

Neutral Citation No: [2021] NICC 1

Ref: OHA11392

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

ICOS No: 19/88542

Delivered: 8/1/2021

IN THE CROWN COURT IN NORTHERN IRELAND

DOWNPATRICK CROWN COURT
(SITTING IN BELFAST)

THE QUEEN

-v-

JORDAN DONNELLY
AND
ROBERT KIERNAN

Mr D McDowell QC led Ms L Ievers for the PPS
Mr E Grant QC led Mr C Holmes for Donnelly
Mr C McCreanor QC led Mr C Lunny for Kiernan

O'HARA J

[1] The defendants have both pleaded guilty to the manslaughter of Ryan Macrae. Mr Macrae was assaulted on the street in Portaferry, County Down in the early hours of Sunday, 14 October 2018. He died from his injuries on 23 October 2018 without ever regaining consciousness.

Factual background

[2] There is little dispute about what happened on 13/14 October. Not only is there CCTV footage of the fatal assault on Mr Macrae outside the Fiddler's Green public house in Church Street, Portaferry but there is also CCTV footage of some of what happened inside the bar before that. It is necessary to exercise some caution about the recording inside the bar because there is no audio but most of what appears is self-explanatory.

[3] All three men involved in the events that night were local men. Mr Macrae was 32 years old, Donnelly was 19 and is now 21 while Kiernan was 28 and is now

30. There was no history of acrimony between them but all three men were very drunk that night.

[4] Inside the bar there was quite a lot of contact between Mr Macrae and Kiernan. Some of this seems to have been reasonably friendly with them talking to each other and to other customers in the smoking area. At other points however there appears to have been some tension between them with offence being taken at something said before they made their peace. During this time Donnelly was also in the smoking area but he had very little, if any, engagement with the other two.

[5] The end point in the smoking area came when Kiernan appears to have said something which, not for the first time, riled Mr Macrae. Mr Macrae responded by pushing Kiernan who stumbled backwards and fell to the floor. Mr Macrae then left the smoking area and went back into the main bar.

[6] Kiernan next went over to Donnelly, still in the smoking area. Donnelly was standing talking to a young woman, oblivious to Kiernan being pushed by Mr Macrae. As the young woman parted company with Donnelly, Kiernan appears to have said something which annoyed her, causing Donnelly to grab Kiernan by his jacket as the woman left with her gesturing back at Kiernan.

[7] At this point it seems that Kiernan said something to Donnelly which led Donnelly to leave the smoking area and stride off into the main bar where CCTV then picks him up as he went to Mr Macrae and confronted or remonstrated with him. Very quickly Kiernan appears behind Donnelly, perhaps trying to bring some calm to a situation which he created.

[8] The confrontation continued for a short time with some grabbing and pulling. At that point the proprietor appears to have had enough and she ordered Kiernan and Donnelly to leave. Mr Macrae was also told to leave but first to wait for a few minutes. I accept that this was done to allow Kiernan and Donnelly to leave the area outside the bar.

[9] The CCTV footage from the street shows that Donnelly in particular appeared to be aggrieved about what had happened but after a short time he and Kiernan moved away and out of camera range. A couple of minutes later Mr Macrae appeared on the street from the bar. The footage suggests he saw Donnelly and Kiernan a short distance away because he is seen striding off in their direction pointing towards them.

[10] Mr Macrae was then out of camera range but only for a few seconds because he then reappeared, walking backwards. It becomes clear very quickly that he is retreating from Donnelly and Kiernan who also reappear in the footage.

[11] Mr Macrae then threw a punch at Kiernan but missed him. Donnelly responded by punching Mr Macrae to his face, causing him to fall backwards and hit

his head against a wall, then the ground. As Mr Macrae lay motionless on the ground Kiernan stamped on his head twice with some force. Donnelly then leant over, grabbed Mr Macrae's jacket and lifted his upper body off the ground before forcibly throwing him back down. Less than 10 seconds elapsed between Mr Macrae's punch towards Kiernan and the final part of the assault on the helpless Mr Macrae.

[12] Donnelly was pushed away twice by Kiernan from the slumped body of Mr Macrae. The two defendants then walked a short distance away, off camera, but returned less than 20 seconds later. Donnelly tried to rouse Mr Macrae to sit him against the wall. When this did not work they laid him on the ground once more. Donnelly was then seen with his head in his hands and was heard to say "he's dead and I'm gonna go to jail".

[13] The defendants left but returned yet again. Kiernan tried to rouse Mr Macrae once more while Donnelly held his head in his hands and blessed himself with the sign of the cross. Efforts by both men to rouse Mr Macrae continued but to no avail. Donnelly was heard to say "I only hit him once, it was self-defence".

[14] By that time two more customers who had left the bar intervened. Both defendants claimed to them that "it was fair digs". Others then arrived on the scene and an ambulance was called. Mr Macrae was taken to the Ulster Hospital. A CT scan revealed fractures to his skull and multiple brain injuries over a significant number of areas. He was transferred to the Intensive Care Unit in the Royal Victoria Hospital Belfast. Initially efforts to reduce the intracranial pressure made some progress but Mr Macrae's condition deteriorated and he died on 23 October. It was not possible for Dr Bentley, consultant forensic pathologist, to distinguish in terms of causing death between the various assaults described above. He found the injuries consistent with the CCTV evidence. There was no evidence of any pre-existing significant condition.

The defendants

[15] When questioned by the police Donnelly claimed that Mr Macrae had pushed Kiernan on the street outside the bar and had then lifted his hand to Donnelly so he punched Mr Macrae. He further claimed that when Kiernan kicked Mr Macrae he tried to intervene. This is not a true picture of what happened.

[16] During later interviews Donnelly fainted, he continued to make the case that he had thought Mr Macrae wanted to attack him and Kiernan but he was sorry for all that had happened and apologised.

[17] Kiernan maintained during initial interviews that outside the bar Mr Macrae had pushed him, that Donnelly then hit Mr Macrae who "hit the deck" and that he, Kiernan, tripped over Mr Macrae trying to push Donnelly out of the way. When he

was shown the footage of himself stamping on Mr Macrae he said "I swear I don't remember doing that".

[18] In later interviews Kiernan became upset and began crying when police highlighted his stamping on the head of Mr Macrae. He blamed the drink he had taken and said he was "truly sorry".

[19] Donnelly who was 19 years old at the time of the killing of Mr Macrae has no criminal record whatsoever. On the contrary, as a collection of impressive references shows, he left school when he was 16, secured employment in a car body repair shop and continued to study to advance himself. He has no relevant history with drink or drugs and comes from a good family background.

[20] I was provided with a psychiatric report from Dr Ian Bownes dated 17 December 2020 which confirms that there is no underlying mental health issue with Donnelly. It suggests that Donnelly has reflected on his part in the killing of Mr Macrae and is highly motivated to avoid further contact with the criminal justice system.

[21] A helpful pre-sentence report concluded that Donnelly presents only a low likelihood of re-offending as evidenced by the positive indicators outlined above. It also confirmed that he presented as remorseful when being interviewed for the report.

[22] Kiernan who was 28 years old when he killed Mr Macrae has a minor criminal record which does not include violence. He has two young children by a partner who he lived with until he was remanded in custody. He has maintained a close relationship with them over the last two years. His criminal record and his interviews with the Probation Board show that he took cannabis regularly but, he says, not since 2015. He reported that he was in regular employment until October 2018 and that he then found new employment after he lost his job because he was charged with the murder of Mr Macrae.

[23] The pre-sentence report assessed Kiernan as presenting a medium likelihood of re-offending in light of his previous convictions, alcohol misuse, use of violence in this offence and failure to consider the consequences of his actions.

Effect on the Macrae family

[24] Ryan Macrae was the only son of Gordon and Jayne Macrae who also have a daughter Rebecca. Their statements highlight the awful effect which his killing has had on them, individually and collectively. In a dreadful twist of fate Mrs Macrae was in New Zealand in October 2018 visiting Rebecca to see her and her three month old son Oscar for the first time. When the news came through from home that Ryan was in hospital critically ill Mrs Macrae returned to Northern Ireland with Rebecca and Oscar. This distressing journey took 2½ days.

[25] Mr and Mrs Macrae describe a kind son with many friends (who happily remain in contact with them) and with an infectious laugh and smile. His death has left a void which will not and cannot be filled. The joy of Oscar's birth has been overshadowed by the tragedy of Ryan's death.

[26] In her statement Rebecca described the case perfectly. Directing her words to Donnelly and Kiernan she said:

"No, I don't believe you woke up that Saturday morning and set about your day in the knowledge that that night you were going to end someone's life, to remove their entire existence. But you did. You did do that. Intentional or not my brother is no longer here as a direct result of your violent actions. I had to travel halfway across the world with my three month old son to see my brother's lifeless cold body lying in a coffin. The first time my father was seeing his grandson was in the lead up to his own son's funeral. You did that. You created that moment in all of our lives and it can never be undone. 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

[27] No sentence which I pass can 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.

[28] In *R v Magee* [2007] NICA 21 the Court of Appeal gave broad guidelines to be followed in sentencing defendants for manslaughter. Those guidelines are still relevant 14 years later - see *R v Smyth and Laverty* (NICA) 8 October 2020. At paragraph [22] of the court's judgment in *R v Magee* Kerr LCJ said:

"Offences of manslaughter typically cover a very wide factual spectrum. It is not easy in these

circumstances to prescribe a sentencing range that will be meaningful. Certain common characteristics of many offences of violence committed by young men on other young men are readily detectable, however, and, for reasons that we will discuss, these call for a consistent sentencing approach.”

[29] The court then continued at paragraph [26]:

“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.”

[30] In the course of the helpful submissions of counsel for the prosecution and for the defence I was referred to a number of other cases involving what might broadly be described as similar circumstances. I was also referred to an invaluable paper written by the late Sir Anthony Hart for the Judicial Studies Board for Northern Ireland in September 2013 dealing with sentencing in manslaughter cases. I have considered all of the authorities and Sir Anthony’s paper when deciding on the sentence which follows below.

[31] I am satisfied on the evidence and on the pleas of mitigation that within the public house there was an initial level of confrontation and aggression between Mr Macrae and Kiernan which did not involve Donnelly at all. Kiernan then got Donnelly involved and, sadly, Donnelly stayed involved. The proprietor put them out of the bar separately with a view to keeping them apart but within a short time the fatal attack occurred. It appears to be the case that Mr Macrae was retreating from Donnelly and Kiernan who only seconds earlier he had been striding towards. He then punched out at Kiernan but missed. Donnelly responded by punching Mr Macrae 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.

[32] The aggravating features appear to me to be as follows:

- (i) The additional assaults on Mr Macrae i.e. the stamping and the throwing.
- (ii) The denials of these acts until confronted by the CCTV footage.
- (iii) The vulnerability of Mr Macrae as he lay on the ground.
- (iv) The use of a shod foot by Kiernan to Mr Macrae's head.
- (v) The intoxication of the defendants.

[33] The mitigating factors for Donnelly (other than his guilty plea) are:

- (i) His comparative youth and clear record.
- (ii) His remorse which I accept is genuine and which I also accept was almost immediate.
- (iii) His effort to help Mr Macrae at the scene (though not by calling an ambulance).
- (iv) The fact that the initial punch was a reaction to events, not a planned attack.
- (v) His record in employment and education.
- (vi) The impressive references written on his behalf.

[34] The mitigating factors for Kiernan (other than his guilty plea) are fewer:

- (i) His criminal record is limited and does not include violence.
- (ii) His remorse which I accept is genuine.
- (iii) His effort to help Mr Macrae at the scene (though again not by calling an ambulance).
- (iv) The effect of a sentence of imprisonment on his family.

[35] I have considered whether the defendants should be assessed as dangerous within the meaning assigned to that term by the Criminal Justice (NI) Order 2008 and concluded that they should not be so assessed in light of all the circumstances and matters set out above. Taking all of these issues into account I conclude that the starting point for both defendants for sentence is 11 years for Donnelly and 12 years

for Kiernan. I distinguish between them in Donnelly's favour despite his punch on Mr Macrae and his throwing back of Mr Macrae's body for three reasons:

- (i) The worst of all the aggravating factors which makes one recoil is the double stamp on Mr Macrae's head by Kiernan.
- (ii) Kiernan was a persistently aggravating character throughout the evening's events.
- (iii) Donnelly's comparative youth and positive references.

[36] So far as the guilty pleas are concerned the agreed position is 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. I accept that a trial has been avoided by those pleas and that any trial would inevitably have increased the distress of the Macrae family. 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.

[37] I do not allow any extra reduction of sentence by reason of the current pandemic. 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, I believe, in cases such as this.

[38] 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.