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Ref:

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

Delivered: 21/12/09

R v TANYA DIANA HOLMES

R v ROY MARTIN KERR

ICOS 09/020585

Sentencing Remarks

His Honour Judge Miller QC

- 1.) The Defendants were jointly charged with eight counts relating to events in the early hours of Thursday 8th May 2008 as follows:
 - i.) Attempted Murder of Raymond White, contrary to Article 3 (1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law;
 - ii.) Attempted Murder of Aileen White;
 - iii.) Attempted Murder of David Raymond White;
 - iv.) Arson, contrary to Article 3 (1) and (3) of the Criminal Damage (Northern Ireland) Order 1977 relating to the lighting of a fire in a wheelie bin and damage to property being 49 Kensington Road, Belfast, with intent thereby to endanger the lives of Raymond White, Aileen White and David Raymond White.
 - v.) An alternative and lesser count of arson relating to the same circumstances but being reckless as to whether the lives of the named members of the White family would thereby be endangered;
 - vi.) Attempted Arson, contrary to Article 3 (1) and (3) of the Criminal Damage (Northern Ireland) order 1977 and Article 3 (1) of the Criminal Attempts and Conspiracy Order 1983 relating to an attempt to destroy by fire a Jaguar car VRM EIL 151, belonging to Raymond White;
 - vii.) Attempted Arson relating to an attempt to destroy by fire a Renault car VRM MEZ 8577 belonging to Aileen White;

viii.) Attempted Arson relating to an attempt to destroy by fire a Volkswagen car VRM NCZ 1434, belonging to David Raymond White.

ix.) In addition the defendants were jointly charged with an offence of Handling Stolen Goods, contrary to Section 21 (1) of the Theft Act (Northern Ireland) 1969 relating to a Ford Fiesta car VRM Y602 WGE and personal items in that vehicle all of which belonged to a John Campbell and members of his family. This offence covered the period from 26th April 2008 to 9th May 2008.

2.) After a trial lasting two weeks Kerr was unanimously convicted of Counts (i) – (iv) and (vi) – (ix) whilst Holmes was convicted of Counts (v) – (ix).

3.) Before turning to an assessment of the sentencing considerations applicable to the case of each defendant I intend to set out in brief terms the background to the case.

4.) At approximately 5.30 am on the morning of Thursday 8th May 2008, the late Dr Raymond White, his wife Aileen and son, David were in bed at their home at 49 Kensington Road, in East Belfast. Raymond White was awakened by the sound of a shout from a male voice and on looking out the window of his bedroom at the rear of the house, observed flames near the conservatory.

5.) Dr. White roused his wife and son and made his way downstairs exiting the house by the front door where he observed a blue wheelie bin pushed to the outside of the said door. He later discovered that this bin had been partially filled with newspaper. A second smaller bin also filled with paper and a branch of a tree had been placed directly outside the side door of the property and a grey wheelie bin also stuffed with papers was lying on its side and against the last remaining exit, that being the conservatory doors. This grey bin was lit and flames were licking the side of the PVC doors.

6.) It was apparent that tyres on each of the family cars (a Jaguar, a Renault Megane and a Volkswagen Polo) parked at the front and side of the house had been deflated and newspapers stuffed under wheel arches.

7.) David White, the son of Mr & Mrs White slept in a bedroom to the front of the house and on being awakened by the shouts of his father he ran to his window where he observed two persons running down the driveway to the

side of the house and out onto Kensington Road. He described these two persons as being a male aged early to mid twenties, 5'7" – 5'9" tall, slender build. This person was wearing a dark grey woollen beanie hat, pulled down so that his hair was not visible. He was wearing a dark coloured top or jumper and dark coloured bottoms, which may have been track suit bottoms. The male was accompanied by a female aged about 25, about 5'5" – 5'6" and of slightly over-weight build with dark black straight hair extending down to around her shoulders. This girl was wearing a baggy bright red sweater-track suit like top and navy tracksuit bottoms with, he believed perhaps two stripes down each leg. Shortly after the two persons disappeared from sight he heard the screech of a car leaving at speed.

8.) Examination of the scene revealed a small green plastic (5L) petrol can exhibiting signs of scorch damage on the patio behind the conservatory. This did not belong to the White family. There was no evidence of any other item used in the attack having been brought to the scene. Both the bins and the newspapers used to fill them and placed on the wheel arches of the cars appeared to have come from the secure area at the side of the house.

9.) At approximately 6.15am police were tasked to the A & E Unit at the Mater Hospital following a report that a male and female were in attendance with the male reporting burn injuries to his hand. The male was identified as the defendant Roy Kerr and the female as the defendant Tanya Holmes. Kerr had very bad burns to the fingers of his right hand.

10.) A vehicle associated with Kerr and Holmes was located outside the hospital. This was a green Ford Focus bearing what transpired were false number plates. Holmes had the keys of this car in her tracksuit pocket and when the vehicle was inspected a number of items associated with both she and Kerr were found inside. These included a brown purse containing a receipt from an Ulster Bank ATM at the BP Station at Ballyhackamore timed at 2.18am that morning. There were also receipts from the same station for the following items: (a) a Clipper lighter; (b) a Unipart petrol 5 L petrol can and (c) just over 4 litres of unleaded petrol.

11.) As a result of these finds police visited the filling station and seized the CCTV coverage of the forecourt area taken at approximately 2.15 am on Thursday 8th May 2008. This footage clearly showed the same green Ford Focus pulling up at the pump. A male, who Kerr from the witness box, accepted was him is seen exiting the vehicle and returning shortly afterwards

with a green plastic petrol can, which he placed in the rear passenger compartment of the car.

12.) Holmes is also observed exiting the car and going to an ATM machine where she extracted money. She then proceeded to the night hatch before returning to the car.

13.) The petrol can referred to in the receipt was identified as identical to the one found at 49 Kensington Road and the Clipper lighter also referred to in the receipt was identical to the one found in the front passenger foot-well of the Ford Focus.

14.) Fingerprints attributable to both Kerr and Holmes were found on the exterior of the Ford Focus whilst others were found on the false number plate (Kerr) various DVD cases and a CD in the car (Holmes) and on the original front number plate (Holmes), which was located on top of the spare tyre under the boot floor.

15.) There were blisters and redness around all the fingers on the back of Kerr's left hand with possibly 3rd degree burns over the left thumb. On the palmer aspect of the left hand there were also blisters and redness around all the fingers though these were not circumferential. In addition there was evidence of petrol vapour and a burn mark on the toe area of the left trainer worn by Kerr at the time of his arrest. There was also a low level of vapour that could have originated from petrol on his right trainer and navy tracksuit bottoms.

16.) Holmes made "No Comment" responses during interviews with the police and at trial she didn't give evidence, but neither did she challenge that given by the Crown witnesses.

17.) For his part Kerr emphatically denied being at the White family home or of having anything to do with the incidents of arson and attempted arson that took place there. He told police that he had been at a BBQ somewhere in the Glengormley area and had received his injuries as a result of an accident whilst putting lighter fuel on the fire. He admitted knowing that the Ford Focus car was stolen but claimed that a friend of his from Scotland was responsible for this.

18.) Kerr gave evidence at his trial and whilst consistently maintaining a

complete denial of involvement in these offences, he accepted that he had lied to police with regard to several matters. In particular and in contradiction to what he had said previously he professed that he had been in Scotland a couple of weeks before the incidents and whilst there had broken into the Campbell home, stolen the keys and then the car.

19.) At the forefront of this case was the issue of the past history between the defendant Kerr and the White family. This was set out in the form of Bad Character evidence admitted by agreement between the parties and focused on two previous incidents.

20.) On the 26th May 2004 a burglary took place at the White family home at 49 Kensington Road. During this burglary a number of items were stolen and sometime later certain of those items were found in the possession of Roy Kerr. These items comprised a black folder, cheques, driving licences, identification passes and sets of keys. In addition Kerr had falsified Mr White's RVH identification pass by placing his own photograph on it with the intention of inducing another person to accept it as genuine.

21.) Kerr was prosecuted for the offences of Handling Stolen Goods and the fraudulent use of the said pass. Both Mr and Mrs. White were witnesses in the case against him. Kerr was convicted of the offences at Belfast Crown Court on 17th June 2005 and he received a total sentence of 3 years imprisonment in respect of these matters.

22.) Kerr was released from custody on 6th March 2006. Just over ten weeks later, on 25th May 2006 and exactly two years after the first, a second burglary occurred at the White home. This time a substantial number of items were stolen together with a Renault Megane car belonging to Mrs. White. Kerr was found in possession of this car and was charged with the offence of handling stolen goods and returned for trial before Belfast Crown Court. That trial was listed to be heard on the morning of Thursday 8th May 2008, just hours after the attack the subject of the present case. Once again both Mr & Mrs. White were to be witnesses in the case. As a result of this incident the trial could not proceed on that occasion. Some months later, however, on the 18th September 2008 Kerr pleaded guilty to receiving stolen goods, namely the said Renault Megane belonging to Mrs. White.

23.) The Crown, therefore, argued and the jury accepted that this background history provided clear and irrefutable evidence of a link between

Kerr and the White family and more than that it provided him with a motive for his actions at 49 Kensington Road on the morning of 8th May 2008.

24.) The consequence for the victims of the deliberate and sustained targeting by Kerr is made all too eloquently plain by the Victim Impact Reports prepared by Anne Kelly, Chartered Psychologist and Accredited Cognitive Psychotherapist. These were compiled after lengthy interviews conducted with both Mrs. White and her son Dr. David White. Apart from examining the effect upon each Miss. Kelly draws specific reference to the stated and shared belief of Mrs. White and her son that Kerr's actions had a profound effect upon the late Dr. White. I wish to make it clear I acknowledge that the circumstances leading to Dr. Raymond White taking his own life earlier this year are complex. Furthermore I accept that the cumulative effect of Kerr's actions culminating in the events of 8th May 2008 does not provide the sole cause or explanation for Dr White's death. Nevertheless I am satisfied that the realization that a person unknown to the family would conduct what they had every reason to believe was a personal vendetta against them, had a direct and devastating effect not only upon Dr. White but also his wife and son.

25.) I do not intend quoting at length from the reports because their contents are clearly sensitive in nature and to do so would intrude further upon the distress occasioned to the victims. I make it clear however, that I consider the deep psychological wounds and consequent personality changes experienced by the late Dr. Raymond White, his widow and son, owe their origins in great measure to Kerr's targeted campaign culminating in his attempt to murder them in the early hours of 8th May 2008. I illustrate this point with one selected quotation from Miss Kelly's report where Mrs. White records: -

“When the burglaries began, Raymond's identity was stolen and that Christmas we received a card from prison from him (the Defendant) advising us that he was sorry he couldn't be with us but that he and his friends were thinking of us.

This totally spooked us – and, with a second burglary – on exactly the same date – two years later, we knew that this was no ordinary burglar. It seemed that we were being stalked and we were continually anxious and vigilant for all of the past five years, especially Raymond.

But the fire took the whole thing onto a whole new level. It terrified me so much that I couldn't cope – I haven't been able to get anywhere near to emotionally dealing with Raymond's death because of it.”

The affect upon the victims amounts, I believe, to a further aggravating feature, which I must take into account when sentencing in this case. Further the sinister aspect associated with the deliberate targeting is a factor that is very relevant to an assessment of the risk Kerr poses to the public.

26.) I now turn to consider the issue of sentencing. Given that these offences occurred a week before the coming into effect of the Criminal Justice (NI) Order 2008 on 15th May 2008 the earlier Criminal Justice (NI) Order 1996 will govern the approach to this exercise.

27.) I shall take each defendant in turn as they appear on the Bill of Indictment.

28.) Tanya Diana Holmes is now 21 years of age having been born on the 3rd February 1988. She comes before the court with no previous convictions. I have had the benefit of a detailed Pre-Sentence Report prepared by Nicola McAuley and a report by Dr. Carol Weir focusing on the defendant's background, how this has impacted on her involvement with Kerr and steps necessary to address the risk of future offending.

29.) It is apparent that Holmes has been greatly affected by the consequences of the breakdown in her parents' marriage when she was 9 years of age and in particular by the impact of then living with her father over the following three years. Their relationship seems to have been characterized by episodes of physical abuse and this has in turn led her to adopt what is termed "dissociation" techniques in order to cope with rejection. It has also left her vulnerable to a person such as her co-accused to whom she apparently remains deeply attached. This gives rise to expressions of concern by both Miss McAuley and Dr. Weir and I share those concerns. I further note that because of her somewhat dysfunctional family background, experiences of periods of homelessness and bereavement, Miss Holmes has had recourse to drug misuse, which she accepts has had an adverse effect upon her emotional well-being.

30.) Whilst noting and acknowledging this defendant's susceptibility to fall under the influence of a person such as Kerr I note that both Miss McAuley and Dr. Weir refer to "manipulative traits in her personality" and to their conclusion that she appeared to deliver "information for affect and it was difficult to know when she was being truthful." I accept that she did not have any previous history with the White family and the Jury clearly by their

verdict determined that she had no intention to kill or endanger their lives. She was, however, a willing participant with Kerr and assisted him by attending at Kensington Park, providing the lighter and, on her account, acting as a lookout whilst he set about preparing to burn down the house. Her role as to the placing of the bins by the respective doors of the property may have been entirely passive but by so doing she showed a reckless disregard for the welfare of the people, whom she surely knew were asleep inside.

31.) I also note with some considerable misgiving the very limited appreciation expressed by Holmes of the consequences of her actions so far as the victims were concerned. Although there are references to her being “consumed with guilt” Miss McAuley concludes “I was unable to gauge if she fully recognizes or accepts the possibility of more serious consequences for the victims of the offence.”

32.) In this context and whilst acknowledging as previously stated, that she did not challenge the evidence of the Crown witnesses, she did maintain a denial of all the charges and thus I consider that she is not entitled to credit, which would have otherwise flowed from a plea of guilty even at a late stage of the trial process. Nevertheless I have taken fully into account all the matters raised on her behalf by Mr Harvey QC in his admirably and characteristically concise and focused submissions. I have considered the authorities including the leading decision of **R v McBride [NICA – 12.06.08]**. I note that although the defendant in that case, unlike Holmes, was an active participant and indeed principal in the offence, that he did plead guilty at the first opportunity. I am also concerned that in the case of the present defendant and notwithstanding her previous clear record, she is assessed as posing “a high risk of re-offending.” Concern is expressed in this context with her continued obsession with and belief in her co-accused and that this could impact upon her future susceptibility to offending but that she does not currently pose a risk of serious harm. This assessment is, however, predicated on her having access to intensive and structured supervision.

33.) Having considered all these matters I have formed the view, pursuant to my duties under Articles 19 & 20 of the 1996 Order that only a custodial sentence is appropriate. Further I have concluded that a custodial sentence of twelve months or more is justified. I have come to this conclusion because of the serious nature of the offences which have been outlined in this case. I consider that the sentence should be for a specific period of 5 years. I am,

however, in these circumstances obliged under Article 24(1) of the said Order to consider whether a Custody/Probation order should be imposed. For the reasons highlighted above I am so satisfied and now require your consent to such an order.

34.) On the basis of your acquiescence to the probation element the sentence of the court is as follows:

Count (v) – 3 years custody followed by 2 years probation including the following additional requirements – “that you shall reside in accommodation approved by the Supervising Probation Officer” and that in addition you “shall present yourself in accordance with the instructions given by the Probation Officer...to participate actively in an alcohol/drug counseling and/or treatment programme during the Probation period; and to comply with the instructions given by or under the authority of the person in charge.”

Counts (vi) – (viii) - 2 years custody;

Count (ix) – 1 year custody;

All sentences will run concurrent with each other. Otherwise the sentence would be 5 years in custody.

35.) I turn now to consider the case of Roy Martin Kerr. This defendant is clearly in a very different position to that of his co-accused. I have already set out in some detail the history of his involvement with the White family and the consequent effect that involvement has had on the individual members of that family. He has been convicted by the Jury of all the charges against him and in particular I must take note of their conclusion that he intended no less than the deaths of Dr Raymond White, his wife and son when he went to their home with Holmes in the early hours of Thursday 8th May last year.

36.) I specifically asked counsel for both Crown and Defence to address me on the considerations applicable to the imposition of a life sentence given the seriousness of the charges and also the underlying concerns regarding the level of danger posed by this defendant. These concerns were highlighted both during and following the trial. In this regard I draw reference, inter alia, to his medical records; letters written by him from prison to people not involved in this case but in which he makes reference to it as a means of adding weight to threats contained in those letters and also to reported threats to members of the White family made to a prison officer after the

jury had delivered their verdict upon him.

37.) This defendant is 31 years of age having been born on the 29th December 1977 in Inverness, Scotland. He comes before this court with a record of 134 previous convictions stretching back some 15/16 years. Many of these offences relate to acts of theft, burglary and Criminal Damage but there are also convictions for possession of an offensive weapon and serious assault and he has served sentences in both Scotland and Northern Ireland, to which he moved in or about 2004. As previously noted during the course of the trial the court had the benefit of seeing his medical notes and records and this made for disturbing reading.

38.) In addition to the medical records themselves I have had the benefit of receiving two reports from Dr. Loughrey, Consultant Psychiatrist, briefed on behalf of the Defendant and also one report from Dr. Christine Kennedy, Consultant Psychiatrist engaged by the Crown. Finally I have also received Mr Darnbrook's extremely thorough Pre-Sentence Report. I do not propose to set out all the issues highlighted in these various reports but would draw attention to the following matters:

- a) The defendant displayed behavioural problems from the age of 5/6. This was quite possibly linked to the rejection of him by his natural mother. By the time he had reached his mid-teens he had become involved in anti-social and pro-criminal behaviour and experimentation with substances other than alcohol and was committing car crime and burglary related offences.
- b) According to his father the defendant's offending reached such a point by the time he was 18 years of age that the wider family effectively disowned him.
- c) A report prepared by Dr. Ian Bownes, Consultant Forensic Psychiatrist, at the request of the PBNI in 2006 concluded that he showed signs of a severe dissocial personality disorder. This assessment was confirmed the following year in a further report by Dr. Bownes and this diagnosis appears to be accepted and supported by both Dr. Loughrey and Dr. Kennedy. That said there does not seem to be any firm basis for the defendant's own assertion that he was diagnosed as being a paranoid schizophrenic when 17 years of age and serving a custodial sentence in Scotland.
- d) Mr Darnbrook expressed the insightful observation that "***the defendant presents as an intelligent and articulate man who has nevertheless made a considered decision to lead a pro-criminal lifestyle and is not willing, motivated or able to accept the rules and social norms of society.***"

I consider that this assessment reflects also on the defendant's ability to

represent himself, his feelings and actions when speaking to a variety of professionals throughout the years of his criminal conduct, a matter highlighted by Dr Kennedy at paragraph 7.1 of her report.

39.) Dr Kennedy detected a considerable number of Psychopathic traits in Kerr, but because of a lack of extensive records she was unable to formally complete a Psychopathy Checklist. Similarly because of a lack of supporting material she was only able to partially complete an assessment of his posing an ongoing risk of violence, concluding that he fell ***“into a group of individuals who represent a moderate risk for repeat violence.”***

40.) I note that Kerr displayed no real appreciation still less concern for the welfare of his victims in this case. First he chose to give a lying account to police during interview as to his movements and actions on the night in question. He maintained a complete denial of any wrongdoing at trial and thereby forced Mrs. White and her son to give evidence. He then gave evidence on his own behalf in which he accepted that he had lied previously whilst insisting that his account to the jury was the truth. He then compounded these earlier lies by admitting for the first time to Mr Darnbrook that he had committed the acts of which he was accused but in so doing he sought to minimize his responsibility and to suggest that the White family had overstated the effect upon them of what had occurred.

41.) I further take note of his attempts to manipulate the court process both in the lead up to the trial and during it by refusing to enter the dock on several occasions unless or until certain demands had been met. His arrogance coupled with his obsession with perceived slights underlined a callous disregard for the true victims of his crime. For this reason I attach no weight to his account given to both Mr Darnbrook and then Dr Kennedy of the motivation behind his actions. I view these claims to be totally self-serving and lacking in any credibility.

42.) Turning to the specific threat posed by Kerr to Mrs. White and her remaining family Dr Kennedy states as follows: ***“While his criminal record does not appear to reflect the aggressive narcissism apparent in his personality, it would seem to be the case that he is capable of engendering considerable fear and intimidation in those he encounters who annoy him in some way...”*** That level of fear is all too apparent in the Victim Impact Reports to which I have made reference and is underscored by the defendant’s renewed threat to the family made to the prison officer after his

conviction. All these factors weigh heavily with me when I consider the appropriate form of sentence in this defendant's case.

43.) Mr. Terence McDonald QC appeared on behalf of Kerr and (together with Mr McConkey BL and their instructing solicitor) conducted his case with exemplary skill in very difficult circumstances. Alive to the concerns expressed by this court Mr McDonald argued that the defendant should be seen as a man of unstable character who perceived himself in grandiose terms. There was, he urged a divergence between what he claimed he could or would do and what happened in reality. Although the defendant had convictions for offences of violence the vast majority of his offending related to motoring matters and therefore Mr McDonald argued, the record, should not be viewed as an aggravating factor pursuant to Article 37 of the Criminal Justice (Northern Ireland) Order 1996. I consider that the relevance of this defendant's record and something I must take into account lies in the fact that the history of his relationship with the White family led directly to his committing the index offences. These most recent offences are in themselves of the most serious character demanding a very heavy sentence.

44.) Dr Kennedy opined that if Kerr received a lengthy custodial sentence **“it is more likely than not that he would again blame the White family for his situation”** Whilst I believe he represents a real threat to the White family I also consider that the risk Kerr poses is not confined solely to them and that he indeed presents a very real risk of causing serious harm to those whom he considers have crossed him in some way. I further note that Dr Kennedy concluded her report by stating that it was not possible to estimate the period of time he may remain a danger to the public.

45.) There are several aggravating features to this case, to which I have already made detailed reference. Central to these are the following:

- (a) The attack upon the Whites' family home was premeditated and planned;
- (b) The motivating factors were a combination of an act of vengeance in relation to a previous prosecution arising out of a burglary at the Whites' home coupled with a determination to prevent Dr Raymond White and Mrs. Aileen White from giving evidence against Kerr at his trial due to commence later that day.
- (c) The attack was wholly unprovoked;
- (d) There were three victims of the attack, which was intended to have resulted in their deaths;

- (e) The Defendant contested the case against him and Mrs. White and Dr David White were required to attend Court and to give evidence;
- (f) The Defendant has shown no remorse;
- (g) The case has had a very significant effect upon the victims as set out in the Victim Impact Reports.

46.) I do not consider on the facts of this case that there are any mitigating factors and none was urged upon me.

47.) I have considered with care the submissions of counsel for both Crown and Defence in conjunction with the Pre-Sentence Report and psychiatric reports. I am of the opinion that the three conditions set in **R v Hodgson (1968) Cr. App. R 113** (as applied in this jurisdiction in **R v Gallagher (2004) NICA 11**) are met. In particular I am satisfied that not only is Kerr likely to commit further serious offences in the future but that where he to do so the consequences for others may be especially injurious. I have, therefore, reached the conclusion that the conditions appropriate for a discretionary life sentence are satisfied and that is the sentence, which I impose. This sentence will apply to Counts (i) – (iii), being the three counts of Attempted Murder. There will be a sentence of 10 years on Count (iv) that being the charge of Arson with intent to endanger life.

48.) Before I turn to consider the appropriate tariff period I shall address the sentence in respect of the lesser counts on the Bill of Indictment. In respect of the three counts of Attempted Arson [Counts (vi) – (viii)] the sentence will be 3 years. On the charge of Handling Stolen Goods [Count (ix)] the sentence is one of 4 years. These sentences will all run concurrent to each other.

49.) By virtue of article 5(1) of the Life Sentences (Northern Ireland) Order 2001 I must now fix the period which is appropriate to satisfy the requirements of retribution and deterrence. I consider that the release provisions should apply after you have served the appropriate tariff period which in this case is one of 10 years, to include the period served to date in custody.

50.) The effect of this sentence is that the decision as to whether you should be released after you serve the tariff period will be made by the Parole Commissioners. In coming to that decision they will assess the risk you pose to the public. If they consider it appropriate they may begin the

process of allowing you to take part in society but it is inevitable in light of your history that any such process will involve the imposition of strict conditions relating to your previous lifestyle.

Geoffrey Miller QC

Crown Court Judge in Northern Ireland

21st December 2009