with victim impact reports from his widow, his two children 'G' and 'M' and his mother. They are moving and tragic, and describe the void which the loss of a husband, father and son has left. In particular, it is clear that Mr Proctor was devoted to his wife, particularly since a riding accident in 2000 left her unable to walk. His daughter G's health has deteriorated since his death and the burden of her illness which Mrs Proctor has had to bear without the support of her husband has added to her grief. It is to Mrs Proctor's enormous credit that in the midst of that grief she thought about you and how, at such a young age you also had to bear the burden of her husband's death. Both G and M have described a wonderful father who played a central role in their lives. Mr Proctor's mother has described the terrible loss of her eldest son, and the suffering she and her family have endured as a result of his death. She has also described the strain which these court proceedings have caused which has prolonged her grief.

5. On that morning, you were driving a tractor. Mr Proctor's motorbike collided with the front of the tractor as you emerged from a laneway on to the Ballyrashane Road.

6. I have been provided with a detailed and careful forensic report from Mr Stephen Quinn on behalf of the prosecution. Mr Quinn is a Chartered Engineer, Senior Scientific Officer at Forensic Science Northern Ireland and he has been involved in the investigation of road traffic collisions since 1981.

7. The report reveals that:

- The tractor was at a very low speed or stopped at the time of impact.
- Your view to your right was severely restricted by the embankment and hedgerow alongside the Coleraine bound lane.

- This made it difficult for you to assess the closeness of traffic approaching from your right, particularly when the traffic is entitled to travel at speeds of up to 60mph.
- Because of the length of the tractor projecting in front of its cab, you had to allow the front of the tractor to move further out of the mouth of the lane to enable the cab to be in a position so that you would have a view to the right.
- Mark Proctor's motorbike would only have been clearly visible to you for approximately **1.2 seconds** prior to impact if it was travelling at an average speed of 60mph.
- Because of the restricted view to the right, you ought to have been very cautious as you emerged from the lane. The report notes that although one solution would have been to "edge out" whilst you leaned forward in your seat to obtain a longer view of the road to your right, this is not a perfect solution since the front of the tractor will become an obstacle to a vehicle approaching from the right. The report also noted that motorbikes are more difficult to see than other vehicles.
- You could safely execute a right turn manoeuvre with the assistance of another person located at a position to give the maximum view of traffic approaching from the right.

8. I have been provided with two letters confirming the dangers associated with emerging from this particular lane onto the Ballyrashane Road.

9. The first is from Mr Robert Lyons of Lyons Contracts, who employed you at the relevant time and has continued to employ you over the summer months. He describes this location as an "exceptionally dangerous" junction. He states that he has consulted with the DOE to improve the junction without success. He endeavoured to purchase a piece of land from a local farmer so that he could exit onto the main road at a safer location. However,

negotiations failed and as a consequence, he paid £20,000 to provide a new lane.

10. The second letter is from Mr John McAlister, Sales Executive for R Kennedy & Co Ballymena. He has expressed the view that the lane from which you emerged is the most dangerous of all the lanes he has been required to exit. He states that he “dreaded” emerging onto the Ballyrashane Road from this lane because in his view it was “an accident waiting to happen”.

11. Aggravating circumstances:

There are no aggravating circumstances.

12. Mitigating circumstances:

(a) I have been provided with a very helpful pre-sentence report along with a number of character references and references from your college. You were 19 at the time of this offence. It is clear to me that you are genuinely remorseful, and that you deeply regret the death of Mr Proctor. It is noted that throughout the interview process with the probation officer, you expressed the wish that you “could turn time back”. I have no doubt that you and your family have also suffered a great deal.

(b) At the time of this offence, you were an experienced tractor driver. I have been provided with a copy of a certificate of attendance which confirms that you completed a training course in 2003, in tractor driving, for 13-16 year olds who had already had some experience. I have also been provided with a number of certificates confirming your experience in the farming industry. I note that you passed your driving test first time when you were aged 17, and in particular I note that you have never had any points on your licence and you have never previously had any contact with the police. You have a clear criminal record.

(c) You are currently in your second year of a three year BSc Degree in Agricultural Technology, delivered jointly at Greenmount College of

Agriculture and the Queen's University, Belfast. I have been provided with a letter from your lecturer which confirms that you are an excellent student.

(d) In particular, I take into account the fact that after the collision, you did everything you possibly could do to help Mr Proctor until professional help arrived. You tried to revive him and you telephoned the Emergency Services, putting your mobile phone on speaker-mode so that you could clearly hear instructions given to you.

13. Sentencing Guidelines:

The relevant guideline case is R v Doole [2010] NICA 11. The Court of Appeal stated that the English Sentencing Guidelines for causing death by careless driving should be followed in Northern Ireland. It is apparent that the central feature should be an evaluation of the quality of the driving involved and the degree of danger that it foreseeably created. Imprisonment is only *appropriate where there is a level of carelessness which gives rise to real culpability*.

As paragraph 8 of the Guidelines states:

*"Where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence"*

14. The Sentencing Guidelines Council suggests three potential ranges of sentence depending on the culpability of the driver. The prosecution accepts that this case falls into the lowest category of culpability. This category is reserved for *"cases of careless driving arising from momentary inattention with no aggravating features"* An example of a case which falls into this category is set out in the Guidelines as a case *involving an offender who...turns without seeing an oncoming vehicle because of restricted visibility"*. A community order disposal is recommended for such cases.

15. In Doole, the Court of Appeal noted that *"where the culpability of the offender is very low, a custodial sentence will generally not be appropriate, even though death has resulted. Such an approach does not fail to recognise the extreme*

*distress and hurt which this offence causes to the families and friends of the deceased.*  
“The Court of Appeal repeated what was said by Lord Taylor CJ in Attorney General’s Reference Nos 14 & 24 of 1993 (1994) (AR(S)1640 at 644):

*“We wish to stress that human life cannot be restored, nor can its loss be measured by the length of a prison sentence. We recognise that no term of months or years imposed on the offender can reconcile the family of a deceased victim to their loss, nor will it cure their anguish.”*

16. Taking into account the Sentencing Guidelines, I am satisfied that a sentence of imprisonment is not appropriate in view of your culpability, despite the tragic death of Mr Proctor.

17. I therefore sentence you to 240 hours community service which is the maximum community service order the Court can make.

18. I am required to disqualify you from driving and I therefore disqualify you from driving for 12 months until tested.

19. This case serves as a warning to all of us who step behind the wheel of a vehicle, that even a momentary lapse of attention can give rise to the most tragic of consequences.

**R -v- Alan ARCHIBALD**

**Antrim Crown Court**

**ICOS Number 10/119736**

**Statement of Facts**

The Defendant has pleaded guilty to causing the death of Mark Proctor by driving without due care and attention. The Defendant was re-arraigned on 21 March 2011, the date of his trial.

The charge results from a road traffic collision that occurred at about 8.10 am on 15 August 2005 on Ballyrashane Road, Coleraine. Two vehicles were involved:-

- (1) a Honda Fireblade motorcycle (VRM XI 79 ENM) ridden by Mark Proctor (DUB 1905.71); and
- (2) a New Holland TM 140 agricultural tractor (VRM JNZ 1748) driven by the Defendant (P013 19.09.89).

The Ballyrashane Road is a single carriageway with one lane in the general direction of Coleraine, and the other in the general direction of Ballybogey. The speed limit for the relevant stretch of road is 60 mph.

At about 8.00 am Mark Proctor left the family home in Derrykeighan to travel to his work in Coleraine. (Photographs 1 to 6 show his direction as he made his way towards Mayrs Lane situated to his left).

The Defendant was employed on a casual basis to drive tractors at farmland at Mayrs Lane in the Ballyrashane Road. On the morning of 15 August 2008 he was emerging slowly from Mayrs Lane onto the main road with the intention of turning right to travel towards Ballybogey. He was in the vehicle depicted in the photographs. He was in the early stages of performing the right turn manoeuvre when the collision occurred.

The photographs show there is a hill as one approaches Mayrs Lane going towards Coleraine and a road marking "slow" (photographs 1 to 4 refer). There is no suggestion of speed on the part of the motorcyclist.

The Defendant's view towards Ballybogey was limited because of the crest of the hill, the bend in the road and the hedgerow (photograph 35 refers). From all the evidence it appears that the position of the laneway in relation, to

where it joins the Ballyrashane Road is the single most important factor as to why the collision occurred.

The motorcycle collided with the front of the tractor causing Mr Proctor to be thrown from the bike in to the oncoming lane. Mr Proctor died at the scene from the injuries sustained.

There are no witnesses to the collision and the case against the Defendant centres on the evidence of Stephen Quinn of PSANI (statements at pp 14-21; 22- 25 refer). During his interview on 11 September 2008 the Defendant told police of the difficulties in negotiating the laneway and the junction – problems recognised by all those who used the lane.

The Defendant is now 21 years old. He has some experience in using farm machinery and he is a student at Greenmount College. He has no previous convictions. He accepts by his guilty plea that emerging from the laneway in the circumstances was careless. His plea is welcomed by the family of the deceased.

#### Guideline cases

*R v Doole* applies and this case could be viewed as falling within the lowest category of culpability.

Dated:5 May 2011