

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

PAUL STOCKMAN

HART J

[1] The defendant has pleaded not guilty to the murder of Patricia Bardon, but guilty to her manslaughter. This plea has been accepted by the prosecution and it is therefore necessary now to sentence him for her manslaughter. The defendant and Patricia Bardon lived together in a flat at Elm Court in Belfast. They had been living together for several years, and there is considerable evidence that their relationship was characterised by very heavy drinking by both of them, together with episodes when the defendant had been violent to her. While some of these episodes were disputed by the defendant, others resulted in prosecutions.

[2] A list of incidents described as a domestic incident history was handed into court by Mr Murphy QC (who appears for the prosecution with Mr Gary McCrudden). Some of these refer to incidents that resulted in prosecution or police investigations, whilst some were not pursued because Ms Bardon declined to make a statement, and there was no independent evidence to confirm whether or not there had been an assault. Many of these allegations must therefore be regarded as unsubstantiated, and so they have to be disregarded when it comes to sentencing. However, some can be regarded as having greater substance. In July 2007 Ms Bardon came to the notice of North Wales Police when she alleged that the defendant had gripped her around the wrists, and kicked her to the buttock area and to her back. In August 2007, also in North Wales, he again allegedly attacked her, and on that occasion the police noticed that she had a black eye. Both had been drinking. On two occasions in May 2008 she complained to the Gardaí in Drogheda that he had assaulted her, on one occasion striking her with a fire extinguisher. She was

admitted to the Accident and Emergency Department of a local hospital, and on one occasion to a women's refuge, but her drinking led to her being asked to leave the refuge. These allegations were denied by the accused at the time, but Mr Terence McDonald QC (who appears for the defendant with Mr McConkey) accepted that he could not disagree that both sets of incidents represented episodes of violence against her by the defendant. Another allegation of violence was that described by Mr Malik when he saw the defendant grabbing her by the hair and smashing her head against a wall. After their period in Drogheda they returned to Belfast, there were further allegations by her of violence towards her by him, and he was convicted of assaults on her on two occasions. The first was an aggravated assault on 20 November 2008. This was followed by a further aggravated assault on 25 December 2008. Both assaults were dealt with at Belfast Magistrates' Court on 24 February 2009 when he was put on probation subject to two conditions which are relevant. The first was that he should participate in a men overcoming domestic violence programme, and the second was that he should take part in an alcohol treatment programme. The pre-sentence report to which I shall refer later confirms the entry upon his record that shows he breached this order, and suspended sentences of six months imprisonment suspended for two years were substituted for the probation order. The suspended sentences were in force at the time of Ms Bardon's death.

[3] By 23 August 2010 both were living in her flat. They intended to get married at Belfast City Hall on the afternoon of the date of her death. This was despite the fact that the defendant was still married. She had bought a wedding dress. At about 3.00 pm that afternoon Joan Clarke, an employee of the housing association which managed and provided the accommodation, saw the defendant at a sink at the kitchen window of the flat. He seemed to be washing something in the sink and was wearing a red t-shirt. About an hour later he came to her office and said:-

"There's something wrong with Patricia. Don't think she is breathing".

She accompanied him to the flat and found Ms Bardon lying face down on the bed covered by a quilt. She was unable to find a pulse, and as she was attempting to do so the defendant was walking up and down the bedroom saying:-

"Wanted to get a doctor she wouldn't have it fell off the toilet. Thought she was sleeping watching TV. I lifted her up put her on the bed".

[4] The police were called and Ms Bardon was found to be completely naked under the duvet save for a pair of socks. When the police were attempting to ascertain what had happened the accused said that she had been sitting on the toilet when she had fallen and hit her head on a metal rail. He said he did not realise at first that she was bleeding, then he told her that she needed to go to hospital, but she said she just

wanted to sleep and he put her in bed about 10.00 am. He later found that she was asleep and started snoring and he unsuccessfully tried to waken her.

[5] There were signs of blood on the floor of the bathroom and elsewhere in the flat. A post mortem report by Dr Bentley, the Deputy State Pathologist, concluded that death was due to head and neck injuries. The relevant portions of his report are as follows:-

“1. Death was due to head and neck injuries.

2. There were quite extensive injuries to the face, comprising bruises and abrasions (grazes) involving mainly the eyes, nose and lips. In addition the nose was broken. These injuries indicated that she has sustained one or more episodes of blunt trauma to the face. (Emphasis added).

3. As a consequence of the broken nose there was likely to have been impairment to her ability to breath due to loss of integrity of the nasal passages and the presence of blood within the nasal passages.

4. There were no specific features to say with certainty how these facial injuries had been sustained. However, the presence of considerable abrasions and the presence of injuries over bony prominences strongly suggests that they had been sustained as a consequence of the face striking an unyielding surface, such as the ground or a wall, due to a collapse, a fall or her head being forcefully impacted by another individual against a hard surface. The facial injuries incorporated two back eyes. It is likely that these occurred as a result of blood tracking through tissues under the skin from the broken nose rather than from direct blows to the eyes. The possibility that some of the facial injuries could have been caused by blows from an assailant cannot be completely excluded. (Emphasis added).

5. Autopsy also revealed that the neck had been broken in two places and subsequent neuropathological examination revealed subtle injury of the spinal cord. Fractures of the cervical spine are all potentially life-threatening, but they need not necessarily be immediately incapacitating. This

fracture of the cervical spine was more likely to have been sustained as a consequence of firm contact with an unyielding surface rather than a direct blow from an assailant. (Emphasis added).

6. Autopsy also revealed evidence of an old head injury with old bruises of the brain and evidence of previous bleeding into one of the membrane bound spaces between the brain and the skull (sub-dural haematoma). These old head injuries would not have contributed to her death, however they may have produced some degree of mental incapacity. Neuropathological examination of the brain revealed no evidence of acute brain injury.

7. There was pre-existing severe liver disease in the form of an abnormal accumulation of fat in the organ and this is known as fatty change. In this instance, in view of the injuries, its role in death is doubtful.

8. Toxicological analysis of samples of blood and urine taken at autopsy revealed insignificant concentrations of alcohol. However, had she survived for a number of hours after sustaining the injuries, it is possible that there could have been alcohol in her blood at that time, and that this had been eliminated from the body over the ensuing hours. Further analysis of the blood sample revealed the presence of a very low level of a breakdown product of one of the drugs belonging to the family of sedative drugs known as benzodiazepines and that includes the drug diazepam (Valium). No other common drugs were detected."

[6] The defendant was questioned by the police over a lengthy period. He denied having assaulted Ms Bardon, maintaining that she had fallen from the toilet on Monday morning, hitting her head on the wall or against a metal hand hold rail. He said that he put her to bed, and later that day he had tried to wake her because he was worried about her snoring, nipping her to see if she was alright. His accounts contained a number of significant inconsistencies. He described how she had fallen on Saturday in the kitchen and had sustained two black eyes and a bloody lip, as well as a nose bleed. However, there was evidence that a Mrs McGregor had spoken to her on Sunday afternoon and had seen no signs of injuries. Later in his interviews he said that they had both dressed for the wedding which was due to take place at 4.00

pm, and that just after 3.00 pm he had helped her to the toilet after she had second thoughts about the wedding. He said they both changed out of their wedding clothes, and it was after this that the fall occurred, and that he helped her to the bedroom. On another occasion he said that he found her lying face down on the mat in the kitchen when he returned from signing bail at about 9.30 in the morning. He maintained that he had wiped up blood and vomit with the red t-shirt which he had then thrown in the bin. He also maintained that "she kept on what she had on" when he put her to bed, however she was naked under the duvet and lying face down.

[7] The prosecution maintain that the injuries described by Dr Bentley, and in particular the breaking of the neck in two places and the facial injuries, were inflicted by the defendant forcing the deceased against an unyielding surface. The Pre-sentence report recounts the defendant as saying that he returned to the flat after signing bail at a nearby police station, that later that day Ms Bardon said that it would be better if they postponed the wedding, and asked him to go drinking with her. He claims this led to an altercation between them, and he threw her forcefully to the kitchen floor (this appears to be a mistake for the bathroom floor), causing her significant facial and head injuries. He then tended to her injuries and placed her in bed. Mr Murphy and Mr McDonald agree that the defendant should be sentenced on the basis that the serious injuries inflicted by him on the deceased demonstrate that he was completely indifferent to Ms Bardon's well-being, an attitude compounded by his failure to seek medical help for her after she received her injuries.

[8] There are a number of aggravating features of the case. The first is that he had inflicted violence on her on numerous occasions in the past as shown by the evidence already described, a continuing pattern emphasised by the two recent convictions for assaults at the end of 2008. The second is that at the time he was under a suspended sentence for a breach of probation. The third is he was on bail at the time on a charge relating to a further alleged assault on Ms Bardon. The fourth is his substantial criminal record which includes a further assault, although not on Ms Bardon. Violence in a domestic context is something that sadly is all too common, predominantly (though not exclusively) by men towards their partners who are often materially and emotionally dependent upon them, as well as less able to physically defend themselves. Such violence must be regarded as very serious by the courts, particularly when it involves persistent and serious violence.

[9] I have had the benefit of two victim impact statements, one from Ms Bardon's only sister, and the other from the younger of Ms Bardon's two sons which speak of their sadness at the death of their sister and mother.

[10] I have also had the benefit of a pre-sentence report on the defendant, as well as two reports upon him by Dr Carol Weir, a consultant clinical psychologist. Dr Weir describes his unhappy upbringing, which was followed by success as a competitive swimmer and the development of a successful business as a fitness coach. Sadly he later developed alcohol dependency syndrome because of alcohol abuse. The pre-

sentence report concludes that he presents as a high likelihood of re-offending, and poses a significant risk of serious harm, particularly within the context of domestic relationships. I agree with that assessment.

[11] The only mitigating feature is that the accused entered a plea of guilty, albeit at a late stage. However, it has to be said in his favour that he had indicated a willingness to do so through his advisers prior to the date of trial and that had been initially refused by the prosecution. He is therefore entitled to some credit for entering his plea and I will sentence him on the basis that his plea was offered rather earlier than the day of the trial. Nevertheless, it was still offered at a late stage and the credit to be allowed to him for his plea of guilty must be reduced accordingly.

[12] As this offence falls within the provisions of The Criminal Justice (NI) Order 2008 (the 2008 Order) I have to consider whether I should impose a life sentence, an indeterminate custodial sentence, an extended custodial sentence or a determinate sentence. It is well established that life sentences should be reserved for those offences which are of the utmost gravity, and the present offence, although serious, is not one which meets the high threshold for such an offence. Mr McDonald submitted that dangerousness within the ambit of the 2008 Order was not established merely by a catalogue of offences of the same nature. However, I am satisfied that this is an appropriate case for the imposition of an indeterminate custodial sentence because the defendant's history of significant violence to Ms Bardon over a lengthy period, his alcoholism, his failure to respond to probation, and the callous and indifferent way he behaved towards her on the day of her death when he failed to seek timely medical attention, all combine to create a significant risk that upon his release he may well enter into another relationship which would be characterised by drunken and significant violence on his part. That being the case, I am satisfied that the criteria contained in art. 13(3) of the 2008 Order have been met in this case, and that such a sentence is necessary to protect the public in the shape of other women who might enter into a relationship with him from serious harm occasioned by the commission of further specified offences taking the form of drunken violence by him towards such women.

[13] If this were a case where a determinate sentence was appropriate, taking into account the aggravating and mitigating factors to which I have referred, I consider that the appropriate sentence would be one of twelve years imprisonment. To reflect the position that the minimum term of an indeterminate sentence does not attract the period of licence (usually half the total sentence) that is a component of a determinate sentence I consider that I should take that into account in accordance with the approach in R v McCandless and others [2004] NI 269 at [51] when fixing the minimum term required to satisfy the requirements of retribution and deterrence as required by art. 13(3)(b) of the 2008 Order. See also R v Kehoe [2009] 1 Cr. App. R(S). 9 cited by McCloskey J in R v Shaw and Shaw [2010] NICC 34.

[14] I therefore impose an indeterminate custodial sentence, and order the defendant to serve a minimum term of six years imprisonment before he can be considered for release by the Parole Commissioners. The minimum term will include the period spent in custody on remand. Given that an indeterminate sentence has been imposed I do not consider it necessary to take any action in respect of the suspended sentence that he was subject to when he committed this offence. Finally, I am obliged by virtue of the provisions of paragraph 25 of sch. 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform the defendant that the Independent Barring Board will include him in the barred list concerned for adults by virtue of his conviction.