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

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IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

THERESA RAFACZ
and
PAWEL CZOP

HART J

[1] The defendants are before the court having pleaded guilty to offences relating to the death of Piotr Rafacz on 18 July 2009. They were initially arraigned on these charges on 17 September 2010 and pleaded not guilty but both asked to be re-arraigned on 3 December in advance of the commencement of their trial on 6 December. When re-arraigned Rafacz pleaded guilty to the manslaughter of Piotr Rafacz and this plea was accepted by the prosecution. Czop also asked to be re-arraigned on the same occasion and pleaded guilty to the single count against him, namely withholding information, contrary to s. 5(1) of the Criminal Law Act (Northern Ireland) 1967.

[2] Theresa Rafacz and Pawel Czop are brother and sister. Both are Polish nationals who came to Northern Ireland some years ago to work. Rafacz was married to the deceased Piotr Rafacz and they had a 3½ year old son. It is clear from the committal papers that Piotr Rafacz (to whom I shall refer as the deceased) suffered from alcoholism because he was a constant and heavy drinker, and this led to considerable marital disharmony because he did not go out to work, whereas Theresa Rafacz worked in a city centre restaurant to support herself, their child and the deceased. At the time of the death of the deceased relations between the defendant and the deceased were very poor, and the defendant slept in a separate room with their child.

[3] On Saturday 18 July 2009 the defendant left for work at about 6.45 am in the morning and returned from work that evening. She said in her police

interviews that she was very tired, and there is no reason to disbelieve this, indeed it seems highly probable from her hours of work that she was tired when she returned from work to find the deceased in a drunken condition in their flat. A blood sample taken during the post mortem examination revealed that the concentration of alcohol in his blood was 437 mgs of alcohol per 100 mls of blood, almost 5½ times the permitted limit for driving. This sample was taken some hours after the death of the deceased, and Dr Bentley, the Deputy State Pathologist for Northern Ireland, who performed the post mortem examination is of the opinion that the amount of alcohol in the deceased's blood:

> "… would have produced a marked degree of intoxication. Indeed, the presence of a considerably higher level of alcohol in the urine indicates that some hours prior to his death his blood alcohol level was even higher."

[4] There can therefore be no doubt that the deceased had been drinking very heavily throughout Saturday 18 July when he had been left in charge of, and was supposed to be at home looking after, their 3½ year old child. Mr Ciaran Murphy QC (who appears on behalf of the prosecution with Mr Gary McCrudden) accepted that there were no empty bottles found in the flat when the police arrived, and that it was highly probable that the deceased left the flat during the day, and went drinking leaving their child alone and unfed in the flat.

[5] The defendant told the police that she returned from work and in her initial witness statement claimed that she had found the deceased lying drunk on the floor in the small corridor between the kitchen and the bathroom. She described in her statement how she tried to find out what had happened but was unable to get any information because her husband was drunk, so she left him lying there as she thought he would get better. She made a meal for her son, and then made a number of phone calls, including one to Women's Aid in Belfast. She said that she also spoke to her brother and checked her husband and found that everything was all right. Later she called her brother and asked him to come to her flat. She maintained that when her brother arrived her husband was still breathing normally and that they checked him again but did not suspect that there was anything seriously wrong with him. However she later noticed that her husband was turning blue and her brother then called an ambulance.

[6] This account, as the defendant subsequently admitted during interview, was untrue. Her defence statement described how:

> "The defendant had returned home after working. The deceased was lying drunk and it seemed injured

> on the bed that she slept in with her son. The defendant's young son was alone and was upset and distressed. The deceased made some food, spent time with her son and when it became time to put her son to bed she got the deceased to wake up. The deceased got out of the bed, he said nothing to her, she tried to steer him along, he was very drunk and he fell outside the bedroom. The defendant just lost control and in temper she struck him with her foot. She did not intend to cause him serious injury. The defendant felt enraged because of her son. The deceased had neglected the child and must have left him during the day to consume alcohol only to return home injured and drunk and fall asleep on their bed."

However, in interview the defendant admitted kicking her husband on the face and cheeks as he lay on the ground, she thought four times in all.

[7] Nevertheless these accounts were not the complete truth either, because the post mortem examination found signs of:

> "… patterned bruising on the forehead and right side of the head that was highly suggestive of footwear marks, consistent with forceful stamping at these sites with a shod foot. There was considerable bruising of the nose, which was broken. Given the proximity of the aforementioned patterned bruising, it is likely that this had also been caused by stamping. The broken nose and almost inevitable associated bleeding would have, to some extent, interfered with his ability to breathe."

[8] A forensic examination of the scene and of the defendant's shoes and jeans revealed blood on the shoes.

> "On the right shoe there was extensive contact bloodstaining on the front of the sole and inner aspect of the shoe and further directional splatter along the sides. A pair of jeans were also recovered from the property … These were ladies size 10. Round the front and inner aspect of the right hem/ankle and lower right shin of the jeans there were a number of spots of blood. The pattern of blood on the right shoe and on the right ankle of the jeans would support a proposition that the wearer, if they be a single individual, may have 'stomped' or kicked into a

> source of wet blood or wet bloodstained object. Little or no blood was present on the sole of the left shoe … though there were spots of blood on the inner aspect of the shoe and also spots of blood on the left ankle of the jeans."

[9] Mr Barker of FSNI also examined the scene and found that there were no trails of blood throughout the property to suggest movement by the deceased whilst blood was freely flowing from any wounds, nor did he find any evidence of splatter, other than some spots in the hallway, resulting from impacts during a struggle after bleeding had started.

[10] The forensic evidence therefore suggests that the defendant did kick the deceased as he lay on the ground and stamped on his head as well, and Dr Bentley's opinion was that death was due to blunt force trauma of the head.

[11] The defendant Czop initially denied having seen his sister attack the deceased when he went to the flat in answer to his sister's telephone call, but eventually admitted during interview that he saw her kick the deceased three times to the head as he lay on the floor in the hall. Both Rafacz and Czop admit that they dragged the deceased's body from the hall where he had been lying and left it where it was found when the police and the emergency services came to the scene once Czop had contacted them.

[12] I accept that Rafacz returned home when she was tired after a long hard day's work to find that her husband was in a drunken condition, and had obviously gone out to drink during the day and left their 3½ year old son hungry and on his own in the flat for a lengthy period of time, in all probability several hours. She was understandably angry with him, and her anger was exacerbated by the previous marital disharmony between them. Whilst she undoubtedly inflicted serious harm upon her husband when she kicked him and stamped on his head as he lay on the ground, I accept that this was the result of a momentary loss of self-control by her in a spasm of anger brought about by her discovery that her husband had left their child alone for such a period of time whilst he had left the flat to go drinking, and then returned in a drunken condition when he was plainly incapable of exercising any proper supervision over such a small child. In those circumstances it is proper to regard her conduct as lacking the necessary intent to kill or inflict really serious personal injury, notwithstanding the severity of the kick and stamping to his head. That being the case, I consider that it was appropriate for the prosecution to accept her plea of not guilty to murder but guilty of manslaughter.

[13] Nevertheless her conduct in kicking her drunken husband as he lay defenceless on the ground amounted to "gratuitous violence" of the type with

which the Court of Appeal was concerned in R v Magee [2007] NICA 21 where the court stated:

> "[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required. Indeed, in some cases an indeterminate sentence will be appropriate. Notwithstanding the difficulty in arriving at a precise range for sentencing in this area, we have concluded that some guidance is now required for sentencers and, particularly because of the prevalence of this type of offence, a more substantial range of penalty than was perhaps hitherto applied is now required."

[14] In R v McArdle [2008] NICA 29, and most recently in DPP's Reference (Nos. 2 & 3 of 2010) [2010] NICA 36, the Court of Appeal stated that a range of 7-15 years imprisonment was appropriate after conviction on a contest where the accused attacked a victim lying on the ground with a shod foot with intent to cause the victim grievous bodily harm. Whilst the court in both cases was concerned with the offence under s. 18 of the Offences Against the Person Act 1861 where the victim has survived the attack, nevertheless these decisions are relevant in that they reaffirm the severe view which the courts take of attacks of the type perpetrated by Theresa Rafacz upon her husband.

[15] I consider that there are number of aggravating factors in her case.

(i) The deceased was struck several times to the head as he lay on the ground.

(ii) He was not simply kicked, but was stamped on the head as he lay on the ground.

(iii) No effort was made to seek medical attention in the immediate aftermath of this attack when it ought to have been obvious that he was seriously injured.

(iv) The defendant did not immediately or completely admit what she had done when questioned by the police, indeed she initially attempted to mislead the police by advancing an untrue explanation to explain her husband's condition.

[16] I have been provided with a pre-sentence report on her which shows that she is a hardworking individual. The author of the report expresses the opinion that whilst the defendant expresses regret at her husband's death she is inclined to minimise her role, highlighting his deficits rather than her contribution to his death. The report concludes that the defendant does not present a risk of harm to the public.

[17] I also heard evidence as to the high regard in which she is held by her colleagues at work and by her employer from Julie Savage, evidence which shows that not only has the defendant worked hard and improved her position at work since she came to Northern Ireland, but that her work mates rallied round to help her when she had to find new accommodation when she was released on bail and found herself virtually destitute. Their support and generosity reflects great credit on them, as does that of her employer who also provided generous assistance. More importantly it is impressive evidence that they saw her behaviour as entirely out of character, and I take this into account in her favour.

[18] There are a number of other mitigating factors in her case.

(i) I accept that she was subjected to considerable provocation in the non-technical sense by the state of affairs that she discovered when she returned to her flat that night. Not only was the deceased a drunken spendthrift, but he had abandoned their child, leaving the child alone in the flat for a considerable period of time whilst he went drinking. The defendant returned home to find this state of affairs when she was tired after a long day's work to support herself, her child and the deceased.

(ii) She is 29 and has a clear record.

(iii) Because she must inevitably receive a custodial sentence she will now be separated from her child for a considerable period of time, possibly endangering her right to custody of the child in the long term. This is something which plainly will weigh heavily upon her and which I consider should be taken into account in her favour.

(iv) Her plea of guilty to manslaughter was entered at the first point when it was known that it would be acceptable to the prosecution and I give her full credit for that.

[19] This is a serious case in which an immediate custodial sentence is inevitable, and because it is a serious offence under the Criminal Justice Order (Northern Ireland) 2008 I am obliged to consider 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 there would be a significant risk of harm to members of the public from her in the future.

[20] Had she been convicted after a plea of not guilty I consider that the appropriate sentence would have been in the region of eight years. Taking into account her plea of guilty and the other mitigating circumstances to which I have referred, I impose a determinate sentence of four years, of which two years will be spent in custody and two years on licence, and the period in custody will take into account the time she has already spent on remand in custody.

[21] The defendant Czop has pleaded guilty to withholding information because he did not tell the police at the scene what he had seen his sister do when he arrived after receiving her telephone call. Eventually during the twelfth interview towards the end of the second day of questioning he admitted that he had seen his sister kick her husband three times to the head. He went on to accept that he had helped his sister move her husband's body from the lounge to the hall where it was found and then he said:

> "We both, we both did that and I regret because I could have phoned the ambulance straight away and that's what I regret today.
>
> Police: I want to ask you man to man why you didn't tell us this sooner.
>
> I thought that we could have come out of it I wanted to protect her because of the child, she will not go through that."

[22] I consider that there are a number of aggravating features of Czop's case.

(i) Had he persuaded his sister to phone the ambulance the deceased might have survived.

(ii) Despite having his sister's admissions put to him he persisted in his denials for many interviews.

(iii) The offence is akin to providing a false alibi, although it must be accepted in his case that his sister had already admitted her role prior to his admissions.

(iv) He has shown little remorse for his conduct.

[23] I have been provided with a pre-sentence report upon Czop which suggests that there is a medium likelihood of re-offending. The defendant has two motoring convictions.

[24] There are a number of mitigating factors in his case.

(i) The accused has a modest record.

(ii) He ultimately admitted his guilt although a good deal of the credit for this must be dissipated by his late plea of guilty. Whilst no doubt he did not wish to weaken his sister's case he nevertheless was slow to accept his own responsibility.

[25] Mr Farrell (who appears with Mr John Orr QC for Czop) referred me to two decisions of Weir J, R v Hill and others [2005] NICC 8, and R v McHugh and Hilditch [2009] NICC 42. In both cases the sentences were suspended, but the circumstances in both cases were quite different from those in the present case and do not offer any assistance. Offences of this nature are serious because they suppress the truth and prevent justice being done. However, in this particular case the accused's conduct did not prevent the successful prosecution of his sister. I consider that the appropriate sentence in his case would normally have been one of six months imprisonment.

[26] He spent approximately two months in custody before being released on bail, and I do not believe that any useful purpose would be served by sending him back into custody for such a short time. He plainly has a drink problem, as shown by his spending the day in question drinking, and he has a drink driving offence on his record. However, the author of the pre-sentence report says that the defendant is reluctant to address his alcohol dependency, and in those circumstance I do not think a period of probation with a condition that he undergo an alcohol management programme would be likely to bring about any change in his attitude. I therefore sentence him to 240 hours community service.