

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

DIANE NORTHCOTT

HART J

[1] Diane Northcott is a 41 year old woman who is before the court to be sentenced on her plea of guilty to the attempted murder of Laurence Smyth on 16 September 2006.

[2] In September 2006 the defendant was a part-time police officer attached to Newtownabbey Police Station where she had served for some twenty years. Sergeant Laurence Smyth was a colleague in the same station, and for some considerable period of time they had a somewhat on/off relationship. On Saturday 16 September 2006 she had been drinking heavily and went to Newtownabbey Police Station where she met Sergeant Smyth. He described in his statement how he was concerned that she had been drinking and he learnt that she had driven to the police station. He decided that it would be necessary to arrest her in order to stop her driving out of the station and causing an accident, so he told her to go to the recreation room and wait for him there. She went to the locker room and took her police issue pistol from her locker. She checked the gun to ensure that it was loaded and that there was a live round in the chamber.

[3] When Sergeant Smyth arrived at the recreation room the defendant was the only other person in the room. He described how she was facing him with her hands behind her back. He was concerned about her stance because he did not know where her gun was, and he started to back out into the corridor to the outer door. He again asked her where her gun was, and described her then bringing her gun out from behind her back in her right hand, swinging it slowly from right to left until it was pointing at him, with the gun dropping to a shallow angle. He then heard a shot and felt "a thud in

my right thigh, it was sore but there was no excruciating pain, it was so sudden". He had been shot in the right groin, but was able to hop down the flight of steps outside the recreation room shouting for help, and ran towards the sergeant's office. The defendant followed him to the door of the recreation hut and shot him a second time, and this bullet entered his neck. Mr Mateer QC, who appeared on behalf of the prosecution with Mr Gary McCrudden, said that it was not entirely clear whether the second shot had been fired before Sergeant Smyth fell, or he fell because of the effect of the first shot, and was shot a second time while he lay on the ground.

[4] Mr Leo Rossi of the Forensic Science Laboratory carried out tests on Sergeant Smyth's clothing using a similar firearm to that fired by the defendant. He concluded that:

"A bullet had passed into the upper right trouser leg without exiting and that another bullet had passed into the back of the pullover to exit from the right neck/shoulder area.

This shows that, in all probability, [Sergeant Smyth] had been facing the muzzle of the discharge pistol for the first shot and had subsequently turned and bent forwards as a second projectile had been discharged.

...

One of the fired cartridge cases was recovered from the recreation room and another from the top entrance steps. This shows that one shot had been discharged in the recreation room and another in the area of the top step recreation room entrance. This second shot being directed downwards towards the fleeing [Sergeant Smyth]."

[5] Other officers heard the shots, and Sergeant Reid ran out of the sergeant's office with his gun and saw the defendant walking towards Sergeant Smyth holding a handgun in her right hand. He saw her walk up to him and come to a stop standing directly over his head. Sergeant Reid called on her to drop her gun and had to do so two or three times before she complied. He then made her move away, overpowered and restrained her. Her response at that time was to say "I'm complying, I'm complying" and "I know my rights, I know my rights".

[6] Once the defendant had been arrested she was taken into custody and was heard to say "I should have just shot myself at the same time and it would have saved all this hassle wouldn't it?", and "Wished I'd finished myself off at the same time, wish I had, it would have saved all this auld crap,

sorry". These and other remarks were recorded by the custody sergeant who asked her did she wish to sign the custody record containing these remarks, to which she replied "No I'm not saying anything else. I know what I've done. If I had of sorted myself out at the same time I wouldn't be here, so there you go."

[7] When the defendant was interviewed she described their relationship and how she had been drinking earlier that day. It appears from her interviews, and the accounts that she gave to the psychiatrists and the psychologist who have examined her, that the relationship between herself and Sergeant Smyth had deteriorated, that she had been drinking heavily, and that afternoon she had an argument with her mother about her drinking. She rang Sergeant Smyth and told him that she had had a fight with her mother, but he said that he could not talk to her at that time. She continued drinking, and later that evening decided to go down to the police station to speak to him. She described how they spoke in the recreation room, she asked him could they not sort things out to which she said he replied "No he says that's it, he says it over, he says get somebody else to help you sort your course work out. He says I've had enough, I says so have I, and I says I can't go on like this any longer".

[8] When asked how did she feel about what he had said to her she replied:

"Devastated, devastated. I didn't want to be without him, I didn't want to have him not in my life. I did everything for him you know, made his dinner, did all his wash his, or not his washing his ironing, we did everything together, we went out on the motorbikes, we went out seeing his trains and stuff."

[9] Later during interview she said that she wanted to commit suicide so that he would feel bad at what she had done. She made the case to Professor Maden, a consultant forensic psychiatrist, and Dr Weir, a consultant clinical psychologist, both of whom examined her on her behalf, that it was her intention to commit suicide when she went to the station.

[10] Even if it was the defendant's intention to commit suicide when she went to the police station, she has admitted that she attempted to murder Sergeant Smyth. Given that she had taken the gun from her locker, checked to see that it was loaded, pointed the gun at him in the recreation room and shot him in the upper thigh, followed him and fired a second shot which hit him in the back and exited from the right neck/shoulder area, the evidence that she intended to kill him was overwhelming. Throughout interview she continued to deny that she had intended to kill him.

[11] Sergeant Smyth has suffered extremely grave injuries as the result of the bullet wounds. A report prepared by Dr Suzanne Maguire of the Spinal Cord Injuries Unit of Musgrave Park Hospital dated 17 May 2007 states:

“While there have been some improvements in his condition he continues to present with complete tetraplegia. This means he has involvement of his muscles from C3 level on the right and the C6 level on the left. Functionally, he has a weak right arm, a slightly stronger left arm and complete paralysis from the upper chest with no voluntary movement in the lower chest muscles, the abdominal muscles or the muscles of the lower limbs. In addition he has alteration of his sensation with a sensory level of C7, meaning that he has good sensation in his upper limbs and shoulders and impaired and absent sensation below this. He has neuropathic bladder and bowel dysfunction and has been instructed in intermittent self-catheterisation to drain his bladder and requires assistance from nursing staff to manage his bowels.”

[12] It appears he has made good progress in his rehabilitation, but he will continue to require a wheelchair for the remainder of his life, and is gravely and permanently disabled as a result of his injuries. A further report from Dr Maguire says that functionally there has been no change from the previous report, saying that “There has been no change in his neurological function and he remains significantly disabled”. She went on to say that his condition is permanent, and that although she expects him

“...to maintain his current level of independence for a period of time, however as he ages in the future it is likely he will require additional help. He requires a significant amount of equipment and housing adaptations to enable him to live as independently as he does. Given the nature of his injuries his life expectancy is reduced. He was 41 years of age at the time which on review of statistics from UK 2003 would estimate without spinal cord injury, his life expectancy would have been in the region of 39.8 years. Figures from the US and UK for spinal cord injury would suggest his life expectancy is reduced to a figure of between 20 and 24 years post injury. The extent to which this is reduced depends on a number of factors including the likelihood of him developing other complications.”

[13] I have also been provided with a statement by Sergeant Smyth in which he describes the effect of his injuries on his daily life. He describes the problems caused by incontinence; the emotional impact; the reduction in the quality of life because of the way in which his mobility has been drastically reduced, and his inability to take part in the active professional career and lifestyle he enjoyed before these events. I do not consider it necessary to describe these matters in detail, but it is clear that the cumulative effect of his injuries has been catastrophic.

[14] The accused has also been examined by Dr Christine Kennedy, a consultant forensic psychiatrist, on behalf of the prosecution. Professor Maden and Dr Kennedy agreed the accused was not suffering from any psychiatric condition which would have affected her ability to form the necessary intent for attempted murder. She has a well-documented and lengthy history of depression, first developing symptoms after the birth of her daughter in 1999. These symptoms appear to have been sufficiently serious to contribute to the breakdown of her marriage, and to have prevented her from working for over three years. During her relationship with Sergeant Smyth she became pregnant by him and arranged an abortion, although she told him she had a miscarriage. In the months leading up to the offence she had a recurrence of depression and was receiving various forms of medication for her depression at the time.

[15] Professor Maden, Dr Weir and Dr Kennedy all referred to her heavy drinking, and the defendant gives an account of drinking heavily for many years. Dr Kennedy concluded that not only did the defendant suffer from depressive symptoms, but she also appeared to meet the diagnostic criteria for alcohol dependence syndrome. She told Dr Maden that she bitterly regrets what she has done. The pre-sentence report does not add anything to the descriptions of her background contained in the psychiatric and psychologist's reports, save that the defendant told the probation officer that she was subjected to a sexual assault aged 9. She did not tell Dr Maden or Dr Weir about this, although she did tell Dr Kennedy. Dr Kennedy's diagnosis of alcohol dependence syndrome is born out by the defendant's own account of her heavy drinking, and by her breach of her bail conditions which required her to abstain from alcohol.

[16] I fully accept that the defendant suffered from depression at the time she committed these offences, that she was affected by alcohol at the time, and that she has had an unhappy past. Mr Gallagher QC, who appeared on behalf of the defendant with Mr McAlinden, said that when she met Sergeant Smyth in 2003 the defendant was clearly mentally vulnerable. Given her psychiatric history that was no doubt the case, but it must also be remembered that, according to the defendant's account to Dr Weir, it was the defendant who "made a move", leading to the start of the relationship

between herself and Sergeant Smyth, and that she had casual affairs with others in the past. Dr Weir said in her evidence that the defendant's biggest fear was that Sergeant Smyth would abandon her. She accepted in cross examination that the defendant did not say in consultation with her that Sergeant Smyth suggested she should have an abortion in 2006, rather that the defendant's agenda was to do whatever she thought might keep him. The defendant appears to have been obsessed by him and her relationship with him, and I am satisfied that it was his desire to bring their relationship to an end that led her to fire the shots in an attempt to kill him.

[17] Sentences for cases of attempted murder cover a very wide spectrum, as can be seen from the numerous cases contained in *Butterworth's Sentencing Practice* at B2-1. The range appears to extend from six years on a plea of guilty, see R v Hough [2001] 1 Cr. App. R. (S) 261, to twenty years on conviction after a plea of not guilty, see R v Edwards [2003] NICA 11, although Newman J in R v Sandasi [2005] 2 Cr. App. R. (S) 92 observed that cases for attempted murder arising out of domestic conflicts indicate

“That, on a conviction after a trial, a sentence of 15 or 16 years would normally mark the top end of the range. As a result sentences of ten years are commonly imposed on pleas of guilty.”

[18] As may be expected of a person who was not only a part-time police officer for 20 years, but worked in remunerative employment in civilian life, the defendant is a person of previous good character.

[19] Of particular significance is the catastrophic nature of the injuries she has inflicted upon Sergeant Smyth, and the extremely grave disability from which he will suffer for the rest of his life. This requires a sentence at the upper end of the appropriate scale for cases of attempted murder.

[20] The defendant has pleaded guilty and is entitled to the appropriate credit for that. However, as was pointed out in R v Pollock [2005] NICA 43 “The greatest discount is reserved for those cases where a defendant admits his guilt at the outset”. In this case the defendant denied during interview that she intended to kill Sergeant Smyth, and she did not enter her plea of guilty until the morning of the trial when the jury was about to be sworn. Even if one makes allowance for the fact that the defence wished to explore the question of her mental fitness at the time of the offence to see whether there was any possible medical defence, it remains the position that Professor Maden's report was available in early January 2008, and the case was mentioned at review hearings on a number occasions after that, and even then the defendant did not ask to be re-arraigned until the morning of her trial. Mr Gallagher QC suggested that there might have been a prospect of successfully defending the charge as it was the defendant's case that she did

not have a clear recollection of her actions, but that nevertheless she could not face a trial. Be that as it may, the evidence against her of attempted murder was overwhelming. In these circumstances, whilst she is entitled to a degree of credit for her plea of guilty, it is significantly less than it otherwise would have been because of the late stage at which the plea was entered.

[21] Although the defendant denied in interview that she intended to kill him, she did express remorse for her actions, saying at p.144 of the interviews:

“I did love him, I did, I still do. And I am sorry for what has happened. Really sorry for what has happened, I know I’ve probably ruined his life and my own I didn’t intend to ruin his life , if anybody’s life should have been ruined it should have been mine.”

Dr Weir described how the defendant was in great distress when she first saw her. Dr Maden records that she bitterly regrets what she has done and that she still loves him, and she expressed similar sentiments to Dr Kennedy, who records that she feels extremely remorseful. The author of the pre-sentence report states that she

“expressed clear regret for her actions. She displays in my view awareness and understanding as to how her behaviour has devastated Mr Smyth’s life”.

[22] I am required to consider whether a custody probation order is appropriate. I have considered the pre-sentence report. I do not consider that this is an appropriate case for a custody probation order because there is nothing to indicate that the defendant will commit any offence of this or a similar nature in future.

[23] Had the defendant been convicted after a plea of not guilty I consider that the appropriate sentence would have been one of 16 years imprisonment in view of the catastrophic effects upon Sergeant Smyth of the defendant’s actions. Taking into account her plea of guilty, and her unhappy background to which reference has already been made, I sentence her to twelve years imprisonment.