

Neutral Citation No. [2010] NICC 51

Ref: **HAR7990**

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

Delivered: **17/12/2010**

IN THE CROWN COURT IN NORTHERN IRELAND

**ENNISKILLEN CROWN COURT
(sitting at Belfast)**

THE QUEEN

v

ANETA SADOWSKA

HART J

[1] The defendant is before the court to be sentenced for the manslaughter of Marek Seweryn on 15 December 2008. She was originally charged with his murder, but at the trial she asked to be rearraigned and pleaded guilty to manslaughter on the grounds of diminished responsibility, and this plea has been accepted by the prosecution.

[2] The defendant is a 38 year old Polish woman, and in December 2008 lived with Marek Seweryn, also a Polish national, in an apartment at 2 Rathrowan House, Hospital Road, Omagh. She worked in a restaurant in High Street, Omagh called The Shoppers Rest, but Marek Seweryn (whom I shall refer to as the deceased) had not worked for some time. They had a small child, and on Sunday 14 December arrangements had been made for the christening of the child. The deceased's brother Jacek came from Poland to act as godfather to the child, and was staying in the flat that night.

[3] The undisputed evidence is that certainly following the christening, if not even before it, the deceased and his brother were drinking, and by the late hours of Sunday 14 and the early hours of Monday 15 December both men were severely intoxicated. Although the defendant went to bed it is accepted by the prosecution that at some stage the deceased woke her up and insisted that she join them in their drinking, and as a result she was also severely intoxicated.

[4] The exact circumstances in which the deceased met his death are to some extent unclear, because only he and the defendant were present when the stab wounds which brought about his death were inflicted. However, it is clear from the account the defendant gave to the police, as well as from evidence from Jacek Seweryn and other witnesses, that the defendant and the deceased had been arguing for some hours prior to his death. It appears that during the argument the defendant's voice was raised in anger.

[5] The evidence of Jacek Seweryn was that the argument was started by the defendant who accused the deceased of being lazy because she went to work whilst he remained at home and looked after their child. The deceased had been unemployed for some considerable time prior to his death. Jacek Seweryn went on to describe how at one stage that night the defendant and the deceased shouted and pushed at each other, and then the defendant slapped the deceased hard on his face with her open hand two or three times. He went on to say that eventually he lay on the sofa to rest and heard them continuing their argument in another room.

[6] He said the defendant then burst into the living room, saying that she needed help, and when he went to see what had happened he found his brother gravely injured. Help was sought, but when the ambulance personnel and police arrived it was clear that the deceased was not going to survive and he died shortly afterwards.

[7] A post mortem examination by Dr Ingram, the Assistant State Pathologist for Northern Ireland, found that three stab wounds had been inflicted upon the deceased. The first involved a wound to the chest which penetrated the heart, causing massive bleeding which was responsible for the collapse and rapid death of the deceased. There was a second deep stab wound to the right side of the deceased's abdomen. There was a third stab wound on the lower left forearm, the wound showing that the knife entered on the inner side of the back of the forearm before emerging on the outer side of the back of the forearm. This led Dr Ingram to conclude that the third wound could have been inflicted whilst the left forearm was raised in a defensive gesture.

[8] These were not the only signs of injury, because he also observed a laceration of the right forehead, together with bruising of the scalp beneath the laceration, which he concluded was the result of the deceased having been struck by a blunt object.

[9] In addition there was bruising to the right side of the neck which Dr Ingram felt could have been inflicted if the collar of the deceased had been grasped tightly round his neck. There were also spots of abrasions, bruises and abrasions to the forehead, chest, right shoulder, base of the right thumb, on the inner side of the upper left arm, on the left wrist and on the right thigh.

[10] An analysis of the blood alcohol concentration in the deceased's blood at the time of his death showed that there were 339 milligrams of alcohol per 100 millilitres of blood present, a concentration which led Dr Ingram to conclude that "he was very heavily intoxicated when he died".

[11] When questioned by the police the defendant gave a number of explanations as to how the deceased came to have been stabbed, but these explanations were far from clear. She maintained that both the deceased and his brother had been arguing with her and insulting her by stating that she needed to "change her blood", which she believed to be a reference to her having come from a different region in Poland to the deceased and his brother. In her defence statement she asserted that she feared that the two males were going to cut her, they appeared aggressive and she accepted that she had a knife in her hand, but made the case that this was placed there by the deceased who was taunting her about cutting herself because she had "dirty blood". She went on to state that she was uncertain as to the actual mechanism whereby the knife became implanted in the deceased's chest, but remembered being held by his brother, struggling and her hands being grabbed, and trying to pull her hands free.

[12] In the immediate aftermath of the stabbing the defendant went into an adjoining flat occupied by a Polish friend and her partner and said that it had been a joke, "that she just wanted to scare him and that he had put his hands towards her". She made various remarks to the same effect to this neighbour, and to a number of police officers who came to the scene, asserting that the deceased had punched or struck her.

[13] Her friend noticed that the defendant's left eye was slightly swollen, and when the defendant was examined for the first time at 4.45 am by Dr Pollock, a forensic medical officer, he noted bruising to her left eye and accepted that this was consistent with the defendant's assertion that she had been struck. He also noted an erythema on her right wrist, together with bruises on the left posterior forearm.

[14] At the request of the police who noted other marks on the defendant's person later that day, arrangements were made for Dr Pollock to examine the defendant again at 12.15 pm. He found that by now there were bruises on her right hand, right lower back, left posterior, right neck and left knee and leg, as well as a chipped second right upper tooth.

[15] The evidence is consistent with a drunken argument having taken place between the defendant and the deceased over some hours prior to the deceased's death. During that time the evidence of the bruising and other marks found on both the defendant and the deceased would suggest that during the course of that drunken argument each inflicted violence upon the

other, and that at the conclusion of the argument the defendant stabbed the deceased three times, thereby causing his rapid death. When the scene was examined two bloodstained kitchen knives were found which were examined by Janson Bennett of FSNI. One was a large knife with a blade 19.5 cm long. This was heavily bloodstained. The second knife was smaller, the blade being 7.5 cm in length, with blood stains on the hilt and tip. DNA examination of the blood from both knives showed that the blood matched that of the deceased. It is therefore clear that the defendant used both knives to attack the deceased, and that the defendant used the smaller knife to inflict the wound on the left forearm of the deceased.

[16] The defendant was examined by Dr Maria O’Kane, a consultant psychiatrist, on her own behalf; and by Dr Fred Browne, a consultant forensic psychiatrist, on behalf of the prosecution. These very comprehensive and detailed reports were made available to the prosecution. Unfortunately these did not become available until after the initial stage of selecting the jury had taken place, although Dr Browne produced his report for the prosecution at very short notice and at considerable personal inconvenience. These reports are very detailed, and there are a number of discrepancies in the accounts the defendant has given about her background. Nevertheless, there are certain common features which have been identified by both Dr O’Kane and Dr Browne. These can be summarised as follows.

1. The defendant was subjected to, and witnessed, much physical violence during her childhood.
2. The defendant did not enjoy close relationships with either parent.
3. In her adolescence she was subjected to two traumatic incidents during which it appears that she was nearly raped.
4. There was a history of anxiety symptoms and some depression.
5. During her marriage which preceded her relationship with the deceased she was subjected to physical and verbal abuse by her then husband as a result of his drunken violence, and she felt humiliated by his apparent infidelity.
6. She found herself in a similar relationship with the deceased who, although she described him as a good and calm man to start with, had lost his job, drank heavily, and was of a jealous and controlling disposition.

7. Their relationship was punctuated by disagreements and arguments as the result of, amongst other matters, his violence towards her and the incessant sexual demands he made upon her.
8. Her alcohol consumption increased very substantially. It is significant that a number of witnesses describe both the deceased and the defendant as drinking frequently and heavily. A back calculation carried out on behalf of the prosecution upon the blood sample taken from the defendant more than five hours after the incident suggested that she may have had a blood alcohol reading at the time of the stabbing of 242 milligrams of alcohol per 100 millilitres of blood, that is at least three times the drink driving limit.

[17] Both Dr O’Kane and Dr Browne concluded that at the time of the stabbing the defendant was suffering from an abnormality of mind. Dr O’Kane takes the view that –

“Aneta Sadowska was suffering from a mental abnormality which substantially impaired her mental responsibility for her acts. I believe that this transient mental abnormality occurred as a result of a dissociative state as a result of long term and severe physical, emotional and sexual trauma.”

[18] Dr Browne’s conclusion is also that the defendant was suffering from diminished responsibility at the time, although he concluded that the defendant –

“. . . shows evidence of using dissociative mental mechanisms that allow her to dissociate her conscious awareness from emotions that are probably too painful for her to tolerate.”

Having considered the extent to which this condition could be said to comply with any of the recognised psychiatric conditions Dr Browne concluded –

“In the current case I take the view that Ms Sadowska’s experiences of trauma and abuse over the years and the pressures she was experiencing during the period leading up to the index incident led to her suffering from an abnormality of mind . . .

this mental abnormality increased the likelihood of her behaving in a violent manner at the time of the index incident and that the mental abnormality substantially impaired her mental responsibility for the killing.”

[19] I have already referred to the substantial amount of alcohol the defendant had consumed, and Dr O’Kane says that the defendant –

“does not have a clear memory for the killing of Marek and I believe this to be due to a combination of the alcohol imbibed (7-10 units over the preceding 24 hours) plus her tendency to dissociate in stressful situations.”

[20] Dr Browne also refers to the amount of alcohol and says that –

“I consider that the alcohol would have had a significant disinhibiting effect on her, however I also consider that she still had an underlying mental abnormality that substantially impaired her mental responsibility for her actions.”

[21] I am satisfied that the defendant consumed a very considerable quantity of alcohol that night, and argued with the deceased while in a drunken state, but was, as Dr O’Kane and Dr Browne have concluded, suffering from a state of diminished responsibility which has reduced the legal effect of her conduct to the lesser offence of manslaughter. That is not to say that she does not bear some responsibility for her actions. In R v. Chambers (1983) 5 Cr.App.R. (S) 190 Leonard J described the approach to be adopted in such cases as follows –

“In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probability, be one of life imprisonment.

In cases where the evidence indicates that the accused’s responsibility for his acts was so grossly impaired that his degree of responsibility for them

was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom possibly with some supervision.

There will however be cases in which there is no proper basis for a hospital order; but in which the accused's degree of responsibility is not minimal. In such cases the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."

[22] In R v. Stubbs (1994) 15 Cr.App.R. (S) Lord Taylor CJ said -

"It has to be remembered that diminished responsibility does not mean - and this has been said before in this Court - totally extinguished responsibility. It is not a defence which necessarily involves that there is no blame, no culpability deserving of punishment and indeed of custody in the person who has committed the offence."

[23] I am satisfied that the defendant's minimal responsibility for this crime, or "residual responsibility" as it is sometimes described, is considerable, notwithstanding that she was suffering from diminished responsibility at the time. She had been drinking heavily for a lengthy period of time, and engaging in reciprocal violence with the deceased. Although she herself was subjected to violence, nonetheless the evidence shows that she was capable of inflicting violence in addition to the three stab wounds which she inflicted, and armed herself with not one but two knives to inflict those stab wounds.

[24] In R v. Magee Kerr LCJ stated that in cases of manslaughter involving the use of violence, and in particular the use of weapons, the appropriate sentence where the matter was contested should be between 8 to 15 years imprisonment. In the present case there are three aggravating factors. The first is the use of two knives; the second is that three wounds were inflicted, and the third is that other blows were inflicted on the deceased as can be seen from the nature of the injuries found by Dr Ingram.

[25] Therefore, whilst the defendant is entitled to be sentenced on the basis that she was suffering from diminished responsibility at the time, the factors to

which I have referred suggest that she had a significant degree of residual responsibility for her actions.

[26] I have received a victim impact report on Jacek Seweryn compiled by the police which recounts the considerable impact that the events of that night have had upon him and upon his parents in particular, and upon the children of the deceased by his previous marriage.

[27] I have the benefit of a pre-sentence report on the defendant. This examines her background in some detail, but does not add to the material upon which Dr O’Kane and Dr Browne reached their conclusions to which I have already referred. Dr Browne has produced a supplementary report in which he concludes that she is

“at low risk of violence towards strangers, but there is a substantial risk that she could enter another relationship with a man and again pose a significant risk of violence towards him.”

The pre-sentence report concludes that there is a medium likelihood of re-offending. It also describes the efforts the defendant has made to find work whilst on bail, and the various training courses she has undergone, and she is clearly a very hard-working woman.

[28] I have been provided with a number of references which testify to her strong work ethic, and to her commitment to maintaining as close a relationship as possible with her young child here in Northern Ireland, and her older daughter in Poland. In particular I also had the benefit of oral evidence from Dr Gregory Skibinski. He and his wife are scientists of Polish origin but are now naturalised British citizens. They have been working closely with the Polish community in Northern Ireland amongst others, and have befriended the defendant during her time on remand and done much to help her. Their efforts to provide practical and personal support for the defendant are to be greatly commended, and I accept their assessment that she was shocked by her act and overwhelmed by guilt. I also accept that she has shown that she is willing to do whatever is necessary to achieve a stable lifestyle, and it is to her credit that she has done so.

[29] She has a clear record, and I am satisfied that she has displayed genuine and considerable remorse for her actions. She has pleaded guilty, and is entitled to credit for that. Although she did not plead guilty to manslaughter until the trial had begun, I am satisfied that she did so at the earliest point when all of the psychiatric evidence was available to enable the prosecution to make an informed decision to accept her plea, and I therefore give her the maximum credit for her plea. I also take into account that she

will inevitably be separated from her young children by virtue of a custodial sentence and that some allowance should be made for that.

[30] Mrs Dinsmore QC (who appears for the prosecution with Mr Reed), and Miss McDermott QC (who appears for the defendant with Mr Brolly) agree that because this offence was committed before all of the provisions of the Criminal Justice (Northern Ireland) Order 2008 (the 2008 Order) had been brought into effect it falls partly under the 2008 Order. The court has to consider the dangerousness provisions of the 2008 Order, and whether a life sentence, an indeterminate sentence or an extended custodial sentence is required. I do not consider that any of the three forms of sentence to which I have referred would be appropriate in the present case because the accused has an otherwise clear record, and there is no evidence to suggest that the risk of harm to members of the public from her in the future would be a significant one.

[31] Having reached that conclusion, she must be sentenced under the pre-existing sentencing regime. I am satisfied that this is a case in which I should consider imposing a custody probation order because the defendant clearly has a considerable alcohol problem, and it is in the public interest that she should have the opportunity to address this. The pre-sentence report refers to the defendant's problems with alcohol and the need for her to abstain from alcohol in the future. Dr Browne has also drawn attention to the risk of violence if her alcohol consumption were to escalate as she struggled to deal with her problems. Although the pre-sentence report does not recommend attendance at an alcohol management course, I consider that the defendant would benefit from probation supervision upon her release to help monitor her alcohol consumption in particular, and to help her develop insight into her own anger. Provided the defendant consents I am prepared to impose a custody probation order of 4 years custody followed by 3 years probation. If the defendant had not consented the sentence would have been one of 7 years imprisonment.