

IN THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

-v-

PATRICIA MCGRADÉ

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HIS HONOUR JUDGE MILLER QC

[1] The defendant was originally arraigned at Omagh Crown Court on 3rd July 2012 and pleaded Not Guilty to charges of Causing Death by Dangerous Driving, contrary to Article 9 of the Road Traffic (NI) Order 1995 and Driving with Excess Alcohol in Breath, contrary to Article 16 (1) (a) of the same Order.

[2] The case was set down for trial to commence on the 3rd December 2012 but was subsequently put back to the following day by agreement. On the 4th December the Crown lodged an amended Bill of Indictment adding a third count of Causing Death by Careless Driving with Excess Alcohol in Breath, contrary to Article 14 (1)(b) of the 1995 Order. The defendant immediately pleaded guilty to this charge and the Crown applied to leave Counts 1 & 2 on the Books. It is, therefore the case that the defendant pleaded guilty at the first opportunity that the lesser count was placed before the court.

[3] The background as set out in the agreed statement of facts is as follows:-

The accident occurred on Monday 17th October 2011 shortly before 5.00pm at Dooish Road near the junction with Owenreagh Road between Drumquin and Dromore, County Tyrone. Two vehicles were involved, these being: -

- (a) Toyota Yaris VRN BHZ 5402 driven by Kevan Hughes (DOB 21.04.78) (Deceased).
- (b) Vauxhall Vectra VRN YE04 ZKD driven by Patricia McGrade (DOB 19.03.74) (Defendant) with Angela Carron (DOB 27.01.69) (Front Seat Passenger).

The Locus

[4] The road comprises a single carriageway in either direction. Travelling in the direction of the Defendant (towards Drumquin) there is a straight section of road on an incline leading to a crest beyond which there is a decline with a very slight right hand

bend followed by a very slight left hand bend. Thereafter the road is flat through a further right hand bend and onto a straight section of carriageway where the collision occurred.

[5] The borders of each carriageway are marked by a solid white line and the central road marking consists of a hazard warning line. The road is subject to the National speed limit of 60mph. The collision occurred approximately 52 metres beyond the apex of the right bend as one travels in the direction of Drumquin. The road was in good condition and there were no irregularities in the surface such as could contribute to this collision.

[6] At the time the road surface was wet but again there is nothing to suggest that this would have presented any difficulty to a competent motorist in negotiating the bend. [See statement of Damian Coll FSNI RTA Inspector at Page 40 of depositions] Mr Coll arrived at the scene at 20:25 hours and conducted a thorough examination. Having done so it was his opinion that: - (Page 43 of the depositions)

“ the Vauxhall Vectra car was travelling in the general direction of Drumquin and the Toyota Yaris car was travelling in the general direction of Dromore...As the driver of the Vauxhall Vectra car attempted to negotiate the right bend in the carriageway the nearside passenger side of the car moved off the Drumquin bound lane and onto the grass covered verge adjacent to the Drumquin bound lane as indicated by the tyre track on this verge...the Vauxhall Vectra car was steered to the right so that the car moved back onto the Drumquin bound lane and across this lane so that the front and offside of the car moved onto the Dromore bound lane and into the path of the Toyota Yaris car which was positioned in this lane and travelling in the general direction of Dromore, impact occurred between the front of the Vauxhall Vectra car and the front offside of the Toyota Yaris ...as a result of the impact the Vauxhall Vectra rotated in a clockwise direction as it continued in the general direction of Drumquin before it came to rest in the position visible in a number of police photographs. The forward momentum of the Toyota Yaris car was arrested and it was also rotated in a clockwise direction as it moved off the Dromore bound lane and onto the grass covered verge adjacent to this lane before it came to rest in the position visible in a number of police photographs”

[7] Mr Coll also was of the opinion that:-

- (a) all occupants of both cars were wearing seat belts at the time of collision (Page 44)

- (b) there were no defects to the vehicles which could have contributed to the collision (Page 45)
- (c) “neither car was travelling at a fast speed on impact” (Page 45)
- (d) the Vauxhall Vectra car was not travelling at an excessive speed for the right bend where loss of control commenced (Page 45).

[8] Constable Boyle had arrived at the scene of the collision at 1724 hours. The driver of the Toyota Yaris was at that time being treated by ambulance staff. The driver of the Vauxhall Vectra Patricia McGrade DOB 19/03/74 was spoken to by the officer. (Page 46)

[9] The officer noticed signs of alcohol and asked her if she had been drinking, her reply was “yes”, she was asked if she was the driver and she replied “yes” she was asked if there had been anyone else in the vehicle and she replied “yes”. (Page 47)

[10] A preliminary breath test was conducted which returned a fail result of 89mg/100ml breath. She was cautioned and denied being the driver but admitted drinking, she did not feel able to discuss the collision at that point (Page 48). Between 1827 and 1846 Hours an evidential procedure was undertaken and this showed 89mg/100ml of breath. (Page 56)

[11] At 5.27am Kevan Hughes (DOB 21/4/78) the driver of the Toyota Yaris was declared dead. (Page 65)

[12] Professor Crane performed a post-mortem examination. He concluded that the deceased was a 33 year old man who was healthy and had not natural disease to cause or accelerate his death. He had suffered massive internal injuries and these led to his death 12 hours after admission to hospital. (Page 99 of exhibits)

[13] During police interview on the 18th October the defendant stated that she had no memory of events from 10.00am on the morning of the incident until the time she was brought to the police station that night. She accepted that she had been drinking at her home throughout that day and during the previous night as well. Ms McGrade said that she had gone to the school where she worked as a classroom assistant to report feeling ill and thus unable to work and had then gone home where she had continued drinking. On this account she had consumed both beer and vodka. So far as the actual incident was concerned she could offer no explanation for how she had ended up on the Dooish Road or say who her passenger was. At that stage and acting on legal advice she said nothing further.

[14] The depositions also include a written statement from the defendant, which gives a somewhat different version of events. In this account she says that she went to work on the morning of the 17th but left because she felt unwell. It was the anniversary of her own mother’s death and she went to a pub in Dromore where she had a couple of bottles of beer. In this pub she met Angela McCarron who was in a highly intoxicated state and behaving in a grossly erratic manner. McCarron was unable to get a taxi to take her home

and the defendant chose to give her a lift so as to get her away from the pub. In this version of events the defendant claims that McCarron tried to grab the wheel of the car on two occasions, the latter of which led the vehicle to mount the nearside grass verge before emerging back onto the road, crossing the central marking line and colliding with Mr Hughes' car with the tragic consequences that ensued.

[15] Further interviews on subsequent dates led to largely "No Comment" responses to questioning relating to inconsistencies in her account of her movements on the day of the incident.

[16] It is apparent from accounts given in the depositions that Angela McCarron was in a highly volatile state both at the pub and at the accident locus in the immediate aftermath of the collision. The Crown is not in a position to question the defendant's account of McCarron's actions in grabbing the wheel and the Court should therefore proceed on the presumption that it is accurate.

[17] On the other hand the Court is equally entitled to consider the defendant's account of her level of consumption of alcohol as set out in her written statement to be wholly inadequate and entirely self-serving. The reading of over 2 ½ times the legal drink/drive limit is more in line with the account as originally given to police in the initial interview.

[18] Before moving to consider the personal circumstances of the defendant I wish to address those of the deceased and the consequences for his family of his tragic death.

[19] Kevan Hughes was the youngest of 5 children. He was single and lived alone. He had a wide range of interests including photography, wildlife, rugby, soccer, poetry and music. He had worked in the offices of Gabriel Hughes Painting Contractor [GABRE UK] for approximately 9 years before his death. Family members describe him as being "witty, good fun, always positive and in good humour". "He was a caring, kind human being, a gentle soul" as his sister Aileen referred to him. It is apparent that he touched the lives of so many people in the local community and not just his close-knit though extended family all of whom speak of the richness of that life.

[20] I do not intend to read in open court the accounts given by Kevan's parents and siblings. May I say this, however that they speak with an eloquence that is deeply affecting of their love for him and their sense of emptiness and loss at his tragic, unforeseen and totally unnecessary death. No one reading their words could fail to be moved by the palpable and searing pain they feel both individually and collectively and the Court tenders its heartfelt sympathy to the whole family circle.

[21] When it comes to the issue of what is the appropriate sentence one cannot equate this to the loss of life caused in the incident. The then Lord Chief Justice of England and Wales, Lord Taylor once remarked in this context:

"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.”

(R v Shepherd, R v Wernet [1994] 2 All E R 242 at 245). Those words resonate in the present case.

[22] The offence of Causing death by careless driving whilst under the influence of excess alcohol is both a "serious" and a "specified" offence within the provisions of Schedules 1 & 2 of the Criminal Justice (NI) Order 2008. This means that the sentencing court is required, therefore, to reach a determination as to whether the defendant is a "dangerous" offender thus attracting the more severe sentencing provisions of the Order. In determining this issue the Court is required to consider not only the facts of the present case but more particularly the antecedents of the defendant and the relevance of past offending to the current offending and consider both the likelihood of future offending and the degree of risk of serious harm such further offences might cause.

[23] Patricia McGrade is nearly 39 years of age, a mother of four daughters aged between 14 and 21 years and is employed as a Classroom Assistant. With the exception of a minor assault matter dating back to 2004, she comes before the court with no previous convictions. Although clearly highly intoxicated at the time of this offence she told the Probation Officer responsible for preparing the PSR that she was not then a regular or heavy drinker and she was adamant that she had abstained from alcohol since the date of the accident. It is apparent that she has sought counselling since then and has expressed remorse for the consequences of her actions in terms of the death of Mr Hughes. The Court has received short reports from Dr Paul O'Reilly (GP) and from Anne O'Toole, (Counsellor/Psychotherapist) of the Tara Centre in Omagh, where the defendant attended 10 sessions throughout 2012.

[24] I have also had the benefit of a very detailed report prepared by Dr Helen Harbinson (Consultant Psychiatrist). This contains an outline of the defendant's background together with her reaction to the consequences of the accident. I am satisfied that Ms McGrade has been affected by the death of Mr Hughes and the responsibility she bears for it and that her expressions of remorse are genuine.

[25] On the basis of all this information the defendant is assessed as presenting a low likelihood of re-offending and as not crossing the threshold so far as being a significant risk of causing serious harm in the future. The conclusion of the Probation Service is, therefore, that the criteria for reaching a conclusion that she is a dangerous offender is not met. I agree with this assessment.

[26] My conclusion on this issue means that I must proceed to consider whether the threshold for the imposition of a determinate custodial sentence is met. I consider that this is self-evidently so on the facts of this case and I propose to sentence the defendant accordingly pursuant to Article 8 of the 2008 Order.

[27] The maximum sentence that can be imposed for this offence is one of 14 years. This is exactly the same as applies to the offence of causing death by dangerous driving. The

logic behind this should be clearly understood. Although by its very nature the level of culpability attendant upon an act of dangerous driving must be higher, in many instances considerably higher, than in cases of careless driving, the fact that a defendant has got behind the wheel of a car with excess alcohol in his/her system is a demonstrably aggravating feature, since it must clearly impact upon both the quality of the driving itself and the defendant's ability to react to circumstances that might arise unexpectedly. It must be recognised, however, that as the excess alcohol is a necessary constituent element of the charge, the sentencing court must ensure that there is no element of double-accounting by considering this to be a further aggravating factor.

[28] In the leading case of R v McCartney [2007] NICA 47 the then Lord Chief Justice (Sir Brian Kerr) when considering this offence observed:-

“[6]...It is to be noted that the less serious form of culpable driving, characterised as careless, which causes death or grievous bodily injury, carries the same maximum penalty as the offence of dangerous driving if the offender was unfit to drive through drink or had consumed alcohol over the limit. Lord Taylor of Gosforth CJ observed in relation to this in Attorney General's References Nos 14 and 24 of 1993 (Shepherd and Wernet) (1994) 15 Cr App R (S) 640 at 643:

‘... causing death by the less serious form of culpable driving, characterised as careless, carries the same maximum sentence if coupled with driving whilst unfit through drink or over the limit. The latter offences do not require proof of a causal connection between the drink and the death. Thus, under section 3A, whoever drives with excess alcohol does so at his or her peril, and even if the driving is merely careless but death results, the courts' powers to punish are the same as for causing death by dangerous driving’.”

[29] He added that prison sentences are required to punish offenders, to deter others from drinking and driving and to reflect the public's abhorrence of deaths being caused by drivers with excess alcohol.

“An extensive analysis of sentencing for this type of offence is to be found in the judgment of this court Attorney General's References 2, 6, 7, and 8 of 2003. The court followed the approach advocated by the Sentencing Advisory Panel and adopted in England & Wales by the Court of Appeal in Cooksley. At paragraph [11] *et seq.* Carswell LCJ set out the guidelines to be followed in cases of dangerous driving causing death or grievous bodily injury: -

‘[11] The Sentencing Advisory Panel propounded a series of possible aggravating factors, which were

adopted by the Court of Appeal in *R v Cooksley*, with the caveat that they do not constitute an exhaustive list. The court also pointed out that they cannot be approached in a mechanical manner, since there can be cases with three or more aggravating factors which are not as serious as a case providing a bad example of one factor. The list is as follows:

'Highly culpable standard of driving at time of offence

(a) the consumption of drugs (including legal medication known to cause drowsiness) or of alcohol, ranging from a couple of drinks to a 'motorised pub crawl' (b) greatly excessive speed; racing; competitive driving against another vehicle; 'showing off' (c) disregard of warnings from fellow passengers (d) a prolonged, persistent and deliberate course of very bad driving (e) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking) (f) driving while the driver's attention is avoidably distracted, e.g. by reading or by use of a mobile phone (especially if hand-held) (g) driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills. (h) driving when knowingly deprived of adequate sleep or rest (i) driving a poorly maintained or dangerously loaded vehicle, especially where this has been motivated by commercial concerns

Driving habitually below acceptable standard

(j) other offences committed at the same time, such as driving without ever having held a licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle (k) previous convictions for motoring offences, particularly offences which involve bad driving or the consumption of excessive alcohol before driving

Outcome of offence

(l) more than one person killed as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable) (m) serious injury to one or more victims, in addition to the death(s)

Irresponsible behaviour at time offence

(n) behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the bonnet of the car by swerving in order to escape (o) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension (p) offence committed while the offender was on bail.'

We would add one specific offence to those set out in paragraph (j), that of taking and driving away a vehicle, commonly termed joy-riding, which is unfortunately prevalent and a definite aggravating factor.

[12] The list of aggravating factors was followed by one of mitigating factors, as follows:

a good driving record; (b) the absence of previous convictions; (c) a timely plea of guilty; (d) genuine shock or remorse (which may be greater if the victim is either a close relation or a friend); (e) the offender's age (but only in cases where lack of driving experience has contributed to the commission of the offence), and (f) the fact that the offender has also been seriously injured as a result of the accident caused by the dangerous driving."

[30] Set against these criteria it is argued that none of the aggravating features apply whilst several of those in mitigation are present. I have been referred to the additional observations of Lord Carswell in AG's References 2, 6, 7 & 8 of 2003 on the sentence range appropriate to cases of this type. It should be noted that these are at some variance with the current guidelines adopted in England & Wales. As the notes accompanying those Guidelines makes clear "The guideline is based both on the level of alcohol or drug consumption and on the degree of carelessness". This, with respect, seems to accord with common sense. If a person is only marginally over the legal limit should their culpability be the same as for someone who is several times that limit? Logic surely demands a higher penalty for the latter than the former.

[31] The Crown Statement of Facts does not take issue with the Defendant's assertion that her initial loss of control was caused by her passenger McCarron grabbing the wheel of the car forcing it onto the grass verge. There seems little doubt that the behaviour of the passenger was reprehensible and if the account is true then she bears no small measure of moral responsibility for the tragedy that ensued. I note that McCarron was convicted of the offence of obstructing police arising from her behaviour after the accident.

[32] It has been urged upon me that I should apply the guidance as set out by Lord Carswell based upon the earlier decision of the Court of Appeal (E&W) in R v Cooksley:-

“[13] The Court of Appeal went on in *R v Cooksley* to set out sentencing guidelines, stating firmly that in these cases a custodial sentence will generally be necessary and emphasising that in order to avoid that there have to be exceptional circumstances. It ranked the cases in four categories:

- (a) Cases with no aggravating circumstances, where the starting point should be a short custodial sentence of perhaps 12 to 18 months, 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 to three years, progressing up to five 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 to five years will be appropriate in cases of this type.

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 six years was propounded for this category.

These were reviewed and amended thus -

The relevant starting points identified in Cooksley should be reassessed as follows: -

- (i) No aggravating circumstances - twelve months to two years’ imprisonment;
- (ii) Intermediate culpability - two to four and a half years’ imprisonment;
- (iii) Higher culpability - four and a half to seven years’ imprisonment;

Most serious culpability - seven to fourteen years’ imprisonment.”

[33] As I have indicated these sentencing guidelines predate those applying in England & Wales since August 2008, which places emphasis on the level of intoxication. Thus for those offences where the carelessness arises from a momentary act of inattention with no aggravating features but where the reading is 71 mg or above alcohol in breath, the suggested starting point is 6 years with a sentencing range of 5 - 10 years. This is based on a first time offender convicted after contest.

[34] In the more recent case of R v Conrad Doole [2010] NICA 11 the current Lord Chief Justice, Sir Declan Morgan indicated that although not bound by the Sentencing Guidelines Council, courts in this jurisdiction should take these into account.

“[7] In determining proper guidelines or guidance this Court takes account of but is not bound by the recommendations of the Sentencing Guidelines Council of England and Wales. Their Guidelines usefully identify relevant considerations in determining the seriousness of offences, aggravating and mitigating circumstances and factors relevant to personal mitigation. They usually put forward the starting point for sentences in carrying out the sentencing exercise. On occasion this Court recommends the adoption of a similar approach though in other cases it may recommend a different approach because of special factors in this jurisdiction.

[8] The English Council has produced Guidelines in relation to offences relating to causing death by driving. They usefully identify the issues relating to determining the seriousness of the relevant offence, the aggravating and mitigating circumstances and relevant factors that relate to personal mitigation. In particular in the present context it contains a section which deals with causing death by careless driving. We consider that the English Guidelines represent a fair and accurate assessment of the relevant factors which a sentencer in this jurisdiction should take into account in reaching his or her decision.”

[35] Of course the Doole case concerned the offence of Causing Death by Careless Driving without the additional factor of the driver being under the influence of excess alcohol. Thus the Court of Appeal did not address the issue of the apparent dichotomy in sentencing guidance between the two jurisdictions.

[36] I have given full consideration to all the mitigating factors set out in Mr Mulholland QC's very full plea. These are:-

The defendant has been driving in excess of 25 years with a completely clear driving record.

The defendant has no relevant previous convictions.

A timely plea of guilty - the plea was entered at the first opportunity the alternate count was offered.

The defendant is genuinely remorseful for the tragic events.

Since this accident she has been completely abstinent from alcohol. It is her intention to continue that for the rest of her life. Her General Practitioner notes her abstinence from alcohol in his records.

She has developed a depressive illness and is being treated appropriately for that with medication and counselling. She shows considerable remorse for her behaviour.

[37] In addition I have read and given weight to the character references also submitted to the court, all of which speak to the regard in which the defendant is held. Nevertheless I am satisfied that the very high reading amounting to more than two and a half times the legal limit for drink driving requires a level of sentence commensurate with the level of culpability that such a reading connotes.

[38] The sentence of the Court will therefore be one of 3 years. This will comprise 18 months in Custody followed by 18 months on Licence. During the licence period the defendant will comply with such requirements as to supervision by the Probation Service as the Minister of Justice considers appropriate. In addition the defendant shall be disqualified from driving for a period of 5 years.