

IN THE CROWN COURT OF NORTHERN IRELAND

THE QUEEN

-v-

ANGELINE MITCHELL

McLAUGHLIN J

Introduction

[1] On 20 October 2010 Angeline Mitchell was convicted by a jury of the murder of Anthony Robin on 11 May 2009 at 78 Fitzroy Avenue, Belfast. The evidence established that a '999' call was made concerning the injuries sustained by Mr Robin at 0334 and life was pronounced extinct at 0412 by a doctor at the Royal Victoria Hospital. Death was due to a knife wound to the upper left chest which had entered his heart. The wound caused his rapid, but not immediate, collapse. The injury however was very incapacitating and he was unable to move for very long after it was inflicted. He eventually fell to the floor in his own living room. The report of the pathologist noted other wounds and injuries sustained by the deceased which arose from the same attack upon him by the defendant, namely, a wound to the left side of the scalp and a wound to the right side of the scalp, a wound to the left upper back, which played no part in his death. There was thus one fatal thrust of the knife but other less serious wounds inflicted by the defendant when she was, as she put it, "thrashing the knife about". The fatal incision was approximately 20 centimetres (8 inches) deep and the knife recovered at the scene had a blade of 15.5 centimetres (6 inches). The difference was explained by the pathologist as being due to the natural expansion and contraction of the chest coupled with the pumping action of the heart. It is clear that the knife was thrust into the deceased's chest to the full depth of the blade.

Background

[2] The deceased and the defendant were friends and then partners. They first met at a party at 78 Fitzroy Avenue about three years or so before. Their relationship was a turbulent and volatile affair which was blighted by frequent abuse of alcohol, rows, verbal abuse and some actual violence. The

behaviour was not always one way. There are no entries in the police domestic violence register recording any complaints by either during the course of the relationship; a prosecution of the deceased was however pending at the time of his death at the suit of the defendant. The deceased had a very significant criminal record, as had a principal prosecution witness who shared the flat with him, and it is clear that they would not have welcomed police being called to the premises; this may explain the absence of any information on the domestic violence register.

[3] The relationship was conducted very much on an on/off basis over the three years. The defendant stayed frequently at the flat but had her own home which she shared with her teenage daughter. The relationship had been in a period of suspension just prior to the death of the deceased but the two of them had agreed to meet the previous weekend and then a further arrangement was made that they should meet on Sunday 10 May, just before the killing. They shared food and drink in a nearby hotel and then came back to the flat where his flatmate and girlfriend were present. It seems there was some short conversation between them and the deceased and defendant then went to his bedroom.

[4] After midnight the deceased received a telephone call from his ex-wife, who lived nearby, as she was having trouble with one of their sons. He then left the flat, accompanied by the defendant, and went to his wife's home to assist. The police however had been called to the scene in the meantime, arriving about 1250 hours, that is before the deceased and the accused arrived, by which time his older son was under arrest and was being taken away by the police. A short time afterwards he returned to his flat with the defendant and they were accompanied by his younger son Thomas.

[5] The events from then on were well documented in evidence in the course of the trial and there is no need for me to repeat them in detail. It appears that in the early hours of the morning a simmering row erupted between them. This came about, apparently, because he perceived the defendant was interfering in his private affairs with particular reference to actions she said he should be taking in respect of his son who had been arrested. The deceased did not take kindly to this intervention. He apparently made it clear that "it was none of her business". By this stage his flatmate and partner had gone to bed. Thomas was due to sleep on the sofa and so was present in the living room as the row escalated. As it became more serious the defendant got up, left the living room and said she was intent on leaving the house altogether. The deceased clearly followed her out on to the landing area where the row continued. The defendant claimed in evidence that it was her intention to go down the stairs and exit the premises but before she could do so she was attacked by the deceased. She emphasised that it was always her intention to leave the flat that night as her daughter had a school examination the following day. She claimed that in the course of

the row the deceased had started calling her names and verbally abusing her suggesting that she was a "tout" and was sleeping with older men. This row eventually gave rise to her attempt to leave. There was evidence from the defendant, some of it confused, about what exactly happened. She alleges she was hit by the deceased, put to the ground and at one stage was being strangled. She also alleged that he took a canoe paddle and was hitting at her with it. In fact the defendant was medically examined in the police station and had little sign of any injury at all, let alone signs of any serious attack upon her. Eventually she went into the kitchen and took a knife. She said that she had done so "to protect myself as he had a big paddle". She also denied that she "went after him". It seems clear that she did go after him because he sustained more than one injury, including an injury to his back as well as the other injuries to the frontal areas.

[6] When the police arrived at the scene the reaction of the defendant was that the deceased was exaggerating his injuries and she made a vain attempt to blame someone else, namely a mystery blond woman from Sweden who was said to have run out into the street and escaped.

[7] In the course of the trial it was not an issue that Angeline Mitchell stabbed and killed the defendant. In the course of summing up I left various issues to the jury, including a direction that they should consider whether the defendant had acted in self defence or under provocation. In order to assist the jury short summaries of the directions on these issues were given to them together with a flow chart to help them arrive at their verdict. Taken together with the verbal directions accompanying the written documents I am able to see that the jury duly considered and rejected both self defence and provocation and they returned a unanimous verdict of guilty to murder.

Setting the tariff

[8] Having been convicted of the offence of murder the sentence I must pass upon you is fixed by law, namely a sentence of life imprisonment, and I did so at the end of the trial. At this stage my task is to fix the so called tariff. As Sir Robert Carswell LCJ put it in delivering the judgment of the Court of Appeal in R v. McCandless and others [2004] NICA 1:-

"When a defendant in a criminal matter is sentenced to imprisonment for life, that does not mean in practice that he will be detained for the whole of the rest of his life, save in a few very exceptional cases. He will ordinarily be released after a period has elapsed which is regarded as appropriate to reflect the elements of retribution and deterrence, provided it is no longer necessary for the protection of the public to detain him. The factual background of

murder cases is infinitely variable and the culpability of individual offenders covers a very wide spectrum. Reflecting this variation, the terms for which persons convicted of murder have actually been detained in custody have accordingly varied from a relatively few years to very long periods, even enduring in a few cases to the rest of the offender's life."

[9] The statutory provisions governing the imposition of the tariff are contained in the Life Sentences (NI) Order 2001. It is therefore essential that I should emphasise that what I am doing at this stage is fixing a minimum term. The defendant cannot be released before that term expires, she may be released at some stage after that point but only if the Parole Board is satisfied that she does not pose a risk to the public. It is important to bear in mind that I do not at this stage take account of any future risk that she may pose as that will fall to the Parole Board to decide in due course. Article 5(2) of the 2001 Order states:-

"(2) The part of a sentence specific in an order under paragraph (1) shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it."

[10] As a result of the decision in R v. McCandless the Court of Appeal has set out a template for the use of judges which is based on the Practice Statement issued by Lord Wolff on 31 May 2002. The first task for me is to decide upon one of two starting points, a normal starting point or a higher starting point, these in turn provide for a term of 12 or 16 years respectively. Once the starting point is decided upon the court then looks at a number of factors and the term is moved up or down accordingly.

[11] In this case the prosecution has suggested that the normal starting point is appropriate and I have been urged to adopt that view by counsel for the defence. I consider this to be appropriate. The Practice Statement indicates the normal starting point is appropriate in the following cases:-

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:
- (a) the case came close to the borderline between murder and manslaughter; or
 - (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or
 - (c) the offender was provoked (in a non technical sense), such as by prolonged and eventually unsupportable stress; or
 - (d) the case involved an over reaction in self defence; or
 - (e) the offence was a mercy killing.

These factors could justify a reduction to 8/9 years . . .

[12] I am satisfied, having heard all the evidence that the normal starting point is appropriate in this case.

[13] I must now consider whether the starting point should be varied up or down by reason of any factor which aggravates or mitigates the offence or the culpability of the offender.

[14] Mr Gordon Kerr QC, who appeared with Mr David Russell for the prosecution, drew my attention to the fact that the deceased had suffered multiple injuries and submitted that this factor amounted to an aggravating feature of the offence. He also submitted that I should exclude any possibility of mitigation based upon an alleged lack of intent to kill given that more than one injury was inflicted. Finally, he suggested that the case demonstrated aggravating features vis a vis the offender in the form of her previous criminal record, bad character and the lack of any remorse on her part.

[15] Mr Paul Ramsey QC appeared with Mr Bacon on behalf of the defendant. He submitted no aggravating factors were present in relation to the offence as the multiple wounds were due to a single attack carried out over a very short period of time when the defendant admitted she was "thrashing around with the knife".

[16] I am satisfied that her behaviour with the knife demonstrated a clear aggressive intent, albeit that only one fatal wound was inflicted. Nevertheless

the aggression was sufficient to require me to conclude that it aggravated the offence, albeit slightly.

[17] Mr Ramsey then dealt with the alleged aggravating factors in the form of her record, bad character and lack of remorse. He argued forcefully that the suggestion these were aggravating factors was wrong. I am satisfied that her record is old, there being no offence committed since 1998, the offences are all minor, could be categorised as largely anti social, and explained by alcohol. In the circumstances I do not regard it as representing any significant aggravating feature of the offender.

[18] In the course of the trial very detailed evidence was put before the jury relating to her bad character. This evidence was disturbing to say the least. It appears to me however that it tells me more about her underlying nature, propensities and the possible existence of a risk of future dangerousness which I do not take into account at this hearing. As I have emphasised the role of the judge today is to deal with issues of retribution and deterrence, not future risk, as that is something which will be taken into account by the Parole Board in due course.

[19] In her favour Mr Ramsey asked me to accept, and I do, that she has proved to be a model prisoner to date and has benefited enormously from a withdrawal from alcohol consumption.

[20] The issue of whether or not the defendant intended to kill or injure the deceased ought to be resolved in her favour at this stage. The speed of the events, the degree of confusion, the consumption of significant levels of alcohol (she was not fit for interview when she was taken to the police station), the presence of some degree of verbal and physical abuse, the spontaneous nature of the attack as demonstrated by the lack of any obvious premeditation and the overall circumstances inform me that I should proceed on the basis that she intended to cause him a really serious injury without a forming a specific intent to kill.

[21] Although the jury roundly rejected issues of self defence and provocation I am obliged to take into account that this was a turbulent relationship which was characterised to some extent by domestic violence. I am also required to acknowledge that the defendant was in a position where she felt she was being attacked and was in danger. I am satisfied therefore that there was a perceived element of self defence in her actions, but, let it be absolutely clear that any reaction on her part was completely excessive and she demonstrated that by injuring him on the back and head as well as plunging the knife into his chest to the maximum extent. There was an element of bullying, threatening or intimidating behaviour but nothing to permit her actions. I acknowledge that some allowance could be made for an element of "non technical provocation". I think that is the height of the allowance I can

make as this was really a case of the defendant losing any sense of proportion and attacking the accused with a deadly weapon. Further, she cannot have allowance made twice for the same behaviour.

[22] Mr Ramsey has also asked me to accept that the defendant has demonstrated remorse. I find this difficult to resolve in her favour. A medical report was prepared by Dr Carol Weir, Consultant Clinical Psychologist, dated 2 May 2010 and in her closing summary she stated:-

“At this assessment she often referred to how sorry she was that Anthony Robin had died as a result of her stabbing him. At the same time she strongly feels that she had to defend herself. This conflict has been on-going since she was remanded almost a year ago but she is starting to integrate her feelings and emotions in a way she has never managed before in her life”.

[23] I have also had the benefit of a very detailed pre sentence report prepared by Ms Nichola McCauley, Probation Officer, who considered this issue in some detail. Her analysis is as follows:-

“Miss Mitchell did not explicitly express regret or remorse for her actions. During interview I explored these issues with her and she admitted that she has been unable to cry. It would appear that she is quite detached from the reality of her actions. She expressed empathy for the victim’s son who witnessed the murder but it is difficult to ascertain if Miss Mitchell has accepted full responsibility for her partner’s death . . .

She evidenced a capacity to engage and reflect but this needs to be further developed to fully assess her level of empathy and remorse. Miss Mitchell stated that she was sorry she had taken someone’s life and that this will ‘stay with her forever whether she is in prison or in the community’. She accepts that she had no right to take a life but she was candid and told me that she was unsure of her feelings towards the victim at this time as ‘she had been so hurt by him’.”

In those circumstances I am not prepared to conclude that she has demonstrated remorse. Hopefully she will gain sufficient insight to achieve a more obvious form of that state of mind than she has articulated so far.

[24] In other parts of her report, Dr Weir referred in detail to the long term depressive state suffered by the defendant, the history of substance abuse, her troubled and dysfunctional life and the extent to which she appears to permit herself to be dependent on men who show her scant affection. Much of this of course is based on self reporting although Dr Weir has had the benefit of medical notes and records. I do take these factors into account but they are of limited effect in the present task.

[25] Mr Ramsey has also asked me to look at the case of R v Carson [2004] NICC 5 which he says contains considerable similarities to this. That case involved a murder of her husband by a wife who was 40 years old, there was a background of domestic violence, when the police arrived at the scene there was an attempt to blame someone else, she was intoxicated at the time and there was a problem of alcoholism. The defendant was unable to remember much about the events. A defence of diminished responsibility was advanced and rejected by the jury. In that case a sentence of life imprisonment was imposed prior to the 2001 Order and a court was convened consisting of the Lord Chief Justice and the trial judge at which a tariff was fixed in 2004. A term of 12 years was set as appropriate in that case.

[26] Finally I wish to make reference to the statements which I have received from various members of the Robin family. It is clear that his death has had a profound effect upon his sons, brothers and mother. They all miss him greatly and they all have suffered a profound sense of grief since his death. It is clear that they, as the living relatives, have been victims in their own way of the actions of Angeline Mitchell. I have been urged by one of his brothers to hold you fully accountable for the murder of his brother and to "reflect this by sentencing her to the maximum life sentence term you can". It is in every way understandable that aggrieved and grieving relatives should wish the courts to punish the accused in a very severe manner.

[27] The effect of a substantial period of imprisonment should not be underestimated however and for most people constitutes a very severe punishment. In this case the accused will be sentenced to life imprisonment and for a term that will carry no remission or hope of release before the expiration of that date. I have tried my best to set out the parameters within which I am required to work and the factors which I must take into account and make allowance for.

Balancing all of these factors I have concluded that the defendant must serve a minimum term of 12 years in prison before the matter of her release may be considered.