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

ICOS No: 21/032887

Delivered: 21/06/2023

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT BELFAST

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THE KING

v

ABDUL WAHAB AND ALEKSANDRA WAHAB

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**Mr L McCollum KC with Ms F O’Kane (instructed by the Public Prosecution Service) for
the Prosecution**

For the first defendant - no representation

**Mr J Kearney KC with Mr G Cairns (instructed by McCrudden and Trainor Solicitors) for
the second defendant**

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SENTENCING REMARKS

O’HARA J

Introduction

[1] On 19 January 2023 the defendants pleaded guilty to a series of charges which related to injuries inflicted on Nadia Kalinowska who died on 15 December 2019. She was the five-year-old daughter of Mrs Wahab and therefore the step daughter of Mr Wahab.

[2] Mr Wahab pleaded guilty to three counts on an amended indictment:

Count 1 Murder of Nadia between 13 and 16 December 2019.

Count 2 Causing grievous bodily harm with intent to Nadia between 11 and 15 December 2019.

Count 15 Causing grievous bodily harm with intent to Nadia between 1 July and 14 September 2019.

This third charge was a specimen charge, intended to cover a number of assaults on Nadia across that period of 5½ months.

[3] Mrs Wahab also pleaded guilty to three counts on an amended indictment:

Count 2 Causing or allowing Nadia's death between 13 and 16 December 2019.

Count 9 Causing or allowing Nadia to suffer serious physical harm between 11 and 15 December 2019.

Count 16 Causing or allowing Nadia to suffer serious physical harm between 1 July and 14 December 2019.

As with her husband's plea to count 15, count 16 was a specimen charge relating to a series of assaults on Nadia over a period of 5½ months.

[4] At the time Mr Wahab pleaded guilty, he was represented by Mr R Lavery KC with Mr M Chambers of counsel instructed by McNamee and McDonald Solicitors. After I imposed the mandatory life sentence on Mr Wahab on 19 January 2023, pre-sentence reports ("PSR") were ordered on each defendant to assist me in the sentencing process. Within weeks, it emerged that Mr Wahab would not meet the intended author of the PSR until he consulted with new lawyers. On 2 March 2023 I allowed his original legal team to come off record because Mr Wahab had changed his instructions and asserted that he had lost confidence in them.

[5] In the following weeks, new legal representatives came on record for Mr Wahab, namely Mr B McGrory KC with Mr E McKenna of counsel instructed by McIvor Farrell Solicitors. Having given them time to receive papers, consult with their client and advise him, I was asked on 1 June 2023 to allow them also to come off record because they had advised Mr Wahab and he would not accept that advice.

[6] I granted that application and asked Mr Wahab what he intended to do next. He said that he wanted to engage new lawyers but had no money to pay them. Since public funds had already been granted to pay two sets of lawyers and since sentencing was not to be delayed further, I set a date of 8 June for the sentencing hearing. I ensured that all papers were served on Mr Wahab in prison, and I made it clear to him that he could respond to the prosecution submissions on 8 June. What he said at that point will be summarised below.

Background to the charges

[7] In the early hours of 15 December 2019, an ambulance was called to the Wahab family home in Newtownabbey, County Antrim. The ambulance crew found Nadia unconscious with what they believed to be non-accidental injuries.

Accordingly, they called for police assistance. The only people in the home at the time were Mr and Mrs Wahab and their two-year-old son, a child of their marriage. Nadia was taken to the Royal Belfast Hospital for Sick Children and was pronounced dead at 3.40 am.

[8] When her body was examined, Nadia was found to have a horrific collection of injuries, both recent and healing. They included the following:

- More than 70 surface injuries including bruising and abrasions. On the evidence before the court, a child who suffered such injuries would be distressed by the pain and would be likely to cry. The bruises would remain visible. The occurrence of some of those injuries was consistent with blunt force trauma and would have been evident to normal care givers.
- Nadia had eight rib fractures sustained over a period of at least several weeks. Five of these were ribs that were refractured between 3 and 7 days before her death. A significant degree of destructive force is required to fracture ribs in children. This would cause a child very considerable pain and obvious distress. Moving, breathing and laughing would cause considerable pain. Those injuries would have been obvious to attentive parents.
- A fractured clavicle or collar bone which would have required significant blunt force trauma. Both the girl's misery and abnormal posture would have been evident to a normal attentive parent. There were also two further incidents of trauma causing the clavicle to fracture again.
- Fractures of the pelvis which are rare in children outside high energy mechanisms such as motor accidents or falls from a great height. These would have caused immediate pain and discomfort when walking and should have been blatantly obvious to attentive parents. The level of force required would be memorable and obvious.
- A fractured skull – a sizeable blunt force trauma would have to be applied to the skull to cause this fracture and be transmitted to the underlying brain causing loss of consciousness and variable levels of responsiveness. There were numerous areas of bruising on the back, sides and top of the scalp and on the forehead and overlying the left side of the jaw consistent with multiple blunt impacts having occurred. There were linear abrasions on the backs of both ears, possibly caused by pinching. There were multiple bruises on the under surface of the scalp. Two of these injuries had occurred a number of days prior to death. One was associated with a laceration, impact with an object with an edge. There might have been one or two fractures. There was also evidence of old bruising on the left and under surface of the brain and a degree of scarring suggestive of more than one previous head injury.

- There was a severe laceration of the liver and bowel. The severity of the injury was in keeping with a forceful blunt impact. There was perforation of the bowel wall occurring a number of days before death which caused severe haemorrhage. These injuries were the result of heavy blunt impacts. The severity of the pain caused by such abdominal injuries would have warranted very strong painkillers such as morphine and Nadia would have been in severe pain and distress while still conscious.

[9] The expert witnesses who were to be called on behalf of the prosecution could not say precisely when all of the injuries were inflicted, and were able to give estimates only. They attributed Nadia's death to a combination of the fractured skull and the injury to the liver and bowel.

[10] The experts disagreed only about how many separate episodes of violent beating Nadia may have been subjected to, but even then, the limited level of disagreement reveals how brutally she was treated. Professor Mangham thought that there were at least four episodes of violence while Professor Offiah thought there were at least six. The difference, which is attributable to the difficulty in putting precise dates on which healing fractures were caused, is immaterial. Their collective view was that she was repeatedly assaulted, that these injuries would have caused her obvious pain and distress and that any half observant parent would have known that.

[11] On behalf of Mrs Wahab, but with the support of Mr Wahab, a no bill application was brought on which I ruled in September 2022. Ironically in light of the way in which the guilty pleas were ultimately entered in January 2023, the case advanced for Mrs Wahab was that the charges as they stood were too vague and that the prosecution had to attribute specific identifiable injuries to each of the original counts e.g. exactly what grievous bodily harm was inflicted between 10 November and 2 December 2019 as alleged in count 6? In response to the no bill application, the prosecution did assign specific injuries to each count.

[12] The defendants did not suggest that any other adult or individual could have caused these multiple injuries to Nadia. Their general explanation was that Nadia was a clumsy child who tripped or fell quite often but not in a way which caused them to feel that she had been injured in any significant manner.

[13] So far as the events leading up to her death were concerned, it was originally suggested that she must have got up during the night to go to the toilet and then fallen down the stairs. That explanation was comprehensively rejected by the prosecution experts. The first sign of a different explanation was on 18 January 2023, the day before the guilty pleas, when an amended defence statement was served on behalf of Mr Wahab. The new proposition advanced in that was that Mr Wahab who was tired and groggy when woken up in the early hours of the morning feared that Nadia had fallen down the stairs, so he ran down the stairs after her in his bare feet. As he reached the bottom of the stairs, he was able to make out her legs. She

was lying crying on the ground. As he reached the bottom of the stairs he stumbled over the second last stair, tripped on the first stair and fell onto her stomach. It was suggested that he impacted Nadia with the outside of the shin of his right leg landing on her stomach, effectively placing his full weight on her. I reject this explanation which is no more likely to be the truth than his other explanations about what did and did not happen to Nadia.

[14] While various enquiries were made on behalf of the defendants, the only report which was served on the prosecution as expert evidence which the defendant Mrs Wahab intended to rely on came from a Dr Rose, Consultant Paediatrician. Despite his expertise being confined to paediatrics, he queried views expressed by a range of prosecution experts from different specialities and suggested that accidental injury could not be dismissed as the cause of her death. He also suggested that it was unfortunate that genetic studies had not been undertaken to explore other possibilities.

[15] In this context it is relevant to note that the two-year-old son of the family, who was examined after Nadia's death, was found to have no marks or injuries of any sort on him. Even more strikingly, his teeth were found to be in very good condition, whereas Nadia's were decayed and rotten. In the PSR Mrs Wahab is recorded as having said that she had tried to register Nadia with a dentist but had forgotten. In the same context it is also noteworthy and disturbing that while their son was taken to the doctor regularly for apparently minor matters, Nadia was never taken to a doctor.

The PSR

[16] Given that Mr Wahab had moved away from, or sought to move away from his guilty plea, no PSR was completed on him.

[17] In relation to Mrs Wahab, who is now 29 years old, the report records her unhappy childhood and life in Poland where she was born and lived until January 2016. Nadia's father, who was Polish, played no part in her life and offered no support before or after her birth. Mrs Wahab left for Ireland in January 2016. She met Mr Wahab, who she had already befriended on the internet at Shannon Airport. Despite her own mother's pleas to her to leave Nadia in Poland until she had established a new and settled life in Ireland, Mrs Wahab insisted on bringing Nadia with her in January 2016.

[18] The Wahabs are reported to have married in a religious ceremony in Ireland in 2016 and later in a civil ceremony in Northern Ireland in 2018. They had moved north in 2017. Mr Wahab worked regularly and while Mrs Wahab had worked sometimes, she had not done so in the months preceding Nadia's death. Her son by Mr Wahab was born in 2017, in Poland. On her arrest in December 2019, she was pregnant, giving birth some months later. Those two children are now in the care

system with final decisions as to their future on hold pending the outcome of these criminal proceedings.

[19] In her discussions with the probation officer for the PSR, Mrs Wahab insisted that her husband was a good father who treated both children equally well. She said he never shouted, and they were not afraid of him. She professed shock that he had been convicted of murder. Mrs Wahab was unable to offer any explanation for the injuries found on Nadia. While she expressed regret for not protecting her daughter, she could not articulate what she should have protected her from.

[20] As regards to her own relationship with Mr Wahab she asserted that there was no domestic abuse. There are some indications to the contrary in the depositions from people who knew them, but she is insistent that that was not the case.

[21] A psychologist's report on Mrs Wahab was obtained by the defence but was not served and is not relied on. I cannot therefore go further than what is referenced in the excellent PSR prepared by Ms L Morgan in which it is stated:

"It is common for those who have experienced trauma to compartmentalise their experiences, the lack of openness about the events leading to the death of Nadia may be a mechanism for the defendant to cope with this experience. Mrs Wahab appears to have issues with attachment stemming from her own childhood, her desire to be in a relationship regardless of how dysfunctional it is, compounds her distorted thinking and reinforces her disregard for herself and her children."

[22] Mrs Wahab was assessed in that report as having a high likelihood of reoffending. However, given that she has no unsupervised contact with children and is in prison, she was not currently assessed as presenting a significant risk of serious harm at this time. On a more positive note, it was reported that she appears to have settled well into the prison system and was taking all opportunities available to her. As against that, her ability to cope with the daily stressors of life on her return to the community is effectively unknown. She has no support network in Northern Ireland and in the view of the author it is likely to be difficult for her to reintegrate into a community.

[23] The PSR concludes with some suggested conditions for when Mrs Wahab is released. At this point those suggestions seem sensible but they should be reassessed when she is eventually released, assuming of course that she stays in Northern Ireland.

Victim impact statement

[24] Mrs Wahab's mother provided a statement in which she summarised the shock and grief she has felt since the death of her granddaughter. The grandmother says that "I have never imagined that something like this could happen, and that the life of my granddaughter would be taken by her mother and my daughter and her current husband." She states that she loved her granddaughter very much, that she relives this trauma every day and that her life has changed dramatically.

Course of the trial

[25] The jury in this trial was sworn on 16 January 2023. On 18 January the amended defence statement from Mr Wahab, referred to above, was served. Then the prosecution opened the case to the jury.

[26] On 19 January the jury was asked to wait while discussions took place on various issues. In the afternoon an amended indictment was presented in which the date specific counts of grievous bodily harm and causing/allowing serious physical harm were replaced with the specimen counts to cover the period between 1 July and 14 December 2019. At that point the defendants were re-arraigned and pleaded guilty to the counts set out at paras [2] and [3] above.

Submissions on sentencing - Mr Wahab

[27] For the prosecution Mr McCollum KC referred me to the guideline Northern Ireland Court of Appeal case of *R v McCandless* [2004] NI 269 and to the recent decision of the Court of Appeal in *R v Ali* [2023] NICA 20. The gist of his submission was that in a case involving a defenceless trapped five-year-old girl who was subjected to a series of brutal attacks over months causing her grievous bodily harm before she was eventually killed the starting point for sentencing should be at least 20 years. As the Court of Appeal said at para [59] of *R v Ali*:

"In a case such as this the starting point should have risen prior to reduction for the plea from the 16 years to 20 years. We see no mitigation which would reduce it back down. We are bound to say that in cases where an accused has a prior criminal history or there is a pattern of abusive behaviour towards a child the starting point of 20 years would likely rise."

[28] I was also referred to the case of *R v McCarney* [2013] NICC 1 in which Stephens J imposed a tariff of 25 years on the defendant who was convicted by a jury of the murder of a child. He was also convicted of causing her grievous bodily harm and of sexually assaulting her.

[29] In terms of aggravating features, Mr McCollum submitted that the following features were present:

- Vulnerable victim, five-year-old girl.
- Sustained attack.
- Breach of trust.
- Number of injuries and brutality of injuries showing gratuitous violence.
- Numerous different assaults and child cruelty.
- Killed and assaulted in her own home where she was entitled to feel safe.
- Failure to seek medical assistance.
- Lack of empathy and remorse.

[30] In terms of mitigating features he suggested:

- No intention to kill in the sense that death was not the intended outcome.
- Lack of any criminal record.
- The late guilty plea.

[31] I invited Mr Wahab to respond to these submissions. He did so by asking for a further four weeks to engage new lawyers, a request which I refused. He then spoke for the following few minutes about how happy he had been with Nadia, that they were like two best friends, that she always smiled and laughed and that she was the best child ever. He said that since he lost her, he did not feel the same, that he had really loved her as did his family. He compared her to a fairy princess, saying that she called him “my dear papa.” He continued that he had dreams for her to have a professional job and a happy life and that he had always listened to her.

Sentencing Mr Wahab

[32] I am obliged to sentence Mr Wahab on the basis of his guilty pleas. While he has already been sentenced to life imprisonment for murder, the law requires me to set the minimum number of years which he must serve in jail before the Parole Commissioners can consider releasing him. Lawyers refer to this exercise as setting the tariff. At the end of that period he may be released by the Commissioners or kept in prison for longer but even if he is released at some point he will be on licence for the rest of his life and subject to recall to prison. What he admitted to on 19 January when he pleaded guilty is entirely consistent with the overwhelming evidence against him. It is distressing and rather pathetic that he now seeks to disavow his guilty pleas.

[33] I do not intend to go over again what I have already set out in these sentencing remarks. What Mr Wahab did to his stepdaughter was brutal, merciless and outrageous. The contrast with his untouched son who was then only two years old is dramatic and shocking.

[35] I do not believe for a second that Nadia's injuries relate in any way to her being clumsy or accident prone. They are all explained, and only explained, by his sustained cruelty which his wife knew about and allowed to happen and continue to happen.

[34] It is inevitable that in these circumstances the starting point for sentencing, taking account of the extreme aggravating factors and the limited mitigating features, is higher than 20 years. The Court of Appeal recognised that in *R v Ali*. In my judgment the appropriate starting point is 25 years on a par with *R v McCarney*.

[35] Odd as it may appear, given his current approach to his own guilty pleas, Mr Wahab is entitled to some allowance for the fact that he pleaded guilty. He has however lost some of that allowance by his prevarications and current refusal to accept responsibility for the death and injuries. Had he adhered unequivocally to his pleas I would have reduced his prison sentence to 20 years. As it is I reduce it to 22 years. That is the minimum time which Mr Wahab must serve in prison before his release will be considered by the Parole Commissioners.

[36] In imposing that sentence I am reflecting the sustained nature of his brutality against Nadia as an aggravating feature. Having done that, and being conscious of the totality principle in sentencing, I impose concurrent sentences on the grievous bodily harm charges. On count 3 which relates to the period immediately before the final fatal attack I impose a sentence of eight years. On count 15 which relates to the previous 5½ months I impose a sentence of 10 years. I repeat that those sentences are to be served concurrently with his sentence for Nadia's murder.

Submissions and sentencing - Mrs Wahab

[37] On count 2, causing or allowing Nadia's death, the maximum sentence allowed by the law is 14 years. On counts 9 and 16, causing or allowing Nadia to suffer serious physical harm, the maximum sentence permitted is 10 years. These are less than the current maximum sentences in England and Wales.

[38] Mrs Wahab did not plead guilty before her husband did. She only pleaded guilty after bringing an unsuccessful no bill application and after maintaining until 19 January 2023 that she did not know and could not explain how Nadia had sustained her injuries and how she had died. In the PSR prepared after her guilty plea she still fails to address these issues.

[39] When the basis of her guilty plea was explored during the sentencing hearing, it remained unclear. The prosecution accepted that she herself had not witnessed any assaults but that she should have been aware of them and of their consequences. In this way, on the prosecution approach she “caused or allowed” Nadia to die and before that to be seriously harmed.

[40] Mr Kearney accepted on her behalf that she should have taken Nadia to hospital, that she should have notified social services and that she should have put her husband out of the house to protect her daughter. In response to this Mr McCollum said the prosecution did not accept that Mrs Wahab did not know what was happening. Her plea was accepted on the premise that she herself was not involved in the assaults, not that she did not know that they were happening.

[41] Mr McCollum also made the point that Mrs Wahab could have pleaded guilty at an earlier stage, before January 2023. As a result, he suggested, she is entitled to some allowance for her plea of guilty but not full allowance. In response Mr Kearney submitted that her guilty plea may not have been accepted until her husband’s position had been resolved.

[42] Mr Kearney also suggested, in a somewhat contradictory way, that her failure to notice Nadia’s injuries was not quite so culpable since only towards the end was any issue raised by her teachers. He further submitted that “all things being equal” she should have noticed what was happening and protected her daughter. However, he contended that all things were not equal for three reasons:

- (i) Her unhappy childhood and background as related in the PSR.
- (ii) The fact that she had suffered a miscarriage in August 2019.
- (iii) Coercive control as referenced at some points in the depositions.

Sentencing of Mrs Wahab

[43] This has proved to be a difficult exercise because the basis of the guilty plea is so ill defined and because the case advanced for Mrs Wahab is in some respects contradictory. For example, in the PSR, she insists that her husband was not a violent man. At this point they have been separated by being detained in different prisons for three and a half years. Yet contrary to her specific instructions I have been invited by her counsel to treat her as a victim of a violent controlling man.

[44] So far as the issue about the teacher’s failure to notice any problems is concerned, as Mr McCollum highlighted in response, Nadia went to school in traditional Muslim dress, largely covered up. In addition, her attendance at school was inconsistent. In any event, if Nadia was a much loved and protected child as has been suggested, how did her mother not notice her multiple injuries over five months when she helped her to dress and bathe?

[45] I accept the possibility, but only the possibility, that Mrs Wahab is a victim of some level of control by her husband, but I do not accept for a second that she did not know that Nadia was being repeatedly beaten and attacked by her husband. In terms of aggravating features, Nadia's age and defencelessness are clearly relevant but they are inherent in the charges which are causing or allowing the death of a child or serious physical harm to a child. The real aggravating feature here is that Nadia's death was not the result of a loss of temper or control which had rarely happened before and was not expected to happen again. As counts 9 and 16 make clear, this pattern of brutal criminal conduct had been going on for months. There were multiple opportunities to protect and save Nadia, none of which was taken by Mrs Wahab. That is how she "caused or allowed" her death and that is how she "caused or allowed" her to suffer serious physical harm.

[46] Ultimately counsel agreed that on the most serious count of causing or allowing Nadia's death, the range of sentence is probably between nine and 12 years. While 14 years is the statutory maximum, the possibility that there may in the future be an even worse case tends to steer a court away from the maximum sentence in any case.

[47] I recognise the mitigating factor of the background of Mrs Wahab and her unhappy early life but like the miscarriage which she suffered in August 2019, that mitigation does not go far. In particular it is difficult to understand why the loss of a child by miscarriage, a dreadful experience for any woman, explains in any way the fact belatedly admitted by Mrs Wahab that she caused or allowed her husband to attack and kill Nadia. If anything, the miscarriage should have made her more protective of Nadia rather than less. The unavoidable truth for every parent or adult is that we have an absolute duty to protect children from harm. Mrs Wahab brought Nadia into this world but did not do that. She completely failed Nadia. For that she must be punished. (This failure on her part also explains why she has suffered the loss, almost certainly permanent, of her two younger children.)

[48] While Mrs Wahab is entitled to some allowance in her sentencing for her late guilty plea, I consider that this is largely negated by the fact that I must also sentence her on counts 9 and 16. In order to avoid an excessive total sentence I will impose on her a sentence on count 2 and make the sentences on count 9 and 16 concurrent.

[49] Bringing all of these factors and considerations together, I impose on Mrs Wahab a sentence of 11 years' imprisonment on count 2 and concurrent sentences of six years on count 9 and eight years on count 12. Had I not imposed concurrent sentences, I would have ended at the same point by imposing a lesser sentence on count 2 and at least one consecutive sentence on counts 9 or 16.

[50] Of those 11 years' imprisonment, Mrs Wahab is to serve five and a half years in custody and five and a half years on licence. That division of the sentence is imposed by statute: it is not a matter over which judges have any control in the vast

majority of cases. As already indicated, I approve the suggestions as to license conditions in the PSR for consideration upon her release if she stays in Northern Ireland.