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

Delivered: 26/05/2017

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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REGINA

-v-

DECLAN MCDADE & SHAUN GAULT

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Before: Morgan LCJ, Weir LJ and Deeny J

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**MORGAN LCJ (delivering the judgment of the Court)**

[1] These are references brought pursuant to section 36 of the Criminal Justice Act in relation to sentences imposed by Her Honour Judge Smyth on 10th of March 2017 at Belfast Crown Court.

[2] In relation to the respondent McDade, he was sentenced in relation to offences of robbery and possession of an offensive weapon, along with his co-accused Gault, who was also sentenced in relation to both offences. In addition to that, those offences having been committed in November 2015, the defendant McDade was sentenced in relation to two counts of wounding, one actual bodily harm, two assaults, an attempted criminal damage and possession of an offensive weapon. In the case of Gault the learned trial judge imposed a sentence of 4 and a half years determinate custodial sentence comprising 2 years, 3 months in custody and 2 years, 3 months on licence. In the case of McDade, the learned trial judge imposed a total sentence of 5 years and 10 months, again with half that time spent on licence.

[3] The background to the offences were set out by the learned trial judge and in relation to the robbery the position is that each of them on 17th of November 2015 at 7.00 am in the morning entered a Spar shop on the Lisburn Road in Belfast. Both of them were carrying knives and both of them concealed their identities and were wearing balaclavas or other material on their heads in order to ensure that they could not be identified. Both of them were carrying substantial knives, one of those knives

was waved at one of the two shop assistants by McDade. It doesn't appear that Gault's knife was visible to either of the two shopkeepers and McDade, who was to the front of this exercise, then required the female assistant, who was clearly terrified by the experience, to put approximately £151.00 into a bag. The learned trial judge concluded that this was a joint operation and that there should be no distinction between them and it seems to us that she was entirely correct to do so.

[4] So far as the assault charge against McDade is concerned, the position was that on 1st of August 2015 three female victims, Tash James, Rachel Ball and Glen Parrot were drinking in the car park at the bottom of Tomb Street in Belfast. Each of them had been at the Belfast Pride parade in the city centre and there was no suggestion though that any of the victims were targeted because of their attendance at the parade. McDade approached the group demanding alcohol and then made a grab for a plastic bag containing tins of cider which was removed from his reach. One of the victims then offered him a bottle of West Coast Cooler but he took it and smashed it on the ground, he then attacked Glen Parrot in a vicious, unprovoked assault, he punched and kicked Tash James and punched Rachel Ball when she tried to intervene and he continued to attack these defenceless women and even as one of his associates apparently attempted to restrain him. He then, when Tash James tried take to photographs, he ran at her and kicked the phone from her hand. He continued the attack on Glen Parrot, striking her with a glass bottle which smashed on her face. This was a lady who was recovering from cancer at the time and suffered the additional distress of having her wig knocked from her head. He then attacked Darren Young and Chris Dixon and as a result of all of this Ms Parrot sustained injuries to her face and Dixon to the back of his head.

[5] Now, the approach of the learned trial judge in relation to the robbery matters was to approach it from the point of view of identifying the appropriate starting point in relation to this and then proceeding thereafter to identify the manner in which she should deal with the sentencing. She averted to the views of this Court in Zoe Pearson that, on a plea, a sentence of 5 to 7 years was appropriate in relation to robbery of premises of this nature or armed robbery of premises of this nature and that authority has long been recognised as appropriate in relation to such cases. But it is appropriate in relation to a secondary offender, by a plea is meant a plea at the first instance with appropriate discount having been provided. That indicates that the starting point on a contest for secondary offenders in or about 7 to 10 years for offences of this kind and on a contest for those principally involved probably lies somewhere between 8 to 12 years where no firearm was involved. But, where there is a firearm and there is evidence of sophistication in relation to the planning the sentence on a contest can properly go to 15 years and indeed on occasions higher.

[6] So turning then to the circumstances in this case. There were significant aggravating factors, the first was the use of the weapons, the two knives by each of the parties. The second was the targeting of the small shop premises, the fact that there had

been attempts made by way of clothing to ensure that they would not be identified but, at the same time, this was not a sophisticated robbery in comparison to those that might be attempted in relation to post offices or banks by professional robbers. Thirdly, one needs to bear in mind that there were vulnerable shop assistants here, that they were subject to threats, that one of them, at least on the police statement, was a person who had been very considerably shaken by the entirety of the events and it is because of the exposure of such people who provide important services to the community that deterrent sentences are appropriate in cases of this kind. Fourth of course is the fact that in relation to each of these appellants, each of them had previous convictions for acquisitive crime and indeed each had suspended sentences, to which I will return, hanging over them in relation to those.

[7] So far as the mitigation is concerned, there was indeed evidence of some efforts at addressing the underlying addiction issues which appear to have been prevalent in relation to these offences and there was some evidence of remorse but, in our view, the starting point in relation to these cases could not go below 8 years before starting to look at the appropriate discount for the plea. Our conclusion therefore is that the appropriate starting point after taking into account the plea was 6 years in relation to the robbery.

[8] So far as the wounding is concerned, there was no difference of view within this Court in relation to a starting point of 4 years on a contest. This was a bad case, it involved a bottle being used as a weapon, it involved multiple victims, it was an unprovoked assault, it showed persistence in that this man continued the attack even on the rescuers when they came into the picture. He is also a person with some record, although not an extensive record, but some record for the use of violence and there is evidence of substantial harm, not just caused physically but also caused emotionally to the injured party in this matter. The plea again, the mitigation point is evidence of change in relation to his addiction issues and of course his plea and a period of 3 years' imprisonment in relation to that was considered appropriate and was not really challenged in the course of these proceedings.

[9] So far as Gault is concerned, he had suspended sentences, all in relation to acquisitive crime, amounting to some 13 months in total, comprising one set at 6 months and one at 7 and on the face of it there is no reason why those suspended sentences should not have been imposed and that would have produced in relation to him a total sentence of 7 years, 1 month which would have had to have been considered by the learned trial judge for totality.

[10] So far as McDade was concerned, the total sentence in relation to each of the offences so far as he is concerned were the 6 years for robbery, the 3 years in relation to the violence and a total of 22 months which would have been implemented in relation to him in relation to the suspended sentences, which again unless there was some good

reason to the contrary, should have been imposed with the four lots being consecutive. That, in his case, would have produced a total sentence of 10 years and 10 months against which issues of totality would have to be taken into account.

[11] We have given careful consideration to the fact that totality needed to be taken into account and to the fact that there needs to be, in this jurisdiction anyway, unlike England and Wales, some recognition of double jeopardy and we have concluded therefore in relation to each of them that the sentences were unduly lenient and, in the case of Gault, we are going to leave the 4 and a half years undisturbed but to implement the suspended sentences making in his case a total of 5 years and 7 months, half of which will be spent in custody and half on licence. In relation to McDade, we are going to impose a total sentence of 7 and a half years, comprising 3 years in relation to the assault and 4 and a half years in relation to the robbery which will be consecutive and in order to clear, as it were, his suspended sentences, we are also going to implement those concurrently; so the total sentence in his case will be a sentence of 7 and a half years.

[12] I think your costs are covered in the usual way, Mr O'Rourke, and again similarly for you, Mr Connolly. Thank you.