

IN THE LONDONDERRY CROWN COURT

R -v- SHANE CHRISTOPHER FRANE

R -v- CONOR CLARENCE

Judge Babington

- [1] These two defendants have pleaded guilty to a number of very serious charges arising out of a road traffic collision on 9th February 2013. Those charges include one of manslaughter relating to the death of Philippa Reynolds.
- [2] This offending has to be set in the context of what had occurred during the previous day and on the day these offences were committed. The two defendants, who were both residents of the Simon Community Hostel in the Waterside in Londonderry, had spent the previous afternoon drinking and taking drugs. They consumed large quantities of each. They appear to have spent most of that time on the Cityside, returned to the Waterside and then decided to steal a vehicle and drive to Limavady. The first vehicle that they attempted to steal was a Citroen Saxo. Their attempt was unsuccessful but they did cause some damage to the vehicle. They then switched their attention to a Toyota Land Cruiser. They entered a dwelling house close to where that vehicle was parked. They discovered the keys and took them.

They got into the vehicle and despite setting off the vehicle alarm they were able to drive the vehicle away.

- [3] Evidence from CCTV cameras located in the area shows that Frane drove the vehicle down Fountain Hill to Spencer Road where he turned right and drove in the direction of Limavady. The vehicle travelled at speed along Spencer Road and then travelled along Clooney Terrace to the junction commonly known as Dales Corner. Whilst travelling to Dales Corner Frane went through one set of traffic lights which were red, this being at the junction of Spencer Road and Dungiven Road.
- [4] Frane drove the Toyota Land Cruiser through a second red light at Dales Corner. The Toyota hit an unmarked police vehicle, an armoured Vauxhall Vectra. The Vectra was crossing the junction under a green light going from the direction of King Street into Glendermott Road. The Toyota hit the Vectra at right angles somewhere between the front and rear doors. There were three police officers in the Vectra. All of them suffered injury from the very heavy collision and unfortunately the injuries to Philippa Reynolds, who was sitting in the rear of the vehicle, proved fatal.
- [5] The two defendants were seen to get out of the Toyota and run into the nearby Ebrington Square area. It appears that they changed their clothing in an attempt to disguise them and then walked back past the scene of the incident. The police investigation quickly identified them as suspects and the defendants were both arrested later that morning.

[6] During interview Clarence admitted that he was a passenger in the vehicle. He admitted that he had spent the afternoon with Frane drinking in many licensed premises and also taking drugs. He admitted that he and Frane had attempted to steal the Citroen Saxo car, admitted damaging it, but were unable to drive it away. He said they were successful in finding the keys to the Toyota after burgling the owner's house and they intended going to Limavady. Clarence told police that Frane drove the Toyota at speeds of up to 80 mph and indeed he asked Frane to slow down as he was becoming uncomfortable at the speed of the vehicle.

[7] Frane was interviewed on 8 occasions on 9 and 10 February, in the presence of the duty solicitor, and denied involvement in the offences. He was remanded in custody and was re-interviewed at his own request on 26 March. By this stage he had been able to consult his usual solicitor and on that occasion he made full admissions. It seems that it was probably in the region of three weeks or so after the incident that Frane requested to be re-interviewed so as to make the admissions that he made.

[8] Frane is now 26 years old. He has an extensive record of previous offending both in this jurisdiction and in the Republic of Ireland. He has only been living in Northern Ireland since 2009 and has 12 convictions. Included amongst them are attempts to take motor vehicles without the owner's consent. He has also been convicted of grievous bodily harm with intent as well as threats to kill and common assault. He received a determinate custodial sentence comprising two years custody and two years licence in respect of the grievous bodily harm offence. It is noted that his offending in Northern Ireland has occurred during periods of licence and whilst he has been on bail. He also has a total of 77 convictions in the Republic of Ireland including 11 motoring offences and various other matters. As the author of

the report says he has served numerous periods of imprisonment for these offences.

- [9] I have read and considered a pre-sentence report, a report from Dr Carol Weir who is a consultant clinical psychologist, and a report from the Chaplains Office at Maghaberry Prison. The author of the pre-sentence report states that Frane has been assessed as presenting a high likelihood of reoffending.
- [10] Following the commission of these offences and his remand into custody PBNI made an application to recall him to prison in relation to his licence. His licence was revoked and a Risk Management Meeting held on 18 February 2013 assessed him as being a significant risk of serious harm. A further Risk Management Meeting was convened to review this decision on 7 January 2014 and it was felt that he continues to present a significant risk of serious harm.
- [11] Manslaughter is a serious and specified offence for the purposes of Chapter 3 of the Criminal Justice (Northern Ireland) Order 2008 and it is necessary for the court to consider whether or not it is of the opinion that he is a dangerous offender. In other words (see Article 15) "... whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences." Ms MacDermott who appeared for Frane made it clear that her instructions were not to contest any finding of dangerousness as she stated her client felt that it was a fair conclusion. In this regard the defence had obtained a report from Dr Brown which did not really argue against such a finding. After considering the contents of the pre-sentence report, the depositions in this case and his criminal record I am quite

satisfied that Frane is a dangerous offender in accordance with Article 15 of the 2008 Order.

[12] In these circumstances I have to consider if an extended custodial sentence would be adequate for the purpose of protecting the public. I have given very careful consideration to this matter and have come to the conclusion that such a sentence would not be adequate. I have come to this conclusion because of what has been stated in the pre-sentence report and because of the escalating nature of his re-offending despite rehabilitative opportunities being given to him. To impose an extended sentence it is necessary to engage in forecasting the appropriate length of the extension period. This in my view would be near impossible to do in respect of this defendant because of his previous offending behaviour and his attitude in relation to previous sentences that have been imposed. It is also because of this that it is not possible at this time to put in place a sufficient package of measures that will protect the public when he would be released. This is not a decision that I have reached without careful thought as the alternative to an extended sentence has very serious implications for the Defendant. It is my view that what I have decided to do will offer the best outcome in terms of reducing further offending and protecting the public.

[13] At the time of these offences the Defendant was on licence arising from his GBH conviction. He had first been released on licence on 29th July 2011 and within 24 hours had committed two drugs offences. That led to a final warning from the Probation Service. He committed further offences relating to drugs and dishonesty in August 2011 and as a result had his licence revoked and was returned to prison. He was then again released on licence on 31st October 2012 and was therefore under supervision at the time of this offending.

[14] On 8th February 2013, the day prior to these offences, he gave his probation officer assurances that he would not resort to alcohol and drugs as a means of coping with his frustration at losing an opportunity of alternative accommodation. As the author of the pre-sentence report says he was “..purposefully trying to deceive his probation officer..” as he went into town and consumed both drink and drugs in very large quantity. It is also stated that in retrospect any participation in rehabilitative opportunities was superficial as he was continuing to engage in substance abuse despite advising his probation officer to the contrary. It is crystal clear that his offending is linked to his drug and alcohol abuse.

[15] Ms MacDermott says that he is now making progress despite earlier failing drugs tests in prison. In addition she says that he is now on a drugs free wing. She suggests that perhaps he has now turned the corner. That may be so but experience has shown that once out of prison he reoffends due to alcohol and drug abuse. It is also clear that as far as PBNI are concerned he lacks credibility as it is hard to believe him. It is also not without significance that he was not completely honest with Dr Weir.

[16] I therefore intend to impose an indeterminate custodial sentence. To do this it is necessary to set what the appropriate determinate sentence would be in relation to this matter. I have considered what Mr Mooney and Ms MacDermott have said in relation to this matter. There is apparent agreement between them that this was a very grave incident with appalling consequences. The only mitigation that can be put forward on behalf of the defendant is his plea of guilty in circumstances which I have already referred to.

[17] On the other hand the offending is aggravated by the following matters:

- Driving whilst drunk and under the influence of drugs;
- The defendant's indifference to the danger he posed to others by the manner of his driving;
- His dangerous driving for a period before the incident;
- Continuing to drive in such a manner despite warnings from his passenger;
- Driving in a stolen car;
- The traumatic effect on the family of Phillipa Reynolds;
- The defendant's previous period of offending and his clear unwillingness to reform or to accept assistance;
- The consequences for the survivors.

[18] It is clear that there is a distinction between the offence of causing death by dangerous driving under the Road Traffic Legislation and the offence of "motor manslaughter". Mr Mooney referred me to the comments of Lord Roskill in R v Seymour [1983] A.C. 493 when the House of Lords emphasised that manslaughter was a more serious offence than causing death by reckless driving. In Northern Ireland of course we have the offence of causing death by dangerous driving.

[19] I take into account all that I have been told about the defendant. I take into account matters that have aggravated this matter, the defendant's very poor

previous record and his failure to respond to previous sentences. I also take into account the fact that this offence was committed whilst he was on licence. I also take into account what Ms MacDermott told me: that he has expressed genuine remorse for the death of Phillipa Reynolds and the impact that her death would have upon her family. This of course only came about once the effect of alcohol and drugs that he had consumed had diminished. In the particular circumstances of this case discount is very limited in view of the circumstances. Taking all these matters into account I consider that the appropriate determinate sentence in this case would have been one of 12 years. If you had contested this matter and been found guilty the appropriate sentence would have been in the region of 15 years.

[20] The effect of passing such a sentence is something that must be explained. It could be said that an indeterminate sentence is broadly the same as a sentence of life imprisonment. This is because it is virtually certain that for the rest of your life you will either be in prison or in the community and subject to close control under license conditions and liable to be taken back to prison at a moment's notice if you should break those conditions. This is because the sentence provides for the indeterminate imprisonment of those who pose a significant risk of serious harm to the public as you do. The exact time that you will be released is something that will be decided by the Northern Ireland Parole Commissioners. They will only permit your release when they are satisfied that it is safe for you to be released. The exact sentence that I will pass in respect of you is one that has been laid down by following guidance from the higher courts. As I said I am satisfied that the appropriate determinate sentence would have been one of 12 years. I have to reduce that by 50% so you will serve a minimum period of 6 years to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, and after that time the Parole Commissioners will decide when

you can be released. When you are released you will no doubt be subject to a number of conditions but those will be set by the Parole Commissioners.

[21] In respect of the defendant Clarence I have had an opportunity of considering your pre-sentence report. Although you have been assessed as currently presenting a high likelihood of re-offending you have not been assessed as being a significant risk of serious harm. You are now 24 years of age and you have a very poor previous record comprising some 48 previous convictions. Your previous offending includes 4 assaults on the police, 11 common assaults, 22 criminal damage convictions as well as drug offences and other offences of dishonesty and public order. It is said that the majority of your offending behaviour occurred during your teenage years and that there is a gap in your criminal record from 2008 to 2011. It seems that this may be while you were subject to a Probation Order which although beneficial in the short term did not subsequently prevent you from re-offending.

[22] I take into account your plea of guilty to these charges and your various admissions made during your first interview with the police. I am satisfied there was no delay in you making those admissions. You also said at that stage that you were sorry and expressed regret at what had occurred. However it appears clear that you and your Co-defendant embarked on a joint plan to take a vehicle and drive to Limavady. You can be said to have encouraged Frane although I note your concern at the speed of his driving.

[23] These offences represent very grave offending by the defendants who at the time cared not a jot for any other member of the Community. It is quite clear that they went on a day long binge of drink, fuelled by the consumption of large quantities of illegal drugs, and then deliberately stole a car so as to go on

to some event in Limavady. To drive a vehicle at speeds of up to 80 mph in a built up area, albeit at 3.00 am or thereabouts in the morning, is an act of the most serious recklessness. You then also proceeded to drive through two red traffic lights and indeed Frane expressed the comment that he would not have stopped for them. You then acted like the cowards you were and made yourselves scarce in the immediate aftermath of the incident. You could have killed or injured anyone or any number of people and it was Phillipa Reynolds misfortune and that of her family that she was fatally injured in the ensuing impact. Her death is particularly sad because it is said that she was doing a job that she loved and was serving the community at the time that she was so tragically killed.

[24] Returning to the actual offences the sentences will be as follows in respect of the defendant Frane:

Count 2 – Burglary – 2 years imprisonment.

Count 3 – Criminal Damage – 12 months imprisonment.

Count 4 – Manslaughter – there will be an indeterminate sentence of which the minimum period will be 6 years.

Count 6 – Causing death or grievous bodily injury by driving – uninsured driver there will be a sentence of 18 months.

Count 7 – Causing death or grievous bodily injury by driving – unlicensed driver there will be a sentence of 18 months.

Count 8 – Driving when unfit through drink or drugs, there will be a sentence of 12 months.

Count 9 – Failing to remain where accident occurred causing injury, there will be a sentence of 6 months.

Count 10 – Failing to report an accident whereby injury was caused, there will be a sentence of 6 months.

[25] Those sentences will be concurrent. I intend to disqualify the defendant from driving for a period of 10 years on counts 6, 7, 8, 9 and 10. Those disqualifications will run concurrently with each other.

[26] The defendant Clarence will be sentenced as follows:

Count 1 – Aggravated vehicle taking – allowing yourself to be carried and death or grievous bodily injury being caused – 3 ½ years imprisonment.

Count 2 – burglary – 2 years imprisonment.

Count 3 – criminal damage – 12 months imprisonment.

[27] These sentences will run concurrently. The sentence will be a determinate custodial sentence of 3 ½ years and the defendant will serve half his sentence in custody and the other half on licence. If you had contested these matters and been found guilty I would have imposed a sentence in the region of 5 years imprisonment. I am recommending to the Minister for Justice that the following license conditions should be imposed.

- (i) Residence in accommodation approved by PBNI.
- (ii) Ban on consumption of alcohol or illegal drugs and subject to testing.
- (iii) Completion of an Addiction Treatment Programme.

- (iv) Completion of an Assessment by PBNI Psychology Department and full co-operation with any treatment programmes thereafter recommended.
- (v) Electronic monitoring to assist with your management in the Community through the enforcement of curfews.

4 February 2014