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IN DUNGANNON CROWN COURT

FOR THE COUNTY COURT DIVISION OF FERMANAGH AND TYRONE SITTING AT LAGANSIDE

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-v-

PATRICK McGINLEY, WILLIAM McGINLEY, PATRICK McGINLEY JNR and BERNARD McGINLEY

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COLTON J

Introduction

[1] Each defendant was jointly charged on a two count indictment with offences of the murder of Bernard McGinley and the attempted murder of Bernard Oliver (Barney) McGinley on Monday 11 February 2015.

[2] Each defendant was arraigned on 22 September 2017 and each pleaded not guilty to the counts on the indictment. The case was listed for trial on 12 February 2018. On the morning of 8 February 2018 the prosecution sought leave to add a third count alleging affray, contrary to Common Law to which the third and fourth named defendants entered pleas of guilty. Counts 1 and 2 were not proceeded with against them. The first-named defendant was re-arraigned and pleaded guilty to the manslaughter of Bernard McGinley as an alternative to the offence of murder. This plea was accepted by the prosecution and the offences of murder and attempted murder were not proceeded with against him. The second-named defendant was re-arraigned on count 2 (attempted murder) and pleaded guilty to wounding with intent to cause grievous bodily harm, contrary to section 18 of the Offences against the Person Act 1861 as an alternative to attempted murder. This plea was accepted by the prosecution and the counts of murder and attempted murder were not proceeded with against him.

[3] I am grateful to all of the counsel in this case for their helpful written and oral submissions. The court was also greatly assisted by the industry of Mr Hackett of Sheridan and Leonard Solicitors, who appeared for all of the defendants.

[4] Mr Neil Connor QC appeared with Mr Simon Reid for the prosecution. Mr James Gallagher QC appeared with Mr Desmond Fahy for the first defendant, Mr Gavin Duffy QC appeared with Mr Jonpaul Shields for the second defendant. Mr Brian McCartney QC appeared with Mr Declan Quinn for the third defendant. Mr Martin O'Rourke QC appeared with Mr Mark McGarrity for the fourth defendant.

Background Facts

[5] The defendants and the deceased and his family were members of the travelling community and are all inter-related. William, Patrick Jnr and Bernard are the sons of Patrick McGinley. The defendant, Patrick McGinley, was the nephew of the deceased Bernard McGinley. All were present in the vicinity of St Mary's Church, Newtownbutler, on the morning of 11 February 2015 as guests at the wedding of the first-named defendant's niece. There appears to have been considerable ill feeling between both branches of the family prior to the date in question which has been described as amounting to a "family feud". Whilst Patrick McGinley (the first defendant) takes issue with this description there can be no doubt that there was indeed a relevant history between his family and the deceased's family.

[6] At around noon, the deceased and his wife drove their white van into the Church car park in close proximity to a vehicle driven by the first defendant. There appears to have been some form of altercation and a heated exchange of words as a result of exception taken to the presence of the deceased at the wedding. The altercation caused the deceased to drive off from the church grounds. Thereafter, the deceased was involved in a rendezvous with two other vehicles driven by his son and son-in-law respectively. This rendezvous took place on the main road a short distance from the church. Various occupants could be seen in discussion with each other while the vehicles were stationary. After these discussions the vehicles were driven the short distance to the roadside adjacent to the church entrance. Bernard Oliver McGinley exited his vehicle and looked up in the direction of the church. He observed the first-named defendant running from the church grounds towards the road at his general location. The first defendant was closely followed by his three sons (the remaining defendants).

[7] It is difficult to be sure precisely what happened next. A "general melee" rapidly ensued which ultimately resulted in the death of Bernard McGinley and the wounding of Bernard Oliver McGinley.

[8] The injuries were caused by a "pipe-gun" which was discharged at the scene by Patrick McGinley (the first defendant) at Bernard McGinley and by

William McGinley at Bernard Oliver McGinley. The following was agreed between the first defendant and the PPS as the factual basis for the first defendant's plea:

> "*The defendant (Patrick McGinley) states that he forcibly removed the pipe-gun from an associate of the deceased. Whilst the prosecution case is that the pipe-gun was brought to the incident by one or other of the defendants, it is accepted that there is reliable information which indicates that this was not the case. The prosecution accepts that it is likely that the court will be unable to definitively resolve this issue and that in such circumstances the court should sentence on the factual basis which is most advantageous to the accused. The gun was a homemade weapon of rudimentary and crude construction with which he was not familiar. The weapon contained a shotgun cartridge. The accused states that he was struck by the deceased and his son and a general melee ensued involving all of the defendants. In the course of the ongoing struggle the weapon was discharged by the defendant causing the fatal injury to the deceased. The defendant accepts that this was a deliberate (as opposed to accidental) act on his part carried out in the "heat" of the moment. The defendant accepts that this was a dangerous act which was done with the intention of harming the deceased or with the realisation that it was likely to harm the deceased (see Gray v Barr [1971] 2 QB 554 as set out in Blackstone at B1.56). The defendant (Patrick McGinley) maintains that given the nature of the weapon and ammunition and the pertaining circumstances that he did not and had not formed an intention to cause really serious harm to the deceased at the relevant time.*"

[9] In relation to the second defendant there is no agreed Statement of Facts. The prosecution case is that after the deceased was shot the gun was taken by the second defendant who was standing nearby. He proceeded to pursue the injured party (the son of the deceased) around one of the parked cars where upon he discharged a shot from a distance of 6-10 feet causing injury to his lower left back. In his pre-sentence report the second defendant is recorded as claiming that in the course of the rapidly developing incident he went to the defence of Patrick McGinley who was being attacked by the victim and others. He claims the victim was coming towards him with a knife and in the circumstances he lifted the pipe-gun which he recalls was lying on the ground and pointed it at the victim. He fired the weapon at the victim who was shot in the back. The prosecution say that in fact William McGinley must have reloaded the gun because it only contained one cartridge which had already been discharged by Patrick McGinley. I considered whether a Newton hearing was necessary to resolve the conflict as to the precise circumstances in which the second defendant discharged the pipe-gun. I came to the conclusion that this would not be productive in the circumstances of this case given the chaos and conflicting statements surrounding the incident. I propose to sentence the second defendant on

the basis that he discharged this weapon in the course of a melee with the intention to cause serious harm in circumstances where he knew the weapon had already been fired. Mr Gavin Duffy QC who appeared on behalf of the second defendant did not resile from this as the basis for the second defendant's plea.

[10] It was also agreed (insofar as the offence of affray is concerned):

> "*On 11 February 2015 at St Mary's Church, Newtownbutler, an incident developed between the defendant's family members and the deceased's family and friends. The prosecution describes this as a "general melee" the defendant (Bernard McGinley Jnr) accepts that given the overall violent nature of the incident this was sufficient to constitute an affray and that by his conduct of running towards this melee in support of his family he contributed to the incident and is thereby guilty of an affray. The defendant was not armed at any stage. While the defendant's actions were sufficient to threaten violence against others, no actual violence was perpetrated by him against anyone.*"

[11] In the course of the hearing it was accepted by the prosecution and the third defendant, Patrick McGinley Jnr, that similar considerations applied to him and he should be sentenced on that basis.

[12] The deceased was shot in the lower chest/abdomen at close range. Bernard Oliver McGinley, who was the subject matter of the wounding count, sustained a wound to his lower left back. The defendants returned to their vehicles in the Church car park and immediately drove off from the scene. The deceased was put into the rear of his van and driven to Lisnaskea Police Station where he received first aid before being transferred by helicopter to the Erne Hospital where he died soon after arrival. The cause of death was noted as "*shot-gun wound of abdomen*".

[13] In his statement, Bernard Oliver McGinley, indicates as a result of his injuries he has been left with scarring on his back and head and that he has been mentally affected by the incident. Whilst in no way under playing the significance of his injuries it is accepted for the purposes of the sentencing exercise that in relative terms the harm caused could not be categorised as "high".

[14] The first-named defendant was interviewed by arrangement with the police after travelling from outside the jurisdiction. He referred to a pre-prepared statement which was read out at the interview. Thereafter, he mainly refused to answer police questions. In the statement he described "bad feelings" which he claimed arose from an alleged attack on his sons by the family of the deceased. He stated that an individual was observed by him to be in the possession of the pipe-gun which he forcibly removed from him only to find the injured party confronting him with a "bone-breaker" (a stick with a metal bolt) and the deceased

striking him with a blackthorn stick. He claimed that he was struck again when he stumbled over the kerb at the side of the road causing the gun to accidentally discharge. He extricated himself from the scene which he described as being in "complete chaos".

[15] The second-named defendant was also interviewed by arrangement and adopted a similar approach as his father. In a pre-prepared statement he stated that he heard shouting at the gates of the church and went down to investigate. He stated he observed his father scuffling with a person from whom he took the gun. He witnessed a subsequent confrontation between his father and the injured party. He described the deceased running at his father with a walking stick and then hearing a shot but not actually seeing anyone being shot. He then described fleeing the scene. He made no admissions regarding his own involvement in the incident.

[16] The remaining defendants were not interviewed by police.

The appropriate sentences

[17] I propose to deal with the third and fourth defendants first. In terms of guideline cases in respect of sentences for affray it is clear that this charge can cover a wide variety of circumstances. In the leading case of *Attorney General's Reference (No: 1 of 2006)* [2006] NICA 4 the Court of Appeal said as follows:

> *"[25] Because of the infinitely varying circumstances in which affray may occur and the wide diversity of possible participation of those engaged in it, comprehensive rules as to the level of sentencing are impossible to devise. Certain general principles can be recognised, however. Active, central participation will normally attract more condign punishment than peripheral or passive support for the affray. The use of weapons will generally merit the imposition of greater penalties. The extent to which members of the public have been put in fear will also be a factor that will influence the level of sentence and a distinction should be drawn between an affray that has ignited spontaneously and one which has been planned – see R v Anderson and others [1985] 7 Cr App R (S) 210. Heavier sentences should in general be passed where, as in this case, the affray consists of a number of incidents rather than a single self-contained episode."*

[18] In the well-known case of *McKee, Crossan & N* [2009] NICC 43, McKee pleaded guilty to the murder of Harry Holland and received a 12 year tariff with 5 years imposed for his affray.

[19] The defendant, Crossan, entered guilty pleas to affray and possession of a blade. He was considered a central participant and had a relevant criminal record.

He was aged 14 years and would not consent to the conditions of a probation element of a custody probation order. He was sentenced to 4 years for affray and 2 years for possession of the blade imposed concurrently. N pleaded guilty to affray and common assault. He pushed the van door against the deceased. He had a lesser role than the co-accused and was aged 15 at the time of offence. He had no previous convictions and had spent some time on remand. A 2 year probation order was imposed.

Bernard McGinley

[20] In relation to Bernard McGinley I accept Mr O'Rourke's submissions that this was a single incident which ignited spontaneously from the defendant's perspective. He did not instigate the incident and his involvement in it was peripheral. He himself did not engage in any violence. He was not armed nor did he believe that any other member of his family was armed. In terms of his personal circumstances he was born on 14 April 2000 and was therefore aged 14 at the time of the alleged offence (he is now aged 18). His youth and immaturity are clearly relevant to the issue of his culpability, notwithstanding that he is now an adult. In considering the appropriate sentence for a child I take into account the principles set out by the Court of Appeal in *CK (A minor)* [2009] NICA 17 and in particular paragraphs 15-22. I have received a pre-sentence report in respect of this defendant dated 27 April 2018. The report indicates that he was born and reared in Co Longford in the Republic of Ireland where he attended St Michael's Primary School, Longford, until aged 11 years. Regrettably, he was forced to leave school as a result of attacks on his older brothers and an attack on his family home. He was taken out of school aged 10 but has recently attended the local South West College in Enniskillen and the local Training Centre to seek guidance about a possible return to further education and/or an apprenticeship type placement. The report confirms that the defendant has no criminal record either here or in the Republic of Ireland. Unsurprisingly, he has been assessed as a low likelihood of re-offending and he has been assessed as not meeting the threshold for significant risk of serious harm. I agree with this assessment and therefore no issue arises in relation to an indeterminate or extended custodial sentence under the Criminal Justice (Northern Ireland) Order 2008. The report puts forward proposals for non-custodial options including a probation order, an attendance centre order and a community responsibility order.

[21] I also take into account that Bernard McGinley entered a plea to affray at the earliest opportunity when this was added to the indictment on 8 February 2018. He had never been the subject of police interview and no issue about a denial during police interviews arises to detract from his plea.

[22] Whilst I accept that the court has a discretion to sentence the defendant as a child given that he turned 18 years old on 14 April 2018, during the currency of the proceedings, I am not inclined to impose an attendance centre order or a community responsibility order as I consider that these orders are best suited and designed specifically for children.

[23] Article 10 of the Criminal Justice (Northern Ireland) Order 1996 provides that where a court is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of:

(a) securing the rehabilitation of the offender or

(b) protecting the public from harm from him or preventing the commission by him of further offences the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than 6 months or more than 3 years.

[24] Having regard to the defendant's role in this offence and his personal circumstances I consider that a non-custodial sentence is appropriate. Having considered the range of non-custodial options open to the court I consider that the best option for this particular defendant is a probation order. I understand from the pre-sentence report that the defendant would consent to such an order. I propose to sentence the defendant, Bernard McGinley, to a probation order for 12 months.

Patrick McGinley Jnr

[25] As is the case with Bernard McGinley the defendant, Patrick McGinley Jnr, has pleaded guilty to affray at the first available opportunity. In terms of his involvement in the offence I consider that it is similar to that of Bernard McGinley and the same considerations apply. As Mr McCartney succinctly put it in his submissions his role and culpability was at the lower end of the scale for an affray. He had a peripheral role, he did not participate in any violence and his participation was a spontaneous response to his father's predicament.

[26] He is aged 24, he has no criminal convictions either in this jurisdiction or in the Republic of Ireland. I have read the pre-sentence report in relation to this defendant dated 23 April 2018 and I have also considered a medical report from Dr Harbinson dated 15 March 2018. Like his siblings he has been the victim of previous attacks. In particular he sustained an injury to the left side of his jaw which has left him with a large scar. He suffers Bell's Palsy on the left hand side of his face due to muscle damage and continues to attend a consultant in Galway Hospital for ongoing treatment in relation to this injury. He was assessed as a medium likelihood of re-offending and not someone assessed as posing a significant risk of serious harm to others. I agree with that assessment and therefore no issue as to an indeterminate sentence or extended custodial sentence arises under the Criminal Justice (Northern Ireland) Order 2008. Dr Harbinson describes the defendant as a young man of previous good character who has been traumatised as a result of this incident and its consequences. She describes his symptoms as in keeping with post-traumatic stress disorder. He is presently prescribed anti-depressants with some benefit but it is her opinion that he will require psychological as well as pharmacological therapy in the future.

[27] Notwithstanding the real risk of a custodial sentence the probation report confirms that a community service order is an option in this case. Mr McGinley is assessed by the Probation Service as suitable for a period of community service and has given his consent to this sentencing option.

[28] The case of *Rice* [1999] 5 BNIL 70 suggests that the factors relevant to deciding to impose a community service order (aside from the statutory conditions) include:

(a) if the offence is an isolated incident not likely to be repeated;

(b) stable home and family stability;

(c) if in employment and little or no criminal record;

(d) if generally of good character and efforts made to avoid offending; and

(e) if the offence is in the nature of a crime against public order or the community.

[29] Having considered the defendant's role in this offence, his personal circumstances and the factors set out in *Rice* I consider that a community service order is appropriate in this case. I consider that the appropriate sentence for Patrick McGinley Jnr is one of 150 hours' community service.

Victim Impact Statements

[30] Before I consider the appropriate sentence for the first and second defendants it is important that I highlight the Victim Impact Statements that I have received. I have read statements from the deceased's wife, Bridget, and his two sons, Michael and Bernard. Each of these statements in their own individual and eloquent way demonstrates the profound personal grief of each of the authors. It is clear from their statements that the deceased was a much loved head of his family. He had been married to Bridget for over 41 years. Together they reared 9 children and his family had extended to 48 grandchildren and 2 great grandchildren at the time of his death. His family miss him greatly particularly on special occasions such as Christmas. The statements illustrate the fact that the impact of his death will resonate with his family for the rest of their lives. They have brought home to me the impact this tragic, pointless and traumatic death has had on his closest relatives. In coming to a determination of the appropriate sentence for Patrick McGinley I bear these statements fully in mind. I recognise that the loss of Mr McGinley's life cannot be measured by the length of a prison sentence. There is no term of imprisonment that I can impose that will reconcile his family to their loss nor will it cure their anguish.

[31] The most significant "guideline" case in relation to sentencing in manslaughter cases is to be found in the Court of Appeal judgment in *R v Magee* [2007] NICA. This case has been quoted with approval in the Court of Appeal and is referred to by Sir Anthony Hart in his authoritative paper for the Judicial Studies Board for Northern Ireland dated 13 September 2013 dealing with sentencing in cases of manslaughter and other offences.

[32] In *R v John Foster* [2015] NICA 6 the Court of Appeal again referred to the *Magee* case when considering an application for leave to appeal a sentence imposed in respect of a manslaughter case. The general principles are discussed in paragraphs 12 and 13 in the following way:

> "[12] In dealing with the general principles to be observed when considering cases of manslaughter Kerr LCJ, in the course of giving judgment in *R v Magee* [2007] NICA 21, confirmed at paragraph [22] that:
>
> > "[22] It is not surprising that there are relatively few decisions in this jurisdiction which could properly be described as guideline cases for sentencing for manslaughter. Offences of manslaughter typically cover a very wide factual spectrum. It is not easy in these circumstances to prescribe a sentencing range that will be meaningful."
>
> After referring to the apparent increase in prevalence of offences of wanton violence among young males, typically committed when the perpetrators were under the influence of drink or drugs or both, the learned Lord Chief Justice went on to say at paragraphs [26] and [27]:
>
> > '[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations

where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required. Indeed, in some cases an indeterminate sentence will be appropriate. Notwithstanding the difficulty in arriving at a precise range for sentencing in this area, we have concluded that some guidance is now required for sentencers and, particularly because of the prevalence of this type of offence, a more substantial range of penalty than was perhaps hitherto applied is now required.

[27] Aggravating and mitigating features will be instrumental in fixing the chosen sentence within or – in exceptional cases – beyond this range. Aggravating factors may include –

(i) the use of a weapon;

(ii) that the attack was unprovoked;

(iii) that the offender evinced an indifference to the seriousness of the likely injury;

(iv) that there is a substantial criminal record for offences of violence; and

(v) more than one blow or stabbing has occurred.'

[13] In his carefully researched and informative paper on "Sentencing in Cases of Manslaughter, Attempted Murder and Wounding with Intent" delivered to the Judicial Studies Board for Northern Ireland on 13 September 2013 Sir Anthony Hart confirmed that manslaughter was often described as one of the most difficult categories of case in which to sentence because of the wide factual spectrum. After analysing a wide number of guideline decisions both of this court and at first instance, he identified seven broad sub-categories, the first of which is probably the most relevant for the purpose of this application and which provides as follows:

'(i) Cases involving substantial violence to the victim. While sentences range from 6 years on a plea to 14 on a contest, pleas in cases at the upper

> end of the spectrum attract sentences of 10 to 12 years with sentences of 12 years being common. Sentences of 6 to 8 years tend to be reserved for cases where there are strong mitigating personal factors, or the defendant was not a principal offender'."

[33] In his detailed submissions Mr Gallagher referred me to a booklet of sentencing authorities dealing with sentences for manslaughter in this jurisdiction.

[34] He particularly focusses on the recognition by the Court of Appeal that *Magee* provides only "the most general of guidelines" because of the "potentially limited variety of factual circumstances where manslaughter is committed".

[35] He says that the particular facts of this case take it outside the range envisaged in the *Magee* judgment.

[36] In assessing the first defendant's culpability the court must look at the particular circumstances of the case. A key feature of the case from the first defendant's perspective relates to the fact that he did not bring the pipe-gun or any other weapon to the scene. It will be recalled that this was the agreed basis upon which the sentence should be imposed. He and his family went to the church for the sole purpose of attending the wedding. He only came into possession of the weapon when he disarmed someone who was with the deceased. At that stage he was only acting in self-defence. The agreed factual basis for the plea is that the prosecution accept there is reliable information in its possession which indicates that the pipe-gun was not brought to the incident by one or other of the defendants as was the case in the papers. Elaborating on this issue, Mr Gallagher referred me to a disclosure letter from the PPS to his solicitors dated 29 January 2018 which sets out the basis for that reliable information. Having considered that material I am satisfied that there clearly is strong support for that assertion, leaving aside the agreement that the court should sentence on the factual basis which is most advantageous to the accused.

[37] Thus there was no question of planning or pre-meditation on the first defendant's part in relation to the killing, which is a strong mitigating factor. It significantly alters the original basis of the prosecution case.

[38] Whilst these central features of the case undoubtedly impact on the degree of the first defendant's culpability I take the view that the appropriate sentencing range is within that suggested in the Magee case. I say so because clearly this is a case where it is accepted that "it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted". That being so the case comes within the "most general of guidelines" set out in Magee.

[39] In determining the appropriate sentence within the suggested range I consider that the use of a weapon by the first defendant in this case is a relevant aggravating feature. The use of the weapon was a deliberate act. He accepts that it was a dangerous act which was done with the intention of harming the deceased or with the realisation that it was likely to harm the deceased. Although unintended by him, death or very serious injury was an entirely foreseeable consequence of his actions. In the court's view this is the most serious aspect of the case in determining the appropriate sentence.

[40] A further, but lesser, aggravating factor in this case is that the offence took place in a public place in the presence and sight of a number of innocent bystanders and at a time of day when any unsuspecting member of the public could have been harmed.

[41] The range suggested in *Magee* is also supported by the JSB paper from Sir Anthony Hart to which I have already referred and which was also quoted with approval by the Court of Appeal in the *Foster* case. As in *Foster* the most relevant sub-category identified by the Hart paper is the first, that is cases involving substantial violence to the victim. His review of the cases suggested that sentences ranged from 6 years on a plea to 14 on a contest with pleas in cases at the upper end of the spectrum attracting sentences of 10-12 years with sentences of 12 years being common. Sentences of 6-8 years tend to be reserved for cases where there are strong mitigating personal factors or the defendant was not a principal offender.

[42] There are mitigating personal factors at play in this case. Mr McGinley Snr is 49 years of age. He is a married man with five children. He has provided for his family over the years through hard work, both in the family scrap metal business and in industrial power washing. In 2011 his home was destroyed in an arson attack and his financial circumstances have been significantly reduced in the intervening years.

[43] The defendant has no previous convictions in this jurisdiction. Since the sentencing hearing it has emerged that he has a conviction for violent disorder which was dealt with in Dublin Circuit Court on 21 April 1999 in respect of which a suspended sentence was imposed. He also has a conviction for fraud in Belgium relating to offences between 21 October 2010 and 27 June 2011 in respect of which he appears to have received a partially suspended sentence. Given the vintage of the first conviction and the nature of the second conviction I do not consider them to be relevant factors for this sentencing exercise. The pre-sentence report prepared by the PBNI records that he has had great difficulty coming to terms with the consequences of his behaviour, the loss of a family member's life and being isolated from the traveller community. I have considered medical reports from Dr Paul Devine, Consultant Psychiatrist, and from his general practitioner, Dr Sali. Both reports confirm that he has suffered from psychiatric problems dating back to the arson attack and the attacks on his sons. According to Dr Devine Mr McGinley suffers

from post-traumatic stress disorder which has also been contributed to by the trauma relating to the offence.

[44] The PBNI assess him as being a low likelihood of re-offending and not currently assessed as being a significant risk of serious harm. I agree with this assessment and therefore no issue of indeterminate sentence or an extended custodial sentence arises under the Criminal Justice (Northern Ireland) Order 2008.

[45] The intervening period between the commission of the offence and his plea has resulted in a significant upheaval in the defendant's life. He was initially in custody for approximately 8 months and when released on bail he was required to leave his former family home and reside in this jurisdiction.

[46] Taking into account all the aggravating and mitigating factors in relation to the offence and in relation to the personal circumstances of the offender I consider that the appropriate sentence on a conviction after a contest would be one of 11 years' imprisonment.

[47] The defendant is entitled to discount in his sentence for his plea of guilty. It is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate.

[48] In determining what the lesser sentence should be the court should look at all the circumstances in which the plea was entered. Clearly the plea in this case was at a late stage.

[49] However, I have been told and I accept, that prior to the trial there was contact between the prosecution and the defence with a view to resolution of the case. Ultimately, the Crown accepted a plea to manslaughter. This has to be seen in the context of the disclosure letter to which I have referred which is dated 29 January 2018 which clearly had a significant impact on the circumstances of the case. The pleas in this case have avoided the potential of a lengthy trial with no certainty as to what view a jury might have taken on hearing all the evidence in the case. Mr Connor correctly accepts that the plea was "of value" to the prosecution. Given the lateness of the plea and the fact that the defendant put forward the defence of "accident" in his police interviews I do not consider that the defendant is entitled to the maximum credit for his plea but nonetheless is entitled to substantial discount which I assess at the midway point between 25% and 30%. I therefore propose to impose a determinate sentence of 8 years' imprisonment on Mr Patrick McGinley Snr for the offence of manslaughter.

[50] Under the provisions of Article 8 of the Criminal Justice (Northern Ireland) Order 2008 I am required to "specify a period (in this article referred to 'the custodial period') at the end of which the offender is to be released on licence under Article 17".

[51] Furthermore, under Article 8(3) the custodial period shall not exceed one half of the term of the sentences.

[52] Given the seriousness of the offence I consider the custodial period should be the maximum permitted under Article 8.

[53] Therefore, the custodial period under Article 8 shall be 4 years with the remaining 4 years to be served as a licence period under Article 8.

William McGinley

[54] In respect of the offence of wounding with intent the Court of Appeal has identified the range of sentence on two occasions (*R v McArdle* [2008] NICA and DPP's Reference Nos: 2 and 3 of [2010] *McAuley & Seaward* [2010] NICA 36) as being between 7 and 15 years after a contest.

[55] I have already referred to the potential conflict in relation to the basis for William McGinley's plea.

[56] An aggravating feature in this case is the fact that a weapon was used to inflict the injuries in circumstances where the weapon had been fired already causing an obvious injury to another person at the scene. Furthermore, the offence took place in a public place in the presence and sight of a number of innocent bystanders where unsuspecting members of the public could have been harmed.

[57] In applying the guidelines set out by the Court of Appeal, Mr Duffy refers me to paragraph [6] of the judgment in AG's References Nos. 2 and 3 of 2010 which referred to the then consultation issued in October 2010 by the Sentencing Council for England and Wales in relation to offences of this kind. These suggestions are now part of the sentencing guidelines applicable in that jurisdiction. In paragraph [6] of the judgment the Court of Appeal said:

> "The consultation document suggests that for this offence the important factors are the culpability of the offender and the degree of harm caused. Where culpability and harm caused are high the suggested range is 9 to 16 years custody if convicted after a not guilty plea. A range of 5 to 9 years custody is suggested where there is either high culpability or a higher degree of harm caused with a range of 3 to 5 years custody being reserved for cases of low culpability and lower harm. The emphasis on culpability and harm is consistent with the approach of the courts in this jurisdiction to the determination of the appropriate sentence."

[58] In accordance with the practice of the Court of Appeal in this jurisdiction the court should be wary about applying the relevant categories to sentencing exercises here. Nonetheless, the Court of Appeal has endorsed the appropriateness of emphasising culpability and harm in determining the appropriate sentence.

[59] Applying culpability and harm to this case Mr Duffy suggests that in relative terms this is a case of lower harm even if the court accepts that the aggravating features mean this is a case of higher culpability. The fact that the harm was low in this case is of course entirely fortuitous given the actions of the defendant and having regard to his intention. Nonetheless, the consequences of offending are a relevant factor in the determination of sentence. It is this defendant's good fortune that he does not face a more serious charge and unlike Patrick McGinley is not responsible for the death of an individual, notwithstanding his intent.

[60] In terms of culpability Mr Duffy suggests that I should have regard to the particular personal circumstances of his client. In this regard I have received two medical reports in relation to William McGinley. The first is from Dr Raymond Paul, consultant psychiatrist dated 12 March 2018 and the second is from Dr Victoria Bratten, educational child and adolescent psychologist dated 14 March 2018. Dr Paul reports that the defendant has had mental health difficulties since 2009. He has been the victim of assaults in the past and he has been extremely anxious and subject to nightmares since the events in February 2015. For him the move to Northern Ireland because of his bail conditions has been a bonus and he has settled somewhat. Dr Paul's opinion was that the traumatic nature of the events in February 2017 worsened his pre-existing anxiety disorder for a period of time afterwards. He notes he is receiving appropriate treatment from his general practitioner and he also records that his geographic relocation has improved his mental state.

[61] Dr Bratton carried out a cognitive assessment of the defendant. She felt that he was not putting forward his best effort during assessment and therefore expressed caution when interpreting the results of the assessments she carried out. That caveat having been expressed, her conclusion was that the tests suggested a full scale IQ of 52, classifying his general level of intellectual ability as well below average. He also obtained a score within the well below average in the reading sub-test and also a deficit in his receptive language skills. Notwithstanding her reservations about the results her conclusion was that "there is little doubt that he is an individual who has very limited cognitive abilities and educational skills".

[62] Mr Duffy suggests that these cognitive deficits impact on the degree of his culpability. He is not someone with the ability to react well to the circumstances in which he found himself, in particular when close relatives were under attack. His conduct should also be seen in the context of the very significant injuries he received as a result of assaults in 2012 and 2013.

[63] I have also received a pre-sentence report in relation to this defendant which confirms much of the background disclosed to the medical experts. He currently resides with his fiancée and their two young children aged 16 months and 9 weeks in their home in the Belfast area. He has no previous convictions in the United Kingdom or the Republic of Ireland. He is assessed as a medium likelihood of re-offending and not someone currently posing a significant risk of serious harm to others. I agree with this assessment and therefore no issue arises in relation to an indeterminate sentence or extended custodial sentence under the Criminal Justice (Northern Ireland) Order 2008.

[64] I consider that the defendant's previous history as the victim of assaults together with his cognitive deficits does lower his degree of culpability and are relevant factors in mitigation.

[65] He is also entitled to credit for his good character and lack of any criminal convictions.

[66] After taking into account all of the aggravating and mitigating factors in relation to the offence and to the personal circumstances of the offender I consider that the appropriate sentence for this defendant on a conviction after a trial would be one of 10 years' imprisonment.

[67] The defendant is also entitled to credit for his plea of guilty. I consider that I should adopt the same approach with this defendant as I did with Patrick McGinley and I propose to reduce the sentence because of his plea by the midway point between 25% and 30%. The defendant William McGinley will therefore be sentenced to a determinate custodial sentence of 7 years and 3 months.

[68] Under the provisions of Article 8 of the Criminal Justice (Northern Ireland) Order 2008 I am required to "specify a period (in this article referred to as the 'custodial period' at the end of which the offender is to be released on licence under Article 17". Under Article 8(3) the custodial period shall not exceed one half of the term of the sentence.

[69] I therefore direct that the defendant William McGinley is sentenced to a period of 7 years and 3 months imprisonment. The custodial period under Article 8 shall be 3 years and 6 months and a licence period shall be 3 years and 9 months.