

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

R

V

MARK JOHN BOYD

HIS HONOUR JUDGE BURGESS

- [1] On the 5th July 2009 the defendant was driving an Iveco Ford Cargo 2 Axle 7 ton Tipper Truck, when he collided with a car driven by Mr Gary White, and in which a Ms Erin Eagleson was a passenger. As a result of this collision Erin, if I may, lost her life and Mr White received serious injuries.
- [2] It has been firmly established that Mr White was on his own side of the road and that the defendant's vehicle was on its wrong side of the road. In the papers is a report from Forensic Scientist Mr Emerson Calder who, at page 59, states that he had been unable to calculate the vehicle's speed in the collision, but was of the opinion there was nothing to indicate that either vehicle had been travelling at an excess speed. He also goes on, on the same page, to state that he was unable to determine the length of time the Iveco truck had been on or had been partially on the wrong side of the road, and therefore he could not rule out the possibility that it commenced to move onto the wrong side a short time prior to the impact.
- [3] However while that may be the expert evidence we have the evidence of Mr White. He confirms that his speed was about 50 mph which was well within the speed limit. The defendant (whose memory I will return to) stated he was doing about 40 mph. However Mr White is clear that for some distance he was able to see the lorry over the centre of the road and continuing to go further over the road onto his side. He states that he flashed his lights and was applying his brakes and blowing his horn but that this had no effect. I am satisfied on the description of Mr White that, contrary to the difficulty the Forensic Scientist had in establishing the length of time that the lorry was on the wrong side of the road, it was on the wrong side of the road for more

than a brief period of time. Mr White swerved at the last minute onto his wrong side of the road to avoid the lorry but as he came across the front of the lorry it swerved back again colliding with the car. This version is borne out in the photographs of the damage to the car where the lorry would have struck the passenger door where the deceased was sitting. She had no chance of surviving this impact.

[4] This was a bad piece of driving. Mr White stated that the driver was looking down rather than looking ahead at all times that he was trying to draw his attention to his presence. There is no evidence of tiredness or sleeping or alcohol but there is evidence that the defendant was not wearing a seatbelt. He has been unable to give any explanation as to how he came to be on the wrong side of the road. In terms of sentencing therefore I do not regard this as a momentary problem but one where a driver of a heavy vehicle, owing a duty of care to others on the road, took his eyes from the road for a appreciable period of time in circumstances where, with any care, he would both have seen the car coming and, given the blowing of the horn and the flashing of the lights, would have had drawn to his attention (if it was ever needed) to the fact that he was on the wrong side of the road.

[6] At the scene and in interview on 5 July a short time after the incident the defendant stated he could remember nothing about the day let alone the incident. In a written statement which appears to have been dated three or four days after the incident he was able to give some information as to events prior to the incident - although this appears to have been gleaned from others who had seen him during the course of the day. There was still nothing about the incident itself. However in January 2010 he was interviewed again and he indicated that he had begun to remember things about the incident. Over a number of pages in the interview he was able to set out what he says were the facts behind the incident. These included:

- (i) That it was the other car who was over on the wrong side of the road;
- (ii) That the other car was doing between 60 and 70 mph;
- (iii) That the speed of the other car was increasing;
- (iv) That he was on his side of the road and had been until he was quite close to the other car;
- (v) That he saw the other car about 100-150 metres away; and
- (vi) That his speed was about 40 mph.

[7] In short the picture painted by the defendant was to place the responsibility fairly and squarely on the shoulders of Mr White. At the previous hearing when I was asked for an indication of sentence I indicated that would be regarded by me as totally reprehensible -

namely that the defendant deliberately went to the police station with his solicitor and gave a false statement. A report was handed to me from Mr W J Gray FRCS, Consultant Neurosurgeon, as to the role of retrograde amnesia. I did not argue with the report which concluded that someone with a head injury may not recall events leading up to the injury if they are questioned a short time after the event - but that with time the length of retrograde amnesia will shrink and they may be able to recall the period before the injury was sustained.

What Mr Gray's report did not address was whether there was a role for false memory arising from that syndrome. I will return to this shortly.

[5] At that hearing the court was proceeding on the basis that some six months after this incident, having claimed to regain his memory, the defendant put forward a totally false account of this accident - false in every respect. As a result his legal representatives, quite naturally, sought to obtain advice from a relevant engineer in order to see whether or not the version put forward by the defendant was capable of being correct. While those steps were proper nevertheless they commenced with a false prospectus provided by the defendant. This would have caused enormous upset to Mr White not least in terms of the fact that his girlfriend had died in the collision and effectively he was being blamed for that. The defendant's case proceeded on that basis up to and including his plea at the date of arraignment and until a date at or about the time that the case was listed for trial. At the hearing I indicated that I regarded this feature as an aggravating feature for the purposes of the factors identified in *R. v. McCartney* [2007] NICA 41, and that whilst the defendant in the event would withdraw that allegation, and has done, the fact remains that Mr White was under this cloud for somewhere in the region of twenty months. While I have no doubt that his family and the family of the deceased gave this no credence, nevertheless I have no doubt also that it would have caused considerable emotional trauma on top of the other injuries sustained by this young man.

[6] I have today been furnished with a further report from Mr Gray, addressing the issue of false memory. In it he confirms that there is a possibility in the mental state of the defendant, that is his condition of anterograde and retrograde amnesia, that no true memory of events were registered in a normal way in the defendant's memory, and that there is a high degree of likelihood, for the reasons set out in the addendum report, that the version of events given later may well represent false memory reconstructed from partial recall and information presented to him around that time. The result is that whereas before I was highly critical of the defendant and considered

this an aggravating feature, I believe that it is not now open for me to come to that conclusion.

- [8] There is however an aggravating factor, namely that over and above the death of this young lady the driver Mr White also sustained very serious injuries which, on the papers I have been shown, have had considerable impact on him.
- [9] I therefore turn to the consequences of this collision.

I have received an Impact Statement from the immediate family of Erin. I was asked to read it and to reflect on the massive impact her death has had, and always will have not just on her parents and sister, but also the extended family and the large number of people who knew her and in whose lives she played such an important part. I can assure them that I have read all the expressions of love and admiration which have been expressed in eloquent, dignified and moving terms. At one point the writer refers to an understanding on the part of the family that 'any court must disregard the family's views regarding sentence'. What the court will not disregard or forget is the terrible devastation that incidents (not accidents) such as this inflict on innocent lives, and the court will always reflect in that loss both the family and friends of the victim in the particular case with which it is dealing, but also a warning to others who are granted the right and privilege to drive what are potentially lethal weapons, that if they fail to meet their obligations to other road users they will face condign punishment notwithstanding their personal circumstances.

In the Statements, Erin's achievements in a far too short life are chronicled. Accomplished academically, outgoing, a trusted confidante, active and enquiring, her life promised much. She was the daughter of devoted parents and a close and loving sister. In a moment that life and all its expectations and promise were lost, and the gap left has been impossible to fill.

In her statement Helen, her mother, asks if I can genuinely place myself in her position. While I have had to deal with many such tragedies and their consequences, even now I have to answer - 'no'. But I can try to understand.

The family's final question is - how can you measure the unmeasurable? What I have to say, as I do in every case such as this is that no sentence passed by any court can ever begin to measure Erin's life and that loss. And in sentencing I can only sentence within the structure of my statutory powers for the offence faced by any defendant, guided by those cases set out by Sentencing Council and the

Court of Appeal as to where in the exercise of those powers the particular case lies – to reflect the actions and omissions of a defendant, to reflect the consequences of those actions and omissions, and to reflect to some extent the personal circumstances of the defendant before the court.

- [10] Mr White suffered an undisplaced fracture of the skull, with brain swelling, soft tissue injuries to his neck and shoulders, and burns to his chest and arm. But as one would expect over and above the physical injuries he has had psychological consequences of sleep upset, nightmares, and emotional upsets which have been described today, evidencing symptoms of post-traumatic stress disorder. And so his life will inevitably be affected for long after any sentence that this court can pass on this defendant. If the defendant may feel hard done by in life in the future, he will have to remember that there are families having to live their lives without a loved one, and another young man having to struggle with all the impacts that this incident has had on him and his life.
- [11] The sentence in this case will reflect a bad course of driving and one aggravating feature – for the reasons I have given. I confirm no other aggravating factors. In terms of mitigating factors the defendant had a conviction some 14 years ago for drink driving but there is nothing on his record since. Suffice to say that that does not help him. As regards his plea it came late in the day and I have rehearsed the background for that delay. While late in the day he has by his plea avoided the witnesses having to go through a traumatic trial, not least in the case of Mr White. He is afforded some credit for that plea. I am advised he is remorseful and wishes to apologise for his actions this day. That I will have to leave to him and his advisors since I have no wish today to add to the distress of the family.
- [12] The Pre-sentence report records that he is unmarried, having left school with some qualifications. He has displayed a commendable work ethic, seemingly never out of employment. The report states that he is ambitious in obtaining qualifications to improve his employment prospects. He told the writer of the report that he can offer no explanation for his lack of concentration that allowed the lorry to cross into the path of Mr White. He describes thinking about the incident and its impact, and I quote, “every day and every night”. He is prescribed anti-depressants for what is described in the medical reports as severe anxiety and depression. The writers of the pre-sentence report and the medical reports advise the court that they believe he is genuinely remorseful.

[13] Addressing then the guideline case of *McCartney*, Mr Murphy on behalf of the Crown and Mr Berry accepted on behalf of the defence, indicated that he felt there was one aggravating feature (the death and serious injury) and that this would fall into intermediate culpability but at the lowest end (see paragraph (35) of *McCartney*). For intermediate culpability there is a range of sentencing of between two and four and a half years imprisonment. That of course is on the basis of someone fighting the case, that is does not accept responsibility and brings the matter to trial. I do not accept that the case lies at the bottom of that level of sentencing, but nor does it lie at the top. In those circumstances I have determined that he should serve a period of imprisonment of 33 months. There will be no reduction in the custodial element to increase the licence period since there are no issues that require specific attention in the defendant's life.

[14] He will be disqualified for 10 years.