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Judgment: approved by the Court for handing down | *Delivered:* **17/4/2008**
*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

NEWRY CROWN COURT
(SITTING AT BELFAST)

THE QUEEN

v

CHRISTOPHER McGINN

HART J

[1] The defendant has pleaded guilty to two charges of dangerous driving causing death, two charges of dangerous driving causing grievous bodily injury, driving with excess alcohol and driving with no insurance. The remaining counts on the indictment were allowed to lie on the file, not to be proceeded with without leave of the Crown Court or the Court of Appeal.

[2] The charges relate to events which occurred on the night of 27 October 2006 on the Dublin Road, Newry. The defendant was driving a white Carina car with two passengers, Anthony Darby in the front passenger seat, and Gemma McKeown who was a rear seat passenger. The defendant admitted to the police that he purchased the Carina car earlier that night for £200 by way of part payment. He accepted that he had no driving licence or insurance, although he said to the police that he had no recollection of meeting Anthony Darby.

[3] The events immediately preceding the collision can be divided into a number of separate episodes. The first is the evidence of Mr and Mrs Seamus Murphy and their friends Emmett and Cecilia Devlin. They were driving down the Dublin Road towards Newry. As they approached the Cloghoe roundabout they were overtaken at speed by a white Toyota Carina, which then braked very sharply as it pulled in front of them in order that it could negotiate the roundabout. The speed and manner in which the Carina was seen to negotiate the roundabout caused Mr Murphy to remark that the car was going too fast "and was going to kill someone". He drove down the

Dublin Road and less than two minutes after the Carina had overtaken him came upon the scene of this collision.

[4] The next is that very soon after the Carina negotiated the roundabout it was seen by two taxi drivers. Both Mr McGuigan and Mr Campbell noted that the Carina drove over chevrons in the middle of the road at high speed. Their impressions of its speed are confirmed by the evidence of Mr Coll of Forensic Science Northern Ireland who analysed security film from Jollye's pet store at this point on the Dublin Road. He said that it was "highly probable" that the Toyota Carina had been caught on film. He went on to say that

> "in my opinion, prior to the Toyota Carina entering the collision scene, at the location of the security camera at `Jollyes' pet store it had been travelling at approximately twice the speed of the other traffic travelling that evening along that stretch of carriageway and highly probably somewhere in the speed range 60-80 mph".

Such a speed was far in excess of the speed limit applicable at that point.

[5] This part of the Dublin Road is a three lane carriageway with one lane for traffic coming into Newry, and two lanes for traffic coming out of Newry towards the Cloghoe roundabout. As the defendant drove down the Dublin Road towards Newry he was confronted by two vehicles coming in the opposite direction. Stephen Shields was a part-time taxi driver who was driving his blue Peugeot car in the inside lane. Brian Fearon was driving a Renault Clio, and his front seat passenger was his friend Gerald Fearon. (I note that his family refer to him as Gerald although the particulars of offence say Gerard.) Brian Fearon was in the outer of the two lanes on his side of the road in the process of overtaking Mr Shields' Peugeot.

[6] It is clear from the extremely detailed analysis of the accident by Mr Coll that immediately prior to the collision between the defendant's Carina and the Renault Clio the Carina was on its wrong side of the road, Mr Coll's view being that it was "positioned with its nearside wheels approximately in the middle of lane 2 of the country bound lane. The offside wheels were positioned in lane 1 of the country bound lanes." In other words, the Carina was not only on its wrong side of the road, but was straddling the two lanes for traffic coming from Newry towards it.

[7] Mr Coll's conclusion continued:

> "At the junction with Hawthorn Hill the Toyota Carina collided with the Renault Clio van [driven by Brian Fearon] which was driving country-

> wards in the middle of lane 2. The front nearside of the Toyota Carina car impacted with the front nearside of the Renault Clio van causing severe crush damage to those areas of both vehicles. As a result of this impact the Toyota Carina began to rotate anticlockwise exposing its offside to the Peugeot 406 [driven by Stephen Shields] which was travelling country bound in lane 1. The lower middle section of the offside of the Toyota Carina impacted the front offside of the Peugeot 406 as indicated by the corresponding damage to both vehicles of these positions."

[8] Mr Coll's opinion was that

> "the Toyota Carina entered the collision scene at a `fast' speed. It was not possible to accurately estimate the speed of the Toyota Carina car based on the area of impact, the impact damage and final rest position of the vehicles. However, taking into account the damage sustained by all the vehicles, the fact that the Toyota Carina car had impacted with two vehicles travelling in the opposite direction and the distances from the impact area to the rest position of the three vehicles this indicated that the Toyota Carina was travelling significantly above the 30 mph speed limit at the scene and significantly faster than the Renault Clio and Peugeot 406 at impact".

[9] A further matter referred to by Mr Mateer QC, who appeared for the prosecution with Miss McColgan, is the evidence of Gemma McKeown which he suggested indicated that the defendant ignored her request that he slow down. In her witness statement she said

> "I then remember coming down the hill on the Dublin Road and around the area of the car wash I remember putting my seatbelt on. I put the seatbelt on because I thought we were going too fast. I also remember that Christopher McGinn, who I know as Goose, was driving the car. As I put my seatbelt on I said to Christopher "Fuck up" meaning for him to slow down."

Mr Berry QC, who appeared for the defendant with Mr Kevin Magill, submitted that it may not have been apparent to the defendant what this

meant, but that in any event there was no evidence of repeated warnings. That is so, but I am satisfied that was a warning to the defendant to slow down, and one which he should have heeded.

[10] It is therefore clear that prior to the accident the defendant was driving in a highly dangerous manner. He cut in in front of Mr Murphy's car before the roundabout, negotiated the roundabout at high speed, then drove down the Dublin Road into Newry at a grossly excessive speed, during which he ignored a request from one of his passengers to slow down. Immediately before the collision he was driving completely on the wrong side of the road, giving Mr Fearon no opportunity whatever to avoid the defendant's car.

[11] Not only was the manner in which the defendant drove dangerous in the extreme, but I have no doubt that this was contributed to by the considerable quantity of alcohol which he had consumed. A blood sample was taken later that night which showed that at the time it was taken his blood alcohol was 100mg of alcohol per 100ml of blood, more than the permitted limit of 80mg of alcohol per 100ml of blood. The defendant maintained in interview that all he had consumed were two bottles of WKD, but the forensic evidence is that these could not have accounted for the amount of alcohol found in his blood, even though the blood sample was taken some time after the accident. A series of calculations by Margaret Mary McBrien of Forensic Science Northern Ireland suggest that his blood alcohol level at the time of the collision could have been between 139 and 196mg of alcohol per 100ml of blood.

[12] Not only was the defendant under age for driving, but there is evidence that he had been driving for a considerable period of time. He bought the Carina that night from a Mr James Treanor, who described how he had known the defendant for some 2½ to 3 years prior to the time he made the statement in March 2007. He said he first got to know the defendant when the defendant drove a car delivering a Chinese takeaway meal to Mr Treanor's house. Mr Treanor described how the defendant bought several cars from him since then, and at one stage sold him a car, all of these transactions taking place before the defendant purchased and drove away the Carina earlier on the night of the collision. If correct, this would suggest that the defendant had been driving on the public roads for two to two and a half years before the collision, perhaps from the age of 14 or thereabouts.

[13] Mr Mateer QC said that the prosecution could not rely on Mr Treanor's evidence, and it may be that Mr Treanor's recollection as to dates is not entirely reliable as to how long the defendant had been driving before these events. However, there is no doubt that the defendant had been driving for a considerable period of time, because the pre-sentence report records that he admitted that he started driving when he was fifteen, and accepts "his behaviour was risky and illegal". So he had certainly been driving underage,

and as a result driving without having passed a test, without a driving licence and without insurance, for a considerable period before that night.

[14] Such was the force of the impact between these cars that tragically Gerald Fearon, the passenger in the Clio, and Mr Shields, the driver of the Peugeot, were both killed. I have been provided with statements from Gerald Fearon's mother, and his sisters Geraldine and Michele; and from Stephen Shields's widow and his mother. It would be an impossible task to adequately summarize the sense of deprivation and loss which they have all suffered as a result of these events, and I do not propose to attempt to do so. No one could fail to be moved by the dignified and eloquent way in which the members of both families have described the shattering effect upon their lives, and the lives of the other members of their respective families, of the events of that night, events which could and should have been avoided.

[15] It is unfortunate that I do not have the benefit of up to date, and more extensive, medical reports of the injuries suffered by the survivors of the crash, but I do have statements from them, or members of their families. In cases of this type it is desirable that sufficient medical evidence should be before the court so that the medical prognoses of the future of those who have been injured can be taken into account.

[16] Anthony Darby suffered serious head injuries, a fractured pelvis, a fractured left leg. as well as an injury to his right foot and other injuries. A victim impact report from his parents describes how he was on a life support machine for a week. Unfortunately it seems that he had significant injuries in August 2004 which required a tracheotomy to be fitted, and his parents describe how these additional injuries have affected their son emotionally, he has become very dependent upon them which places a considerable strain upon his parents.

[17] Gemma McKeown was the rear seat passenger in the defendant's car. She describes how she suffered a broken ankle, a broken pelvis, a broken finger, a fractured skull and various other injuries, including numerous scars which cause her considerable embarrassment. She had to wear a frame from her ankle to her knee for several months, and had pins inserted in her ankle and left little finger. Her mobility is restricted and, understandably, she is very nervous when travelling in a car. Not only has the cumulative effect of her injuries been to impose changes on her social life, but she missed a year's schooling.

[18] Mr Brian Fearon was extraordinarily fortunate to emerge from the collision without any physical injuries. I do not have any medical or similar evidence about the effect this experience has had upon him, although one might reasonably infer that it has had a considerable impact on him.

[19] I have also been provided with a number of reports upon the defendant's injuries. The reports from his GP, Dr McKinley, and from Mr R Brown FRCS, describe how he suffered a small sub-dural haematoma over the right side of the brain, and on 29 October he underwent a seizure lasting about three minutes. He was treated conservatively. Since his injuries the defendant says that he has no recollection of the events relating to the accident, something which the report of Mr Brown says "would not be unusual with a head injury of this magnitude". The opinion of Professor Davidson, a consultant clinical psychologist, is that the cognitive problems are most likely the result of the head injury. The reports from Professor Davidson, and from Dr Campbell, a consultant psychiatrist, describe the mental effects of the injuries on the defendant. Dr Campbell confirms the defendant has been left with no physical disability from this crash, although it seems he sustained a fractured skull when a back seat passenger in an earlier road traffic accident in August 2005, and has suffered a leg injury in a more recent accident when he fell from a tree. Since the events giving rise to these charges he has been unable to concentrate, has given up his job and now lives a somewhat isolated existence with his sister.

[20] Professor Davidson concludes:

> "I do feel that he is genuinely remorseful about his behaviour and the accident has had a significant psychological effect."

Dr Campbell observed:

> "With the acceptance of his guilt he has expressed remorse".

The pre sentence report states that:

> "Mr McGinn expressed a high level of regret at the death of Mr Shields and Mr Fearon, and the injuries inflicted on his former friends. He expressed a high level of regret at driving when under the influence of alcohol. In interview he tended to focus on his lack of memory of the events but asserted that he accepts responsibility regardless of this, and accepts that as the driver he must accept culpability. He is aware that driving when under the influence of alcohol and at speed is extremely dangerous and was without regard for his passengers or other road users."

[21] On behalf of the defendant Mr Berry QC said that his client recognised that he inevitably faced a lengthy sentence, and that such a sentence will do little to assuage the grief he has caused, nor can it put matters right. He also submitted that whilst the defendant had driven before this night, he had no convictions, and so it could not be said that the manner of his use of cars had been a danger to the public. That may be so in the sense that he had not committed other types of road traffic offences, but the prohibition from driving whilst underage is to ensure not only that drivers have the technical skills to drive on the public road without endangering others, but that they have the necessary maturity and appreciation of danger that comes with age, qualities that were wholly absent from the defendant's behaviour that night.

[22] In recent years the Court of Appeal in Northern Ireland has considered the appropriate level of sentencing in cases of causing death by dangerous driving on a number of occasions, most recently in R v McCartney [2007] NICA 41 in which the court reiterated the application of the guidelines earlier approved by the court in Re Attorney General for Northern Ireland's Reference (Nos 2, 6, 7 and 8 of 2003) [2003] NICA 28 where the court laid down that courts in Northern Ireland should apply the guidance provided by the Court of Appeal in England in R v Cooksley [2003] 3 AER 40. In R v McCartney the Court of Appeal considered the effect upon sentencing guidelines of the increase in the maximum sentence for causing death by dangerous driving to 14 years imprisonment, and concluded that the revision of the four starting points in Cooksley prescribed in R v Richardson [2006] EWCA 3186 should apply in Northern Ireland.

[23] There are several aggravating features in this case. (1) The defendant had not passed a driving test and had no insurance. (2) This was not the first time he had been driving on the public roads underage. (3) He had been drinking and was over the legal limit for the consumption of alcohol. (4) He drove in a dangerous fashion over a significant distance prior to the collision, and the manner in which he was driving immediately prior to the collision was extremely dangerous. (5) He disregarded a warning from his one of his passengers to slow down. (6) He drove at a grossly excessive speed immediately before the collision. (7) His driving resulted in the deaths of two people, and (8) in grave injuries being sustained by two more. The number of aggravating factors is such that this is a case which falls into the highest level of culpability where a sentence of at least 8 years imprisonment would have been appropriate in the case of a defendant who was an adult at the time of the offence, where the charges were contested, and the defendant convicted

[24] There are a number of mitigating features that have to be taken into account. (1) He pleaded guilty upon arraignment and therefore is entitled to a considerable degree of credit for doing so. However, the maximum credit is reserved for those who admit their guilt in interview and the defendant did not do this. Indeed he denied that he could have been driving in the way that

was alleged even when the overwhelming evidence to the contrary was put him in interview. Whilst I accept that he has suffered a genuine loss of memory, his reluctance to recognise the inevitable at that stage does not assist him. (2) I am satisfied he has displayed genuine remorse for the devastating consequences of his actions on that night. (3) He is a young man, he was not quite 17 at the time and he is now 18. (4) He has no previous convictions, although the credit to be allowed for this is somewhat diminished by his driving whilst underage on other occasions. Mr Berry QC pointed out that his client had suffered injuries. That is so, but fortunately he has been left with no lasting physical consequences and I do not regard his injuries as a mitigating feature.

[25] An important consideration is his age at the time he committed these offences. He was only 16 and 10 months of age at the time and he is now 18. As the Lord Chief Justice observed in R v McElhone [2004] NICA 46:

> "The [defendant's] youth must rank as one of the most important factors in the selection of the appropriate sentence. … We do not consider, however, that the guidelines should be abandoned where the offender is a young person. It is incumbent on the sentencer to keep in mind that a young person's culpability is likely, as a general rule, to be less than that of a fully mature person. And it is to be remembered that this court in the Attorney General for Northern Ireland's Reference reiterated the principle that the primary consideration in sentencing, even in this species of case, was the culpability of the offender. But the other considerations identified by the court in that case are as potentially pertinent in the case of a young offender as they are in the case of an adult."

In view of his youth at the time of the offences I consider that, despite the number of aggravating features, I should treat him as having a lower degree of culpability and therefore impose a somewhat lower sentence than would be appropriate for an older defendant.

[26] In this case a substantial custodial sentence in excess of 12 months imprisonment is inevitable, and I am required to consider whether a custody probation order should be imposed. I have carefully considered the pre-sentence report which concludes that a period of probation supervision upon release is not necessary, although it says that such an order "may be of some assistance in helping the defendant reintegrate into the community following a period of custody".

[27] Mr Berry QC urged me to consider a probation element to the sentence because, whilst he recognized that the defendant comes from a stable background he was nevertheless facing a custodial sentence for the first time, and, given that he was from a rural background, it would help him to reintegrate with society upon his release. However, the purpose of a probation element in a custody probation order is to try to protect the public from harm or to ensure that a defendant will not commit further offences. Article 24(2) of the Criminal Justice (Northern Ireland) Order 1996 makes this clear when it requires the court

> "..to take account of the effect of the offender's supervision by the probation officer on his release from custody in protecting the public from harm or from preventing the commission by him of further offences".

As I do not consider that either of these objectives are required to prevent the accused from committing further offences of this or another type in the future I do not consider that such an order is appropriate.

[28] I have already referred to the defendant's youth at the time and that this will be his first experience of custody, and I consider that I should also take into account that a sentence of imprisonment, as opposed to a period of detention in the Young Offenders Centre, would result in his being exposed to the influence of older criminals. Taking into account all of the aggravating and mitigating features I sentence the defendant to the maximum sentence of detention allowed in the Young Offender's Centre, namely 4 years detention on counts 1, 2, 3 and 4. On count 5 I sentence him to 3 months detention, and on count 6 I sentence him to a fine of £250 with an immediate warrant. I also disqualify him from driving for 10 years on each count. The sentences will run concurrently, and the total sentence is therefore one of 4 year's detention and 10 years disqualification.