

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING IN BELFAST

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-V-

MARTIN THOMAS McDONNELL

SENTENCING REMARKS

His Honour Judge Miller QC

30th November 2009

1. You have pleaded guilty to causing the death of Adele Whiteside by dangerous driving, contrary to Article 9 of the Road Traffic (Northern Ireland) Order 1995.
2. The offence arises out of a fatal road traffic accident that occurred at approximately 1.00am in the morning of Saturday 15th September 2007. The accident occurred on the Finaghy Road South, Belfast, adjacent to the junction with Orpen Park. At the relevant time the Defendant, who was then 18 years of age (DOB 3rd January 1989) was driving his motor vehicle, a dark blue Citroen Xantia Registration number HCZ 1296 in the direction of the Upper Lisburn Road. The area is built up and is governed by a 30 mph speed limit.
3. The deceased in this case, Adele Whiteside was one of three young girls who were in various stages of crossing the roadway when the accident

occurred. Adele Whiteside was a healthy young teenager who had just turned 14 years of age (DOB 24th August 1993).

4. These three girls, including Adele, had been invited earlier that day to attend a wedding party and reception held in the bar of Linfield Football Club. The party was on the Friday evening 14th September 2007 and the lady who was getting married was a friend of Adele's mother. They all enjoyed the party and it is apparent that the girls, along with another friend (and cousin of the deceased) called David Fell, drank some alcohol during that evening. The group of four friends left the party at sometime between 11.30pm and midnight intending to get a taxi to take them back to Adele's house where they were all planning on staying the night.

5. They got the taxi but seem to have had a change of plan, and asked the driver to drop them off at Creighton's Garage on the Upper Lisburn Road, a short distance past the Kings Hall, so that they could get something to eat at the All Night Garage. David decided that he wanted a Chinese, so after leaving Creightons they went down to Washington Chinese, located adjacent to the garage. They then walked up to another Chinese called the "Hong Kong Night" which is on the opposite side and further up on the same side of the road as the Kings Hall. They stayed there for about 10 to 15 minutes before proceeding to walk towards the junction of Lisburn Road and Orpen Park. It was at this point that David Fell left them to go and see some of his friends. This then left the three girls, (Sharlene, Chanel and Adele) by themselves. They then walked in the direction of Finaghy Road South, talking and laughing as they went.

6. They reached the junction of Orpen Park and Finaghy Road South, (shown on the map **Exhibit 15**) where they stopped at the corner, at a point on the footpath where the streetlight, (which is noted on the map with a black dot), is to be found.

7. Chanel crossed the road first followed by Adele and then Sharlene. Chanel walked across diagonally to her right. She had just reached the kerb and still had her back to the other girls when she heard a thud. This was the sound of the impact between the car and Adele. She then saw Adele being thrown through the air so that it was her impression she nearly struck the top of a lamppost located adjacent to the city-wards bound lane many yards down from where Chanel had crossed the road. In her account Chanel described how Adele landed about 5 to 6 houses away from where she (Chanel) was standing.

8. Sharlene (the third girl) was just starting to cross the road when she saw the Defendant's car suddenly approach from the right at speed at a time when Adele was in the lane closest to Sharlene but was towards the centre of the road. The car, as it approached, appeared to occupy both lanes and seemed to Sharlene, to be "travelling really fast". She did not hear the car engine as it approached but was aware that its lights were illuminated, though they were not overly bright. She too described Adele flying through the air after impact.

9. The witnesses describe the aftermath of the accident and the steps they took to comfort Adele and to raise the emergency services, which arrived approximately 15 – 20 minutes later. Tragically Adele was pronounced dead at the scene.

10. Sharlene noted that the car involved in the collision drove on a short distance before coming to a halt outside Finaghy Primary School approximately 100 yards beyond the point where Adele's body came to rest. The defendant got out of the vehicle and came back to the collision scene where he remained until the arrival of police.

11. Sgt Hastings arrested the defendant at the scene on suspicion of the offence of causing death by dangerous driving. McDonnell's after caution response was "***I was coming down the road. There was three girls on the left hand side as I was about four car lengths away. As I got closer one of them ran out. It was at that stage, that's when I braked. With shock I just drove on down.***"

12. The defendant was subsequently interviewed later that day. During questioning he stated that about 11.00pm he had collected some friends from Belfast International Airport and had brought them back to Belfast about midnight. The car belonged to his father who had bought it at auction some months previously. He is able to add very little to the circumstances surrounding the tragic accident, beyond saying that he believed his speed was between 30 – 35 mph and that he had been unable to react by braking until he actually struck Adele. It is significant to note in this context that the interviewing officers sought on several occasions to suggest to him that he could have been distracted by such things as lighting a cigarette or changing a CD. The defendant denied any of these matters saying: "***There was nothing to distract me.***" [Interview 1 at Page 26] he also made the point that the weather conditions were dry, the road was quiet and that he had "***plenty of observation on the way down the road.***" He made the case that although he was aware of the girls on the footpath to his nearside, he only saw Adele on the road in front of him a couple of

seconds before the impact. Subsequent interviews in February 2008 conducted after police had obtained the results of forensic tests, which threw into doubt the defendant's account as to his speed, produced little further information of substance.

13. The scene was subject to forensic examination in the aftermath of the accident and I was referred to the report from Emerson Callender, (forensic scientist) in the court papers. A number of conclusions and propositions emerged from this report, which were opened to the Court by Mr F. O'Donoghue QC who, together with Mr Purvis BL, appeared on behalf of the Crown:

a.) The distance from the estimated point of impact to Adele's final position was about 52.5 metres.

b.) The forensic evidence demonstrated that as Adele was projected after impact, she came into contact with a parked Audi car (shown in Photographs 11 – 20) before she came to lie in the position that she was found.

c.) The Defendant's car was an old style Citroen Xantia. It came to rest in the middle of its own lane. The impact damage can clearly be seen at Photographs 31 to 39 and 55 to 66. It is plainly apparent that there was a substantial impact to the front offside of the vehicle with Adele striking the front windscreen directly in front of the driver's position of the car.

d.) From this evidence Mr. Callender on behalf of the Prosecution, concluded that at the time of the impact the Defendant was driving at an absolute minimum speed of 47 mph.

e.) This calculation was, however, subject to a caveat. Adele struck the parked Audi, and in the opinion of Mr. Callender this would have reduced the distance that she was thrown. Had she not struck the parked car, it is his opinion that Adele would have been thrown further and this would have allowed a more accurate, and higher, calculation of the Defendant's speed.

14. The defendant's plea of guilty came only on the 22nd September 2009, he having been arraigned and pleaded not guilty back on the 13th February of this year. I was informed, however, that the original plea and the re-arraignment were made in the light of legal advice focussing on the key issue of the calculation of speed. A report prepared by Dr Denis Wood on behalf of the defendant concluded that the absolute minimum speed at the time of impact would have been 41mph rather than the 47mph in Mr Callender's report.

15. The plea of guilty was put forward to the prosecution on a specific basis, which was accepted by both the Crown and the family of the deceased. It was placed before this court on the terms set out below:

a.) The defendant accepted that he was driving too fast in a residential area. His speed at the time of striking Adele Whiteside was 47 mph in a 30 mph speed limit.

b.) He failed to keep a proper lookout. This is evidenced by the fact that having been aware of the presence of the three girls as he approached the junction with Orpen Park, he failed thereafter to observe properly or at all the movements of the three girls, including Adele Whiteside, immediately prior to the collision. Had he been keeping a proper lookout he would have seen that one of the girls (Chanel Curran) had already crossed Finaghy Road South and that Adele Whiteside was the second of the girls crossing the road at the time that she was struck.

16. Mr O'Donoghue stressed that there was no evidence such as could be put before the court, that the defendant had been engaged in driving at sustained speed immediately before the accident.

17. Before I turn to an examination and assessment of the defendant's circumstances and the factors relevant to the determination of the appropriate sentence I must make a specific comment about the devastating consequences of the defendant's actions that night and in particular on how they have impacted upon the lives of the deceased's family and friends.

18. The court has been provided with Victim Impact Reports prepared by Dr Loughrey (Consultant Psychiatrist) on behalf of Adele's parents, Alan and Shirley and her sister Alanna Whiteside. Without going into too much detail I believe it is appropriate that I refer to some of the observations in each of these reports.

19. Dr Loughrey refers to Alanna who was more than nine years older than her sister as being "*subject to chronic preoccupations of grief concerning Adele's death, in that she misses Adele greatly. She feels angered about what happened and about what she has heard of the driver's conduct, especially since the death.*"

Of Mr Whiteside it is said: "*The depression was the worst. It sticks in your head.....could it have been avoided?*"

"He says that the circumstances of his daughter's death are still something of a mystery to him, and he hoped that the trial would bring this out. Now with the guilty plea, he feels frustrated by this, and he thinks that he will always wonder about what more facts might have been produced. "I would like to know what happened that night.""

“He is subject to continued preoccupation with the circumstances of his daughter’s death and to a continued preoccupation with grief in respect of her.

Mrs Whiteside is quoted as saying: ***“It kills me to think that he’s out and about and that we’ll never see Adele again.....my mother is going to die of a broken heart.....we were all so very close.”***

20. These quotations reflect the searing pain and sense of loss that has struck this family as it must do every family to whom such tragedy has come. One is reminded of the depth of the grief and sorrow that can flow from a single act of wrongdoing and reckless disregard for the consequences of one’s actions. Nothing that this court can do can turn back the clock and restore a young life cut so tragically short to those to whom she meant most but it is important that in approaching the task of sentencing the court is aware and mindful of the hurt that has been caused and the wounds that will never heal.

21. I must turn now to consider the defendant’s actions and the subsequent consequences for him of what occurred in the early hours of the 15th September 2007.

22. First I wish to address a matter that is highlighted in the reports filed by Dr Loughrey to which I have referred and that is the great unanswered question in this case, namely why did this accident take place? There seems to be no identifiable answer, either from the evidence of witnesses or indeed from the defendant.

23. It was a dry, clear night; the roads were quiet; the defendant’s car was mechanically sound, in particular the lights were illuminated and operating normally; he was stone cold sober; there is no evidence of drugs; he specifically and categorically denies being distracted by anything happening in the car; the road was straight, flat and well-lit and yet despite all this, despite seeing the girls at the side of the road, despite the fact that Chanel successfully traversed the entire road as he approached; despite all of these factors he failed to see Adele Whiteside in time or at all as she stepped onto the road. Even though she had virtually reached the centre of the road and even though the point of contact with his car was directly in line with the driving position, this defendant failed to take any meaningful action until after the collision had taken place. There is absolutely nothing to suggest any wilful or intentional act on his part to drive at and strike Adele, (and if there was the charge would have been one of murder or

manslaughter) and the circumstances do not permit of a clear answer as to why this dreadful tragedy occurred. This lack of explanation must only serve to underscore the sense of grief and of a life needlessly lost that so clearly preoccupies and distresses the deceased's family.

24. Having set the defendant's actions in the context of its consequences for the family of the deceased I must turn now to consider his own circumstances both prior to and subsequent upon the night of 15th September 2007. In so doing I take account of the matters urged upon me by Mr Lyttle QC who appeared with Mr Green on his behalf and bear in mind the appropriate guidelines set down by the Court of Appeal in reaching my determination of sentence.

25. One cannot lose sight of the tragedy of the fact that the victim in this case was so young, being just a month past her 14th birthday. She had her whole life ahead of her with so much to look forward to. By his actions the defendant has deprived her of that opportunity and hope of fulfilment. He too, however, is also young. At the time he was still only 18 years of age and for as long as he lives he will have to carry with him the knowledge that by virtue of a moment's recklessness he cut short such a young life.

26. All too often where one has to deal with cases of dangerous or careless driving involving a youth of the defendant's age one can expect to find elements such as sustained bad driving including high revving and speed; showing off and also driving whilst under the influence of drink or drugs, none of which elements appear in this case.

27. This is a case where the Crown accept that the "dangerousness" is made out by the level of speed, (be it 41mph or 47mph, it being accepted that the assessment of each expert witness was based on equally valid and tested models) in the given circumstance of driving in a built up area where the consequences of such speed can, and in this case were, so high. To this is added the failure by the defendant to keep any or any proper lookout for persons on the road or who might at a moment's notice enter onto it.

28. It was accepted by the Crown, however, that on the facts the Defendant could have run a defence that the speed in this case was more properly marked by carelessness and that the plea to the substantive charge is worthy of more credit as removing the relatively small uncertainty of a jury, having considered all the facts, concluding that the Defendant's driving did not meet the test of dangerousness. This is of significance when I move to consider the absence of aggravating factors in this case.

29. At the time of this accident the Defendant had a clear record and had been driving for just 14 months. He does now have convictions for other motoring offences but they post date this accident. I wish to say something about these matters since they give rise on the face to concern not just, as is apparent from the extracts from the VIR s referred to above, to the family of the deceased, but also to the sentencing tribunal.

30. The defendant has convictions for criminal damage and “drunk in charge” dating from February 2008 and then and of most particular concern, dangerous driving, driving with excess alcohol and two counts of S. 47 OAPA 1861 assault, all of which offences occurred on the 9th May 2008. Finally there is a conviction for obstructing police dating from an incident in November 2008.

31. Offences, particularly in the nature of driving offences committed in the wake of the tragic events of 15th September 2007, can, in most instances only be seen as aggravating factors bearing in mind the belief that such behaviour suggests strongly that the defendant has failed to learn any lesson from his previous actions. In the present case the fact that the distress and anger felt by the Whiteside family has been exacerbated by the knowledge of the defendant’s subsequent offending only serves to underline the potential for this to be regarded as an aggravating feature.

32. The facts, however, do place these convictions into a different context. Mr O’Donoghue outlined the background to the offences committed in May 2008 and confirmed that Police were satisfied that this driving incident followed a failed suicide bid by the Defendant, where he was intercepted by officers and that the failed suicide bid was as a consequence of the circumstances of this case. This was opened to and accepted by the Court responsible for sentencing the Defendant in respect of those matters.

33. I further have the benefit of a psychiatric report prepared on the defendant’s behalf by Dr Best, which provides additional information about the consequences for the defendant of his actions leading to the death of Adele Whiteside. From this it is apparent that he has been and continues to be severely affected and that the attempt at suicide in May last year was followed by a similar incident in November 2008. It seems, however, that the risk of his attempting to repeat this in the future has diminished since this case first came to the Crown Court early this year.

Sentencing Powers

34.) I have been referred to the relevant sentencing principles, which in this jurisdiction are to be found in a series of con-joined references: **AG's Reference Number 2 6 7 and 8 of 2003**. In the course of judgment in these matters the then Lord Chief Justice Carswell approved and adopted the Sentencing Guidelines, which had in turn been adopted by the Court of Appeal in England & Wales in **R v Cooksley; R v Stride; R v Cook; A G's Reference (No 152 of 2002)**. At paragraph 11 (iv) Lord Woolf CJ said the following:

It has to be appreciated by drivers the gravity of the consequences which can flow from their not maintaining proper standards of driving. Motor vehicles can be lethal if they are not driven properly and this being so, drivers must know that if as a result of their driving dangerously a person is killed, no matter what the mitigating circumstances, normally only a custodial sentence will be imposed. This is because the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence."

35. The Court also approved the following observation made in an earlier case by the then Lord Chief Justice Taylor in **R v Shepherd, R v Wernet [1994] 2 All E R 242 at 245**: **"We wish to stress that human life cannot be restored, nor can it 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."** I consider that these words bear repeating against the background to this particular case.

36. The Sentencing Guidelines have been adjusted so as to take account of the increase in 2005 of the maximum penalty for this offence from 10 years to 14 years. This results in the following scale of sentences approved by the Court of Appeal in England & Wales in **R -v- Richardson [2006] EWCA Crim. 3186** (which was adopted in this jurisdiction by our Court of Appeal in **R -v- McCartney [2007] NICA 41**) :

(a) Cases with no aggravating circumstances, where the starting point should be a short custodial sentence of perhaps 12 months to 2 years, with some reduction for a plea of guilty.

(b) Cases of intermediate culpability, which may involve an aggravating factor such as a habitually unacceptable standard of driving or the death of more than one victim. The starting point in a contested case in this category is two years, progressing up to four and a half years as the level of culpability increases.

(c) Cases of higher culpability, where the standard of the offender's driving is more highly dangerous, as shown by such features as the presence of two or more of the aggravating factors. A starting point of four and a half years rising to 7 years will be appropriate in cases of this type.

(d) Cases of most serious culpability, which might be marked by the presence of three or more aggravating factors (though an exceptionally bad example of a single factor could be sufficient to place an offence in this category). A starting point of 7 years was propounded for this category rising to the statutory maximum of 14 years in the most severe cases.

37. It was accepted by the Crown in the present case that there were no aggravating features in this case. Mr O'Donoghue QC in his characteristically comprehensive and measured submission said this: "The Court must, of course, be careful not to double count in relation to aggravating factors. If driving is dangerous by reason of a particular fact, it is self evident that the fact giving rise to the dangerousness is not to be counted as an aggravating factor. I have already advised the Court that the Defendant's speed is part and parcel of the case of dangerousness made against the Defendant; indeed it is an essential ingredient to the commission of the offence. The residual aspect of dangerousness, that of failing to keep a proper look-out, is only to be considered as a component of the case when viewed alongside the speed at which the Defendant was driving."

38. It should also be noted that there is no evidence of sustained speed on the part of this Defendant and thus the Defendant does not fall to be sentenced on the basis of speed as an aggravating factor in any way.

39. The car he was driving was sound. There was no drink taken. The Defendant was simply driving too fast in this area and was failing to keep a proper lookout with disastrous consequences.

40. On the other hand there are several mitigating factors, which Mr Lyttle QC asked the court to consider. These include the timely plea of guilty. I have already remarked that this could not be said to have come at anything like the earliest opportunity but it is apparent that the issue, which delayed the plea was one of an assessment of speed, this being the core element of the charge on the specific facts of this case. The fact that a plea was entered obviously obviated the necessity of a trial and removed the risk, albeit a relatively small one, that the jury could have concluded that the defendant's culpability was at the lower level of carelessness rather than dangerousness.

41. Another mitigating factor is that of genuine shock or remorse. I have already traversed the background to the defendant's subsequent offending and the effects upon him of his actions, all of which are fully covered in the Pre Sentence Report and that prepared by Dr Best. Suffice it to say I am satisfied that this defendant's expressions of remorse are genuine and that the events of that night have had a radical effect on his life and mental well-being.

42. Mr Lyttle referred me to the fact that the defendant is currently subject to a 3 year probation order imposed by His Honour Judge Markey QC at Craigavon Crown Court on 26th June this year. This sentence resulted from the offences of driving with excess alcohol and dangerous driving in May 2008 to which reference has been made. It was urged upon me that the defendant has responded well to this order and that he has addressed and is continuing to address issues giving rise to those offences. Mr Lyttle also pointed to the conclusions contained within the PSR to the effect that the defendant is not assessed as posing a risk of serious harm to others and that he is assessed as posing a low likelihood of re-offending. This is based upon the fact that "*no significant risk factors have been identified which significantly contributed to this offence.*" It was Mr Lyttle's submission, in the light of these factors, that I should not intervene to upset the course of the existing probation order by imposing an immediate custodial sentence. I was referred to the ruling in **R v Duporte (1980) 11 Cr. App. R (s) 116**, endorsed in this jurisdiction in **Attorney General's Reference (No. 5 of 2003) [2003] NICA 38**, in support of this proposition.

Conclusion

43. The defendant has pleaded guilty to a charge of causing death by dangerous driving. As a direct result of his actions by driving too fast and without having sufficient regard to the road ahead, a young and vibrant life was cut short. The result of these actions has been devastating for the family and friends of Adele Whiteside. It has also had a profound affect upon the defendant who too will have to live with the consequences of those actions for the rest of his life.

44. I must sentence in accordance with the guidelines laid down and approved by the Court of Appeal. In so doing I note that an immediate custodial sentence will generally be appropriate and necessary. This is in order to underline the responsibilities that fall to all who get behind the wheel of a car and to act as a deterrent against acts of irresponsible and

wanton driving without regard as to the consequences. I wish to make it clear that I endorse that view and approach to these cases.

45. This case falls in the lowest category wherein the guidelines suggest a sentence of between 12 months and 2 years upon conviction after a contested trial. The courts are entitled and indeed obligated to give credit for a plea of guilty. This is particularly the case when the charges involve fatalities, as it brings some comfort to the families in that it avoids further delay as a case is prepared for contested hearing. It also means that time and money is saved in the final preparation for the case coming before the court, and that witnesses, particularly civilian witnesses, do not need to prepare themselves for the ordeal of giving evidence in court. It may also be some evidence of a degree of remorse, which I have already accepted to be present in this case.

46. Pursuant to **Article 24(1) of the 1996 Order**, I have formed the view that a custodial sentence of twelve months or more is justified for the offence. I have come to this conclusion because of the serious nature of the offence, which has been outlined in this case. I consider that the sentence should be for a specific period of eighteen months.

47. However and not without some considerable hesitation, I have also come to the conclusion that the custodial sentence which this offence merits, should be suspended. The power to suspend a sentence of imprisonment is contained in Section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 as amended by Article 9 of the Treatment of Offenders (Northern Ireland) 1989. **In Attorney General Reference Number 2 of 1993 [1993] 5 NIJB 71 at p75 Hutton LCJ** said;

“It is also important to observe that as recently as 1989 Parliament expressly recognised that even in a serious case calling for a sentence of up to seven years imprisonment, it may be appropriate for the trial judge to suspend the sentence. It is also important to emphasise that the decision to suspend the sentence should only be taken after the judge has decided that a sentence of imprisonment should be imposed and after he has decided what length that sentence should be. It is only after he has taken those two decisions that he comes to the third and final decision of whether he should suspend the sentence... (p76). Therefore when a judge follows the correct procedure in suspending a sentence of imprisonment, he does not decide at the outset that he will not impose a sentence of imprisonment. Rather he decides that the offence merits a sentence of imprisonment for a specific period and he then turns to decide whether there are circumstances which justify him in suspending that sentence.”

48. I believe that the matters I have referred to above and which formed the cornel of not just Mr Lyttle's submissions, but also the Crown approach to the facts, amount to exceptional circumstances and are such as to persuade me that the sentence of custody which I feel should be imposed, namely eighteen months detention, should be suspended.

49. The sentence of the Court is, therefore, one of 18 months detention suspended for a period of 3 years. Should you abide by the terms of the order and keep out of trouble for the stated period then you will not be called upon to serve this sentence. In the event, however, of any breach by further offending you will not only be sentenced for the new offence but you will be referred back to this Court where this sentence will be put into immediate effect and it will be consecutive to any sentence imposed for the offence then before the court. I remind you that you will also continue to be subject to the provisions and requirements of the Probation Order imposed upon you at Craigavon Crown Court and that this will remain in effect until June 2012. In addition you will be disqualified from driving for 10 years.

Geoffrey Miller QC
Judge of the Crown Court in Northern Ireland

30th November 2009