

Neutral Citation No.: [2009] NICty 3

Ref:

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

Delivered: **30/03/09**

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING IN DUNGANNON

R

-V-

THOMAS O'BRIEN

SENTENCING REMARKS

His Honour Judge McFarland
30th March 2009

1. You have pleaded guilty to causing the death of Paul Flanagan, and serious injury to Sinead Corry, and to Patricia Mulligan by your dangerous driving and to other charges of driving whilst disqualified, and taking a motor vehicle without consent.
2. These events took place around about midnight on Christmas Eve, or into the early hours of Christmas morning in 2005.
3. On the 31st October 2005 you were convicted at Newry Petty Sessions of driving whilst disqualified, and received a prison

sentence of 4 months, suspended for 2 years, and you were also disqualified from driving for 2 years. On the 18th December 2005 you bought a Subaru car (trading in a Vauxhall car) from Oliver McCarron. You were driving this car on Christmas Eve, when you attended the Three Way Inn in Ederney, Co.

Fermanagh. Statements have been given by staff and customers of that bar, and it is clear that from about 3 pm you were drinking in the company of a friend. Reference is made to about 10 drinks of cider and vodka. Just before you left you had some shots of Goldschlagger, a particularly strong brand of alcohol. One member of staff described you as “really drunk...he was staggering and his eyes were really wide.” You left in the company of friends, some of whom would accompany you in your car. In doing so, your party bought more drink from the bar – about 40 bottles in all.

4. You then proceeded to drive out of Ederney along the Castleberg Road in the direction of Sinead Corry’s house. Sinead Corry was in the front seat, and there were four passengers in the rear, Emer Mulligan (a 13 ½ year old), her mother Patricia Mulligan, Shauna Timlin (a 15 year old) and Paul Flanagan. During this journey you continued to drink, and one witness describes how bottles were being passed to you from the rear of the car. The music in the car was at a high volume. Your driving at this stage was described by Emer Mulligan in the following terms – “Tommy was driving fast. He had the music up full blast. He was going at a wild speed. Sinead told him to slow down about four times and he kept getting faster and that’s all I remember.” Sinead Corry stated – “Tommy was driving at a reasonable speed going down the

road. He wasn't worrying us until we got to the bad bridge and then I asked him to slow down a couple of times. He didn't say anything. He definitely didn't slow down. He was doing fast hard driving but wasn't erratic."

5. You then lost control of the car as you negotiated a right hand bend. It left the road, and fell down into a wooded area, ending up on its roof.
6. The analysis of the incident by Stephen Quinn, a forensic engineer, concludes that the accident was caused by the car being driven too fast for the road conditions.
7. Paul Flanagan, who was 36 years of age, died of postural or positional asphyxiation, in other words, he suffocated. He did not suffer any significant physical injury that would have led to his death. As he was trapped in the overturned car his breathing had become compromised, which resulted in his death. It was described by Dr. Crane as a rapid, rather than an immediate, death. Sinead Corry suffered multiple abrasions, with fractures to her right knee, and left arm. Patricia Mulligan suffered a deep 10cm laceration to her scalp, and severe ligamentous and tendon damage to her right hand and wrist. The other passengers suffered less significant injuries.
8. In the immediate aftermath of the accident, friends and relatives of the injured had arrived at the scene. At that stage, the police and emergency services had been called, but had not arrived. When they were helping the injured, all of whom were greatly distressed, you got into one of the other cars, a Vauxhall car, and drove off. Shauna Timlin, one of the injured passengers had actually been sitting in that car, and was forced to jump

from it when you drove off. This vehicle was later found abandoned.

9. It would appear that you made contact with Oliver McCarron early on Christmas morning, and with Sean Timlin later the same day, and you would have been aware of the fact that Paul Flanagan was dead. Despite this, you made no attempt to make yourself amenable to the authorities. You have been known to use aliases and were able to leave the jurisdiction. As a consequence, these proceedings were not commenced until mid-2007. Warrants for your arrest had to be issued, and eventually you were arrested, and brought before the court in December 2008, and you have been in custody since then. During that period when you were out of the jurisdiction you were serving short prison sentences.
10. You have a bad criminal record with previous convictions for driving without a licence, driving without insurance, driving when unfit through drink, and driving while disqualified in this jurisdiction and dangerous driving, no insurance, excess speed and various crimes of dishonesty in the Republic of Ireland.
11. This is perhaps one of the worst cases of driving that I have had to deal with. It has resulted in the death of Paul Flanagan in circumstances that could easily have been prevented, and in serious injury to Sinead Corry and to Patricia Mulligan.
12. I have read statements from Paul Flanagan's mother and partner, and clearly his death has had a significant impact on their lives and on the lives of the wider family. Those who were injured have made a reasonable physical recovery from their injuries, but clearly they will live with the impact of the incident for many years to come.

13. This is a clear reminder and warning to everyone not to drink and drive, particularly when tempted at times of the year like Christmas.
14. The aggravating factors in this case are as follows -
- The consumption of alcohol;
 - Driving while your attention was avoidably distracted by you consuming alcohol whilst driving, and with the music in the car at a high volume;
 - You ignored warnings about your driving from your passengers;
 - At the time you were driving the vehicle as a disqualified driver;
 - Your previous driving convictions, particularly as you had received a suspended prison sentence a few months earlier;
 - One person died, and two others were seriously injured;
 - Your behaviour at the scene. You left the scene with 5 people clearly injured and during your escape committed a further offence of taking and driving away a vehicle.
15. The number of aggravating factors places this case in the most serious bracket. The maximum sentence is 14 years imprisonment, and the guidance set out in the English cases of **Cooksley** and **Richardson**, and the Northern Ireland decision in **McCartney** categorises this case as one of the most serious culpability, with a recommended sentencing range of 7 – 14 years, before taking into account mitigating factors. The number of factors, seven in all, and the fact that several are particularly bad examples of the type of conduct, would put this case into the higher, if not the highest, part of that range.

16. I have taken into account all the matters mentioned by your counsel, and referred to in the pre-sentence report. The mitigating factors include –

- You have pleaded guilty. I appreciate that this has come after you had fled the scene, and the jurisdiction, and have remained at large for nearly 3 years. The pleas were also entered in the face of overwhelming and comprehensive evidence against you, but nevertheless, courts do give credit for pleas of guilty at an early opportunity. This is particularly the case when the charges involve fatalities, as it brings some comfort to the families in that it avoids further delay as a case is prepared for contested hearing. It also means that time and money is saved in the final preparation for the case coming before the court, and that witnesses, particularly civilian witnesses, do not need to prepare themselves for the ordeal of giving evidence in court. It may also be some evidence of a degree of remorse, even at a late stage. Although you had entered a plea of guilty at arraignment to the charges of careless driving whilst under the influence of alcohol, the pleas to the more serious charges involving dangerous driving were entered well in advance of the suggested trial date. You will therefore receive the substantial credit for your pleas of guilty.
- The death of your close friend has clearly had an impact on you, and it reinforces the evidence of your remorse;
- This will be the first time that you will have to adjust to a substantial period in prison.
- You have been assessed as having a fairly restricted level of cognitive ability and extremely low in terms of intelligence

17. The appropriate sentence, after a contest, would have been the maximum permitted, namely 14 years. Taking into account the

mitigating factors, the appropriate commensurate sentence is one of 10 years in prison.

18. In the circumstances, I am obliged to consider a Custody Probation Order, under which you will serve a period in custody, and then, on your release, serve a period on probation. You will now be spending a lengthy period in custody, and supervision on your release will facilitate your rehabilitation, and may prevent the commission of further offences. I acknowledge that you may return to what has been a transient and nomadic lifestyle, and a Probation Order may be difficult to manage, but I believe that you should be given the opportunity to undertake such an order.
19. I therefore propose to make such an order, whereby you serve 9 years in custody, followed by 1 year on probation. There will be no specific conditions in the probation order. Should you be in breach of your Probation Order, the PBNI may refer the matter back to the court, and in those circumstances the court can revoke the order, and re-sentence you in respect of the original offence.
20. Before I make such an order, you must consent to me making it.
21. The sentence of the court is therefore –
 - Counts 1, 2 and 3 – causing the death of Paul Flanagan, and serious injury to Sinead Corry and Patricia Mulligan by dangerous driving – concurrent sentences of 9 years in custody and 1 year on probation. The sentence I would have passed had I not made a custody probation order would have been 10 years in custody.
 - Count 4 – driving while disqualified – concurrent sentence of 9 months.

- Count 5 – taking and driving away – concurrent sentence of 12 months.
22. Your pleas of guilty to Counts 6, 7 and 8 relating to the careless driving charges were not accepted by the Crown. The counts will remain on the books of the court not to be proceeded with without leave of this court, or the Court of Appeal.
 23. You will be disqualified from driving for a total of 20 years in relation to Counts 1, 2, 3 and 4.