

Neutral Citation No: [2020] NICC 3

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

Ref: COL11163

Delivered: 28/01/2020

**IN THE CROWN COURT AT DOWNPATRICK
SITTING AT BELFAST**

R

-v-

**DONACH RICE
NATHAN RICE
PAUL MAGENNIS**

COLTON J

[1] I want to thank all the counsel who appeared in this case for their helpful written and oral submissions and for the way in which it was managed. Mr Richard Weir QC led Ms Laura Ievers for the prosecution. Mr Eugene Grant QC led Mr Tom McCreanor for Donach Rice. Mr Greg Berry QC led Mr Neil Fox for Nathan Rice. Mr Gavan Duffy QC led Mr Sean O'Hare for Paul Magennis.

The Charges

Donach Rice

Count 1 - Manslaughter - Unlawfully killing Pdraig Fox.

Count 2 - Perverting the course of justice.

Count 3 - Fraud by false representation.

Count 4 - Jointly charged with Nathan Rice with burglary at the Slieve Donard Hotel.

Count 5 - Jointly charged with Paul Magennis - attempted robbery.

Count 6 - Jointly charged with Paul Magennis - perverting the course of justice.

[2] At arraignment on 27 September 2019 you pleaded not guilty to Counts 1, 2, 3, 5 and 6. You pleaded guilty to Count 4. A date was fixed for trial to commence on 13 January 2020. At a review on 29 November 2019 you applied to be re-arraigned and pleaded guilty to Counts 1, 2, 3 and 6. You also pleaded guilty to an added count of common assault (Count 10). The prosecution applied to leave Count 5 "on the books" in the usual terms and this application was granted.

Nathan Rice

[3] Nathan Rice, you were charged with the following offences:

Count 4 - Jointly with Donach Rice - burglary at the Slieve Donard Hotel.

Count 7 - Perverting the course of justice.

[4] At arraignment on 27 September 2019 you pleaded guilty to Count 4 and not guilty to Count 7. Your trial was also fixed to commence on 13 January 2020. At a review on 29 November 2019 you applied to be re-arraigned and pleaded guilty to Count 7.

Paul Magennis

[5] Paul Magennis, you were charged with the following offences:

Count 5 - Jointly with Donach Rice - attempted robbery.

Count 6 - Jointly with Donach Rice - perverting the course of justice.

Count 8 - Perverting the course of justice.

Count 9 - Theft.

[6] At arraignment on 27 September 2019 you pleaded guilty to Counts 6 and 8. You pleaded not guilty to Counts 5 and 9. Your trial was also fixed to commence on 13 January 2020. At a review on 6 December 2019 you pleaded guilty to an added count of common assault (Count 10) and the prosecution applied to leave Counts 5 and 9 "on the books" in the usual term and this application was granted.

Factual Background

[7] The case arises from the killing of Pádraig Fox. He was born on 27 December 1998 and lived alone in Flat 17A Burrendale Park Road in Newcastle. He has been described as a vulnerable adult. Although he lived independently at his own request his family were concerned about him. He had some learning difficulties in his youth and in the past had succumbed to the excessive use of alcohol and illicit drugs. He had successfully attended drugs rehabilitation and was involved in a local church but it appears he had relapsed in more recent times.

[8] Paul Magennis had been friendly with the deceased. He lived in Flat 19B in the same small apartment block; this was above the deceased's flat.

[9] The defendants Donach and Nathan Rice are cousins and on 7/8 December 2018 they were at the apartment block at the invitation of Magennis. Another man Jim Crilly was also present; he was a friend of Magennis. Also present was Mr Fox. Throughout the course of the evening and through to the morning of 8 December it

appears that the five men consumed alcohol, “acid” and cannabis. In the course of the investigation CCTV footage examined by the police established that the Rices and Magennis were seen leaving the flat to go to Tesco’s just after 8.00 am where Donach Rice bought vodka. By this stage he was so intoxicated that staff were initially refusing to serve him and there was a level of confrontation before the sale went through. At least some of the vodka was consumed thereafter. The three defendants returned to the flat and a short time later there was an altercation between Donach Rice and Padraig Fox; this involved Rice punching Fox once to the head causing him to fall to the kitchen floor. This proved to be a fatal blow. It appears likely that Fox’s head also made contact with a hard surface as a result of being put to the ground.

[10] Mr Fox’s body was discovered at 13:45 hours on Saturday 8 December. A post mortem took place on 9 December. The pathologist Dr Johnson had attended the scene of the crime while Mr Fox’s body was present. He noted that the deceased was lying on his back and that his top had been pulled over his head to expose his chest. His hand overlay a short machete. The cause of death was principally blunt force trauma to the head. There was a bleed to the brain and fractured skull. At the time of death the level of alcohol in his blood was 113 mg/dl (33 in excess) and a trace amount of cocaine was detected. In his comments Dr Johnson says:

“In summary Padraig Fox was a 29 year old male who was subjected to a blunt force assault. He was struck to the face and sustained a fractured nose, facial bruising and a laceration to the left lower eyelid. During the course of the assault, he sustained a head injury characterised by a right sided depressed skull fracture, subarachnoid haemorrhage and traumatic axonal injury. He brain became severely swollen within the rigid confines of the skull, leading to compression of the base of the brain. This would be expected to cause unconsciousness, and whilst lying supine, in an unconscious state, his ability to breathe would have been compromised due to his broken nose and consequent bleeding into his airways.”

[11] It was this single punch which is the basis of the manslaughter count (count 1) against Donach Rice.

[12] In the course of the investigation CCTV footage examined by the police revealed that at around 5.00 am on 8 December the deceased walked to the Slieve Donard Hotel with Donach and Nathan Rice. The two cousins burgled the premises by entering through the spa and stealing three bottles of alcohol from behind the bar. They returned to the flat where the drinking continued. Mr Fox did not enter the hotel at any stage.

[13] It is this burglary which gives rise to Count 4 against Donach Rice and Nathan Rice.

[14] Later in the day on 8 December a solicitor for Donach and Nathan Rice contacted the police on their behalf to say that they had been in the flat with Pádraig Fox and they wanted to assist police and tell them what had happened. Each of them gave statements to the police in which they describe the background of meeting in the apartment and consuming alcohol and illicit drugs. Crucially they both alleged that the fatal blow was administered by Paul Magennis after a dispute between him and the deceased. Donach also indicated that he had tried to pull Magennis and Fox apart and that Magennis brought down a knife from the top of the cupboards and cut himself on his left forearm. He then went on to allege that Magennis swung the knife at the deceased and as he, Donach, intervened he sustained a knife cut to his right forearm. It was after this that it was alleged that Magennis “swung a hard dig” at Fox’s face, causing Fox’s legs to fold under him and fall to the ground. In his statement Nathan alleges that he saw Magennis punch Fox once in the face and that Fox fell. He did not see how or where he fell as his view was obstructed. They both said that they were frightened and panicked and left the scene. As has now been admitted by both Donach and Nathan Rice this was a false account wrongly placing the blame on Magennis and this forms the basis of Count 2 against Donach Rice and Count 7 against Nathan Rice.

[15] The issue of perverting the course of justice does not end there. After a series of interviews and with the assistance of some CCTV footage it was finally established in the course of interviews between 9 and 11 December that after Mr Fox was struck Nathan Rice was the first to leave the premises along with Crilly at around 9am. The defendants Donach Rice and Paul Magennis did not leave until 13 minutes later.

[16] It was during these 13 minutes that Donach Rice and Paul Magennis inflicted wounds to their own arms and placed the machete underneath the arm of the deceased. They were in effect staging a self-defence scenario. These actions give rise to Count 6 against Donach Rice and Paul Magennis. So far as Paul Magennis is concerned the other count namely Count 8 of perverting the course of justice arises from the fact that when he was initially interviewed he gave a false account as to the circumstances in which he had sustained the injuries to his arm.

[17] At around 9.25 am Donach Rice and Paul Magennis were at the Barbican on Dundrum Road, Newcastle. An elderly man, Daniel Curran was using the ATM there when both defendants stood close to him as he withdrew money and caused him alarm as they were “boxing him in”. As they did so Mr Curran pushed one of them away and he noted that they were intoxicated. When Mr Curran suggested he was going to call the police one of the males kned him to the groin causing him pain. Mr Curran did give a statement to the police but he indicated he did not wish to pursue his complaint. On this basis the defendants Donach Rice and Magennis were initially charged with attempted robbery but ultimately the prosecution

accepted a plea to common assault (Count 10) and so the court is not concerned with Count 5 (attempted robbery).

[18] At approximately 9.50 am on the same morning Donach Rice cashed in a betting slip belonging to Mr Fox which had been to the value of £7.60. This was at Toals bookmakers. The employee recognised the writing on the slip to be that of the deceased and alerted police to this issue. This forms the basis of Count 3 against Donach Rice namely fraud by false representation.

[19] Finally, although not directly related to these course of events it emerged in the course of the investigation that Paul Magennis had stolen an electric bike belonging to a Mr Barry Graham. Because of his suspicions of Magennis he had attended at 17B Burrendale Park Road on Saturday 8 December to investigate this matter and it was then that he discovered the deceased's body. Mr Magennis admitted in interview that he had stolen the bike and said that he had sold it on. Indeed, he used the fact that he thought he was being pursued by paramilitaries for stealing the bicycle as the basis for his possession of the weapon which had been ultimately placed under the deceased.

[20] This formed the basis of Count 9 against Paul Magennis, which has been left "on the books".

[21] This is a summary of all the offending which has given rise to the counts to which the defendants have pleaded guilty.

Victim Impact

[22] Before determining the appropriate sentence in this case it is essential that I refer to the victim impact statements I have received. Every case involving a death will almost inevitably have devastating consequences for those who knew and loved the deceased. The consequences of a criminal act particularly resulting in a death must be a relevant factor in the sentencing exercise carried out by a court. Mr Fox was clearly loved by his close relatives, particularly because of his vulnerability. I have received statements from his two sisters Stacey and Francine, from his mother Marie, his brother Sean and his step-father Mark. Each of these statements in their own eloquent way express the devastating impact of Pdraig's death. His sister Francine points out not only has the death had a serious impact on her but also on her children, one of whom has had great difficulty in coping. The concern that his family had about his well-being and the fact that he was living independently is expressed by his mother and his brother who was particularly concerned about him and who kept an eye out for him when he was alive. Unsurprisingly, Pdraig's death has had a significant impact on his mother's health. As has been said many times by sentencers dealing with cases which have resulted in death, be it murder or dangerous driving causing death or as in this case manslaughter the value of the deceased's life cannot be measured in terms of the length of a prison sentence. The court must sentence the defendant Donach Rice in this case in accordance with the

legal principles relating to manslaughter and based on his degree of culpability. That said I take account of the impact his death has had on his loved ones in determining the appropriate sentence in this case.

Sentencing principles in relation to manslaughter

[23] It is somewhat of a cliché to say that offences of manslaughter typically cover a wide factual spectrum. In terms of what might be referred to as “single punch” cases the guideline case in this jurisdiction is the case of **R v Ryan Arthur Quinn** [2006] NICA 27 which is also analysed and summarised in the very helpful paper on Sentencing in Cases of Manslaughter prepared by Sir Anthony Hart for the Judicial Studies Board for Northern Ireland on 13 September 2013.

[24] In **Quinn** the Court of Appeal decided not to follow the English guideline cases of **Coleman** and **Furby** which proposed a starting point of one year’s imprisonment, deciding that a more suitable starting point in Northern Ireland for this type of offence was two years imprisonment, rising to six years where there were significant aggravating factors.

[25] In deciding not to follow **Coleman** and **Furby** Kerr LCJ says as follows:

*“[19] The decisions in **Coleman** and **Furby**, while of course not binding on this court, are of considerable persuasive authority. But in this difficult area of striking a balance between, on the one hand, the culpability of the offender and, on the other, the public sense of justice, this court must reflect conditions encountered in our community and the expectations of its citizens. As we have said, it is now, sadly, a common experience that serious assaults involving young men leading to grave injury and, far too often, death occur after offenders and victims have been drinking heavily. The courts must respond to this experience by the imposition of penalties not only for the purpose of deterrence but also to mark our society’s abhorrence and rejection of this phenomenon. These sentences must also reflect the devastation wrought by the death of a young man such as Mr McVey.*

*[20] As the court in **Furby** said, however, where the consequences of a single blow were not foreseeable, care must be taken to ensure that the sentence imposed is not disproportionate. While acknowledging the strength of this factor, we cannot believe that a starting point of twelve months imprisonment adequately caters for the considerations that we have outlined in the preceding paragraph. We consider that a more suitable starting point in Northern Ireland for this type of offence is two years’*

imprisonment and that this should rise, where there are significant aggravating factors, to six years. It follows that we must reject the argument that the judge's sentence in the present case must be regarded as excessive because it does not accord with the guidelines contained in Coleman.

*[21] We agree with the view of the Court of Appeal in **Furby**, however, that no valid distinction can be drawn between the case where a light or moderate blow unexpectedly causes death and that where the blow causes the victim to fall and sustain, as a result of the fall, injuries which prove fatal. Such a distinction is, of course, justified, where the blow is particularly severe and, for the reasons that we have given, we consider that the blow struck in this case falls into that category."*

[26] In **Quinn**, the Court of Appeal rejected an appeal by the defendant to the effect that a sentence of four years imprisonment was manifestly excessive.

[27] The Court of Appeal said at paragraph [28]:

"... Substantial sentences are required to deter young men from engaging in this type of wanton violence and to remind them that if the effects of their actions go beyond what they in their drunken condition intended, they must face the consequences of that eventuality. Severe sentences are also required to mark society's outright rejection of such behaviour and to reflect the ultimate and terrible tragedy of a young life brought shamefully to an end."

[28] Returning to the particular facts of this case I consider that the following aggravating features are present. The evidence points towards at the very least a moderate to severe blow. This is consistent with what the witnesses finally said when the truth emerged about the assault. Mr Weir QC on behalf of the prosecution suggests that the deceased was vulnerable as a result of his mental health and there was at least one earlier incident in the course of the evening when he had been physically hurt. It is not clear that the deceased's vulnerability was a factor in the assault or that the previous allegations about him being hurt played a role in the final assault. He was certainly vulnerable in the sense that this appears to have been an unprovoked and unexpected blow which immediately caused him to lose consciousness and fall to the floor. The fact of a previous assault on Mr Fox in the course of the night's events is an aggravating factor.

[29] The offence in my view is further aggravated by the fact that it was committed after sustained consumption of drugs and alcohol.

[30] The matter is particularly aggravated by the conduct of you, Donach Rice, in the aftermath of the assault. I appreciate that these actions have resulted in additional charges. In approaching the sentencing exercise I do not propose to impose consecutive sentences but rather intend to look at the totality of your criminality associated with the manslaughter and impose an appropriate overall sentence. In the immediate aftermath of this assault your first reaction was to seek to set up a false self-defence scenario. This took considerable effort on your part including the infliction of a wound to your arm and the placing of the machete under the deceased's hand. This demonstrated a shocking indifference to the plight of the deceased. No effort was made to contact the emergency services to see if any assistance could be rendered to the deceased. After preparing this self-defence scenario you left the property, engaged in an assault on an elderly man and as a further and final insult to the deceased sought to cash in a betting slip belonging to him to the value of £7.60. You then returned to your girlfriend's house.

[31] All of this of course was compounded by the fact that after Mr Fox's body was discovered you along with your cousin went to the police and made an entirely false statement accusing Paul Magennis of inflicting the fatal blow. This resulted in Magennis being arrested for murder and questioned at length about what took place. It was only as a result of subsequent enquiries and Magennis's own account that you were arrested. Nine interviews were conducted with you on 10 and 11 December. Throughout the first day you maintained your denial and your assertion that Magennis had inflicted the fatal blow. After various matters were put to you by police during the second day you finally admitted your role in the matter.

[32] In my view your conduct after the manslaughter of the deceased constituted serious criminal offending and would in its own right justify condign punishment. However, as I have said I must look at the totality of any sentence I impose and on that basis I propose to reflect this criminal conduct as aggravating features in relation to the substantial offence of manslaughter.

[33] In terms of the subsequent offending, in particular the perverting the course of justice counts, it is correct to say that whatever the intention your conduct did not have a significant impact on the investigation. Certainly there was some initial confusion about the matter but the police quickly came to the correct conclusion about what happened, and you made in effect full admissions on the second day of your interviews. The "self-defence" scenario never really was taken seriously and as indicated you did not persist with the false account in relation to Magennis beyond the second day of your interviews. The behaviour of course has to be seen in the context of a very serious principal offence, that of manslaughter.

[34] In terms of your personal circumstances you were born on 11 September 1997 and you are therefore aged 22.

[35] You have a very significant criminal record with a total of 69 previous convictions. These include 7 convictions for assault on the police, 4 convictions for

common assault and one conviction for an assault occasioning actual bodily harm committed on 27 January 2018 which resulted in a sentence of imprisonment for 6 months, suspended for 3 years imposed on 17 January 2019. Since the commission of these offences you have received a series of suspended sentences arising from assaults which had occurred prior to the commission of this offence. Since these post-dated this incident there are no active suspended sentences to be considered by the court. It is right that you had some pre-existing suspended sentences but these have been dealt with subsequently by the courts.

[36] Whilst your previous offending does not demonstrate the level of violence which gave rise to Mr Fox's death your record is in my view an aggravating feature in this case.

[37] The court has also received a pre-sentence report from the Probation Service of Northern Ireland, a medical report from Dr David Rouse, consultant in forensic medicine and pathology dated 22 November 2019 and a report from Dr Ian Bownes, consultant forensic psychiatrist dated 15 January 2020.

[38] It is clear from the reports that you have had a difficult and chaotic childhood. You were the subject of a residence order and raised by your parental aunt and uncle in Glasgow from 2 years of age until you were 15. You had been in foster care prior to this arrangement. For the majority of your childhood you believed that your aunt was your mother and you have only seen your birth mother once. During your formative years your birth father resided in Northern Ireland and upon reaching your adolescence years the discovery of your actual background sparked emotional turmoil and subsequently your behaviour in life deteriorated to include the abuse of alcohol and illicit substances together with offending behaviour which has resulted in the criminal record to which I have referred. After travelling to Northern Ireland to reside with your father the decision was made to return you to the care of the Trust and you subsequently resided in Aran House, Glenmona, Belfast. At that time until you turned 18 you regularly absconded to Newcastle to associate with like-minded peers and have contact with your family. Your alcohol and drug use commenced in your early adolescence years and has persisted until the present date.

[39] You have been in custody since your arrest for these offences and it appears that your behaviour there has been problematic and you have already been subject to five guilty adjudications. It appears that your conduct has improved somewhat and I have been provided with some certificates of achievement from ADEPT Drug and Alcohol Service and some City and Guilds certificates awarded to you.

[40] Unsurprisingly the Probation Service have assessed you as a high likelihood of re-offending, an assessment with which I agree.

[41] The more difficult issue relates to whether or not you present as someone who is a significant risk of serious harm where there is a high likelihood that you

will commit further offences. This matter has been given anxious consideration by the Probation Service and in the detailed report the author has set out the relevant concerns and the relevant protective factors. Having balanced all of these factors the Probation Service has assessed that you do not meet the threshold for presenting as a significant risk of serious harm at this time.

[42] That said there are definite concerns about your behaviour. By way of example in his report, Dr Bownes, comments as follows:

“The clinical picture currently presented in this case is of an individual with significant personality based deficits to which damaging developmental influences are likely to have contributed, and that include dissocial and ‘borderline’ traits of low frustration, tolerance, a lack of appropriate and effective strategies for coping with negative feelings and stressful situations, and relative limited ability to intuitively reflect on the wider consequences of his actions.”

He goes on to say:

“I would consider that Mr Rice is currently highly likely to continue to relapse to patterns of behaviour that have previously provided him with a sense of camaraderie and of temporary respite from demands and difficulties in his life and should Mr Rice continue to engage in psychoactive substance misuse the risk of deterioration in his mental wellbeing and of further damaging behaviour is clearly significant.”

[43] In terms of mitigation Mr Grant on your behalf refers to your relative youth and unfortunate personal circumstances. He urges on the court to accept that you are genuinely remorseful for your conduct. In particular he points to your conduct on the second day of your police interviews when you finally admitted your involvement in the offence. In the course of that interview you expressed remorse and apologised for your behaviour. The experienced police interviewers respond by saying *“I do believe that you are being genuine about that”*.

[44] This expression of remorse is also repeated in the probation report where the author reports that you reflected on the harm caused and reported great regret at your actions. You indicate that you have struggled to deal with the guilt of what you had done and that is why you have told the truth about what happened. You demonstrated insight into the detrimental impact of the victim’s death on his family and indeed the victim himself. Dr Bownes also records that it was apparent that you had a good deal of insight regarding the distress that your behaviour at the time of

the incident has caused. It was Dr Bownes opinion that your demeanour was consistent with the feelings of regret and remorse you described.

[45] Whilst it can be difficult to assess whether or not remorse is genuine in circumstances such as this I am satisfied that you have remorse for your actions although that must be tempered by your conduct in the aftermath of the incident. In any event remorse is of relatively little value by way of mitigation in a serious case such as this, but I do take it into account in your favour.

[46] You are undoubtedly entitled to credit for your plea of guilty.

[47] It is a long and firmly established practice in sentencing law in this jurisdiction that when an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate.

[48] In determining the lesser sentence the court should look at all the circumstances in which the plea was entered. You did not plead guilty at arraignment. However, at that stage Mr Grant did indicate that this was a “*formal*” plea pending receipt of medical evidence. Your lawyers sought a medical report from Mr Rouse to advise on the extent of the injuries sustained by the deceased and in particular to comment on the conclusions expressed by Dr Johnson. Having analysed the evidence in the case Dr Rouse concluded that he would not disagree with the conclusions expressed by Dr Johnson. His final conclusion was that “*I would confirm the view that death has occurred as a result of the final blow to the head.*” This was the blow inflicted by you. This report was received on 22 November 2019. Within one week of this report you applied to be re-arraigned and pleaded guilty.

[49] That plea was not at the first opportunity but it is clear that issues were narrowed at an early stage. You pleaded immediately you received the medical evidence your lawyers sought. The plea has been of value to the prosecution and was indicated well in advance of the trial. The trial would have been a lengthy one and considerable public expense has been saved as a result of your plea and the family of the deceased have been spared the inconvenience and potential trauma of attending a protracted hearing. The plea has brought certainty and finality to the matter and reinforces the remorse you have expressed. You are entitled to substantial credit for your plea.

The appropriate sentence

[50] Manslaughter is both a “serious offence” for the purpose of Schedule 1 Part 1 of the Criminal Justice (Northern Ireland) Order 2008 (“2008 Order”) and is a “specified violent offence” for the purpose of Schedule 2. In these circumstances the court is obliged to consider whether, in your case, under Article 13 of the Order there is “*a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences*”. I must have regard to the factors set out in Article 15 of the Order. The appropriate principles to be applied

are set out in the Court of Appeal decision in England and Wales of **R v Lang** [2005] EWCA Crim 2864 which have been adopted in this jurisdiction see **R v EB** [2010] NICA. I also have regard to the subsequent decision of the English Court of Appeal in **R v Johnston** [2006] EWCA 2486 in which the Court of Appeal commented that the principles set out in **Lang** should not be treated as if they were a statute but rather provided useful guidance in the approach to sentencing which the act required. As Lord Chief Justice Morgan pointed out in the case of **R v Mongan** determined on 5 November 2015 in this exercise “*the analysis is likely to be highly fact sensitive*”.

[51] Having regard to the factors set out in Article 15 and in particular the contents of the probation report, notwithstanding some concerns I have come to the conclusion that you do not meet the threshold for “*dangerousness*” within the Order. I have no doubt that in accordance with the principles set out in **Quinn** that your case can only be dealt with by way of a determinate custodial sentence. A key factor in my determination in relation to “*dangerousness*” is the availability of strict licensing conditions when you have completed the custodial element of your sentence. I therefore strongly recommend that when consideration is being given to your licence conditions that the recommendation of the Probation Service are implemented as part of the conditions. I agree with the probation report that comprehensive, stringent and robust licence conditions are required at the point of your release into the community.

[52] Had you contested these matters I would have imposed a total sentence of 8 years’ imprisonment to reflect the totality of your offending and the broad circumstances of your case. In particular, this reflects very serious counts of manslaughter and perverting the course of justice. However, I consider you are entitled to in effect full credit for your plea and I propose to reduce your sentence to one of 6 years in custody. Standing back I consider that to be an appropriate sentence to reflect the totality of your offending.

[53] In relation to count 1 I therefore propose to impose a sentence of 6 years in custody. Under the provisions of Article 8(2) of the Criminal Justice (Northern Ireland) Order 2008 I am obliged to specify a period referred to as the custodial period at the end of which you are to be released under Article 7 of the Order. Under Article 8(3), the custodial period shall not exceed one half of the term of the sentence. I therefore specify that the custodial period of the sentence is to be one of 3 years with a licence period being one of 3 years.

[54] In respect of count 2 I impose a sentence of 12 months’ custody. In respect of count 3 I impose a sentence of 6 months in custody. In respect of count 4 I impose a sentence of 6 months in custody. In respect of count 6 I impose a sentence of 12 months in custody. In respect of count 10 I impose a sentence of one month in custody. All of these sentences are to run concurrently.

[55] I should indicate that had counts 2 and 6 been the only offences in respect of which you were being sentenced I would have imposed a lengthier sentence, akin to that which I intend to impose on Mr Magennis but this is unnecessary because of the way in which I have dealt with count 1, which as I have said is to reflect the totality of your offending. This is also why I have imposed concurrent sentences rather than consecutive sentences.

Nathan Rice

[56] Nathan Rice you have pleaded guilty to the burglary at the Slieve Donard Hotel and to the offence of perverting the course of justice.

[57] The perverting of the course of justice count relates to the false statement you originally made to the police about the incident which gave rise to Mr Fox's death. The gravamen of the falsity is that you wrongly implicated Paul Magennis as the person who inflicted the fatal punch on Mr Fox. As a result Mr Magennis was arrested and interviewed by the police as a murder suspect. He was interviewed on 12 occasions by the police between 9 and 11 December. As a result of other investigations carried out by the police your cousin Donach was arrested and interviewed between 10 and 11 December and on 11th he finally admitted his guilt and confirmed that it was he who had in fact struck Mr Fox.

[58] In turn you were then arrested on 12 December and on that date the police conducted four interviews with you. As well as your solicitor your father was also present throughout the interviews as an appropriate adult because of the fact you have been diagnosed with autism and ADHD. In the course of those interviews you made full admissions as to your role on the night in question and you accepted that your initial account was false.

[59] Self-evidently perverting the course of justice is a serious offence. The factors for a sentencing court to take into account for such an offence are firstly the nature of the principal offence, the degree of persistence of the action contributing to the offence and the impact on the police investigation.

[60] In this case the police were investigating a very serious offence namely manslaughter. In your favour however you did not persist with your false account beyond your initial statement and made full admissions when interviewed. There was no significant impact on the investigation. The sequence of events were such that the investigation into Mr Fox's death was not unduly or severely hampered or obstructed by the statement you made on 8 December 2018. Ultimately the investigation was not thwarted or frustrated in any meaningful way. It seems clear to me that your actions were motivated by a misguided loyalty to your cousin and desire to protect him.

[61] In considering the appropriate sentence it is important to consider your personal circumstances. In that regard I have received a pre-sentence report from

the Probation Board for Northern Ireland and a medical report from Dr Aidan Devine, Senior Clinical Psychologist dated 16 October 2019.

[62] You were born on 19 November 1998 so you had just passed your 20th birthday at time of these offences. Dr Devine outlines a number of health issues you have dealt with over the years which are confirmed in your medical notes and records. You have been diagnosed with development disorders namely autism and ADHD which have resulted in difficulties for you particularly as a child at school and social difficulties with peers. You required special educational needs at school. Dr Devine confirms that you have a lower than average IQ, with a diagnosis of autism and ADHD and that you were easily led by peers. You were on medication for your autism for most of your childhood. Regrettably your difficulties resulted in problematic misuse of drugs and alcohol and has led to criminal offending on your part. You have 19 previous convictions, commencing in 2015 when you were only 17 years of age. The offences have all been dealt with in the Magistrates' Court and vary in nature, with 6 convictions for dishonesty related offending and other matters which include disorderly behaviour and common assault. Significantly, you were sentenced to a probation order of one year on 28 February 2019 for obstructing police, assault on police and disorderly behaviour. You were also sentenced to 100 hours community service on 6 June 2019 for fraud by false representation.

[63] The probation order is due to end on 27 February and to date you have completed 60 hours of the 100 hours community service. Your current and previous supervising probation officers advise that there have been no issues with your engagement with supervision. You attend regularly and engage in a meaningful manner. You have also been referred to drug related counselling and have participated in offence focused work during supervision appointments.

[64] It seems therefore that the probation order and community service order are achieving their objectives and at long last you are addressing the issues which had given rise to your involvement in the criminal courts.

[65] The Probation Service assess you as a person who has a medium likelihood of re-offending and not someone who presents as a significant risk of serious harm. I readily agree with both these assessments.

[66] In considering the appropriate sentence you are entitled to credit for our plea of guilty. When you were arrested you made full admissions at interview. You pleaded guilty at arraignment to the burglary count and then shortly afterwards on 29 November 2019 to perverting the course of justice. I am told by your counsel Mr Berry and I accept that there were discussions between Crown and defence counsel prior to and subsequent to the arraignment about an alternative count to Count 7 such as withholding information or assisting offenders. Ultimately, when this could not be achieved you pleaded guilty to the original count. In those circumstances I consider that you are entitled to very substantial credit for your early pleas.

[67] Ordinarily given the serious nature of the offences to which you have pleaded guilty and having regard to your record the court would impose a custodial sentence. However, in this case I consider that the court can and should take an alternative course. I consider that it is particularly significant that you have engaged fully with probation since the imposition of a probation order on 28 February 2019 which post-dated this offence. In addition to the probation order you are also engaging productively in community service. In my view it would be futile and wrong in principle having regard to your personal background and the circumstances of this offence to interfere with that work and impose a custodial sentence on you. Such a course of action was endorsed by the Court of Appeal judgment of Carswell LCJ in the case of **Reference by Her Majesty's Attorney General for Northern Ireland (No: 5 of 2003) (Richard Herbert Crowe)** [2003] NICA 38. Rather in my view the appropriate course is to impose a combination order under Article 15 of the Criminal Justice Order 1996. I consider this is appropriate so that you can make some reparation to the community for your offending but also because you need to continue probation supervision to reduce the risk of reoffending in the future. Such an order is in the interests of securing your rehabilitation and protecting the public from harm from you or preventing the commission by you of further offences. I understand from the Probation Service that you would be willing to continue with probation and community service - is that so? In the circumstances therefore I propose to impose a further probation order of one year combined with a community service order of 40 hours.

[68] In relation to the probation order the following additional requirement is attached to that order.

- You shall participate actively in an alcohol/drug counselling and/or treatment programme during the probation period and you must comply with the instructions given by or under the authority of the person in charge.
- You must actively participate in any programmes of work recommended by the supervision order designed to reduce any risk it may present and to attend and co-operate in assessments by PBNi as to your suitability for programmes and other events of focused work.

[69] I impose these orders in respect of counts 4 and 7 on the indictment to run concurrently.

Paul Magennis

[70] Paul Magennis you stand charged with two counts of perverting the course of justice, one count of theft and a common assault. The first issue which gives rise to perverting the course of justice is the dishonest account you gave of the events on the night Mr Fox was killed and the second relates to your actions in conjunction

with Donach Rice in preparing a “self-defence” scenario at the scene. Whilst these are two separate offences it seems to me that the real gravamen of the offence relates to what you did after Mr Fox was struck by Mr Rice. So the comments I have made in relation to Donach Rice are equally applicable to you in connection with your actions in this regard. You showed a callous disregard for Mr Fox’s plight. You made no effort to seek medical attention or assistance for him but rather set about leaving a false trail with a view to protecting you and Mr Rice wrongly seeking to implicate Mr Fox in some wrong doing. Your conduct has to be seen in the context of the principal offence of manslaughter. The perverting of the course of justice relates to an unlawful killing. You also have pleaded guilty to a further count of assault but as in the case of Donach Rice I do not propose to impose consecutive sentences on you but rather apply the totality principle in determining the appropriate sentence.

[71] I have already referred to the appropriate principles in relation to sentencing in perverting the course of justice cases and I do not propose to repeat them. It is right to say that you did not attempt to persist with the self-defence scenario and whilst your actions may have caused some initial confusion to the police in the course of their investigation there was no significant delay by the police in establishing exactly what happened and ultimately the investigation was not frustrated.

[72] You are a 28 year old single man and have been remanded in custody since the time of the offence. You have had an unsettled childhood characterised by domestic violence in the home and your parents separated when you were 14 years old. At that time you commenced drinking alcohol and apart from a number of years when you were in a relationship you consumed alcohol and illicit drugs including cannabis, cocaine, Pregabalin and LSD to excess. You have mental health issues and have been diagnosed with post-traumatic stress disorder, depression and anxiety. You are currently prescribed Mirtazapine, Amitriptyline and Omeprazole.

[73] After a difficult start in prison involving failing a number of drug tests you are now more settled and are using the time productively. You are attending education courses and have completed a number of qualifications. It appears that you may have been close to the victim who was a neighbour. What is clear is that you committed the offences under the influence of a range of substances which is an aggravating feature of your offending.

[74] During the pre-sentence report interview prepared by the PBNI you presented as remorseful and stated that you deeply regret your involvement in the offences and particularly the death of the young man who you considered to be a friend. The report records:

“In discussing the fatal consequences his statements and demeanour evidenced remorse and he repeatedly expressed concern for the victim’s family. Mr Magennis remembers

feeling shock at the time and states in the panic he did not stop to think. He states in hindsight he should have phoned the emergency services. Mr Magennis tells me he is extremely ashamed of his actions. Having had the opportunity to reflect since the time of the offences he was clear in terms of how he perverted the course of justice and acknowledged how this may have delayed the investigation at the time. Mr Magennis's level of victim awareness appears to have increased since the time of the offences and he was clear in terms of both the short and longer term impact on the victim's family and friends. He also presents with an understanding of the impact of his offending on his own family."

[75] You do have a significant criminal record including 20 previous convictions. You began offending in 2010 at the age of 18. At that time you were sentenced to a probation order having been convicted of possession of an offensive weapon in a public place and criminal damage. The following year you appeared before the courts on three occasions in relation to criminal damage (2) and theft. You were sentenced to a conditional discharge and two fines. In 2013 you were convicted of another theft for which a monetary penalty was imposed. The record then confirms a significant period of desistance from criminal activity until 2017 which correlates with the steady relationship you had with your partner to which I have referred earlier. Regrettably after the breakup of that relationship you became involved in criminal activity again and were back before the court and fined for common assault and criminal damage. In 2018 you were convicted of cultivating cannabis and possession of a Class C controlled drug in respect of which a monetary penalty was imposed. In 2019 you acquired a further 10 convictions which related to offences committed in 2018 including theft offences (8), possession of Class B controlled drugs (2). You have been subjected to a variety of suspended sentences and conditional discharges, no doubt because of the fact that you were in custody on remand in relation to these charges.

[76] The Probation Service regard you as someone who has a high likelihood of re-offending but that you do not present as someone who represents a risk of serious harm under the 2008 Order.

[77] I agree with both assessments.

[78] I consider that the offences of perverting the course of justice in this case are sufficiently serious to justify the imposition of a custodial sentence. You may feel that you are somewhat unfortunate in comparison with the sentence that I have imposed on Nathan Rice. However, Nathan Rice was not involved in the most serious aspect of the attempt to pervert the course of justice namely the creation of a potential "self-defence scenario" and more importantly his personal circumstances are very different from yours.

[79] You are entitled to very significant credit for your plea of guilty. You pleaded guilty to the serious counts at arraignment and to an alternative count of common assault when this first became available to you. You made full admissions in the police station and I consider that you are entitled in these circumstances to very substantial credit for your plea. In relation to count 6 had you been convicted on a contest I would have imposed a custodial sentence of 3½ years to reflect the totality of your offending. Because of your plea of guilty I propose to impose a sentence of 2½ years in custody. Under the provisions of Article 8(2) of the 2008 Order I am obliged to specify a period referred to the custodial period at the end of which you are to be released under Article 7 of the Order. Under Article 8(3), the custodial period shall not exceed one half of the term of the sentence. I therefore specify that the custodial period of the sentence is to be one of 1 year and 3 months with a licence period of 1 year and 3 months. When considering your licensing conditions the authorities should have regard to the recommendations in the Probation Service which in my view have strong merit. In respect of count 8 I impose a sentence of 12 months' custody. In respect of count 10 I impose a sentence of one month in custody. All of these sentences are to run concurrently with the sentence imposed in respect of count 6, to reflect the totality principle and the broad circumstances of the case.