

# Judicial Communications Office

8 January 2021

## COURT SENTENCES FOR MANSLAUGHTER OF RYAN MACRAE

### Summary of Judgment

Mr Justice O'Hara, sitting today in Downpatrick Crown Court, sentenced Jordan Donnelly and Robert Kiernan who both pleaded guilty to the manslaughter of Ryan Macrae. Mr Macrae was assaulted on the street in Portaferry in the early hours of 14 October 2018 and died from his injuries nine days later without ever regaining consciousness. Donnelly received an eight year determinate custodial sentence. Kiernan received a nine year determinate custodial sentence. Both defendants will serve half the term in custody and the remaining period on licence.

#### **Factual Background**

The events of the evening were captured on CCTV from inside and outside the Fiddler's Green public house. The Court noted that all three men were local residents and there was no history of acrimony between them but that they were all very drunk on that night. The CCTV footage from the bar showed quite a lot of contact between Mr Macrae ("the deceased") and Kiernan ranging between being reasonably friendly to some tension with offence being taken at something said before they made their peace. When in the smoking area, Kiernan appeared to say something which riled the deceased who responded by pushing Kiernan who stumbled and fell to the floor. The deceased then went back into the main bar. Kiernan is then seen saying something to Donnelly which led him to leave the smoking area and go back into the bar where he is seen confronting the deceased. This continued for a short time with some grabbing and pulling at which point the proprietor ordered Kiernan and Donnelly to leave. The deceased was also told to leave but to wait for a few minutes until the others left the area outside the bar.

CCTV footage from the street shows Donnelly and Kiernan moving away and out of camera range. The deceased then leaves and the footage shows him striding off in the direction of Donnelly and Kiernan pointing at them. The deceased then reappears on the camera walking backwards retreating from Donnelly and Kiernan. The deceased threw a punch at Kiernan but missed him. Donnelly responded by punching the deceased to his face, causing him to fall backwards and hit his head against a wall and then the ground. Kiernan is then seen stamping on the deceased's head twice with some force. Donnelly then leant over, lifting the deceased's upper body by his jacket before forcibly throwing him back down. The assault took less than 10 seconds.

Donnelly was then pushed away from the deceased by Kiernan. They walked away but returned less than 20 seconds later and tried to rouse the deceased by sitting him against the wall, When this did not work they laid him on the ground and Donnelly was heard to say "he's dead and I'm gonna go to jail". The defendants left but returned again and tried to rouse the deceased again. Donnelly was heard to say "I only hit him once, it was self-defence". By that time two more customers had left the bar and tried to help. Both defendants claimed to them that "it was fair digs". The deceased was taken to hospital where a CT scan showed fractures to his skull and multiple brain injuries over a significant number of areas. Despite efforts in hospital to reduce the intracranial pressure, the deceased died on 23 October.

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## The defendants

When questioned by the police, both defendants initially maintained that it was the deceased who had initiated the attack but when shown the CCTV both claimed not to remember taking some of the actions they did. Donnelly, who was 19 years old at the time of the killing, has no criminal record. A pre-sentence report concluded that he presents only a low likelihood of reoffending and confirmed that he presented as remorseful. Kieran who was 28 years old at the time has a minor criminal record which does not include violence. The pre-sentence report assessed him as presenting a medium likelihood of reoffending in light of his previous convictions, alcohol misuse, use of violence in this offence and failure to consider the consequences of his actions.

## Victim Impact Statements

The Court received statements from the deceased's parents and his sister who directed the following words to the defendants:

"Whatever sentencing you receive I wish only that you remember everyday what you did and the impact it has had on so many lives. Teach the people around you and your children that violence is never the answer and the consequences of it. I can only hope that you are sorry for what you did and it will have a positive impact on your lives going forward. Because, unlike my brother, you still have a life to live and how it unfolds is entirely in your control."

## Sentence

The Court commented that no sentence could even begin to make good the killing of Ryan Macrae:

"The series of events which led to his death are not unique. Time and again judges have had to pass sentence on people like Donnelly and Kiernan in similar circumstances. It seems as if very few lessons are learned. The fact that so much of what happened in this case is caught by CCTV does not make it worse than other cases where there is no film. It does however remind us in a graphic way of just how easily and quickly a life can be taken."

In *R v Magee* [2007] NICA 21 the Court of Appeal gave broad guidelines to be followed in sentencing defendants for manslaughter. At paragraph [26] the Court said:

"We consider that the time has now arrived where, in a 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."

The Court said it was satisfied on the evidence and on the pleas in mitigation that within the pub there was an initial level of confrontation and aggression between the deceased and Kiernan which did not involve Donnelly. Kiernan then got Donnelly involved and, sadly, he stayed involved. It said it appeared to be the case that the deceased was retreating from Donnelly and Kiernan who only

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seconds earlier he had been striding towards. He then punched out at Kiernan but missed. Donnelly responded by punching the deceased on the face causing him to fall back and hit his head twice, against the wall and on the ground:

“Had matters stopped there I would take a different view on sentencing to the one which I will take in light of the further assaults – Kiernan’s double stamping of Mr Macrae’s head and Donnelly’s lifting of Mr Macrae’s body and throwing it back to the ground.”

The Court concluded that the defendants should not be assessed as dangerous within the meaning of the Criminal Justice (NI Order 2008 in light of all the circumstances of the case and the mitigating factors including their remorse and effort to help the deceased at the scene. Taking all the issued into account it concluded that the starting point for sentence is 11 years for Donnelly and 12 years for Kiernan. It distinguished between them in Donnelly’s favour despite his punch on the deceased and his throwing back of the deceased body for the following reasons:

- The worst of all the aggravating factors which makes one recoil is the double stamp on the deceased’s head by Kiernan;
- Kiernan was a persistently aggravating character throughout the evening’s events;
- Donnelly’s comparative youth and positive references.

The Court noted the agreed position that while the defendants pleaded to manslaughter only in September 2020, they had offered those pleas in or about February 2020. At that point the prosecution was maintaining the murder charge, a position it held until September. The Court accepted that a trial has been avoided by those pleas and that any trial would inevitably have increased the distress of the Macrae family. It said that credit for the pleas should go back to February 2020 but realistically that credit must be limited: “The CCTV footage captures so much of what happened, and captures it so clearly, that a plea to manslaughter was inevitable”. The Court did not allow any extra reduction of sentence by reason of the current pandemic. It noted that such a reduction has been approved in a number of recent cases and might well be appropriate in cases which involve shorter sentences but not in cases such as this:

“In all the circumstances I allow some limited discount for the guilty pleas with the result that Donnelly’s sentence is 8 years of which 4 years will be in custody and the remaining period on licence. Kiernan is sentenced to 9 years of which 4 years and 6 months will be in custody and the remaining period on licence.”

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

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