

IN THE CROWN COURT IN NORTHERN IRELAND

ANTRIM CROWN COURT

R

v

FRED McCLENAGHAN

TREACY J

[1] On 5 November 2014, following a lengthy trial, the jury unanimously found the Defendant guilty of the murder of Marion Millican.

[2] Mrs Millican had worked in the launderette at 3a The Promenade, Portstewart for in excess of 11 years and was working in the launderette at the time of this incident. She was working in the company of Mrs Pamela Henry and both ladies had worked together for some time and were also friends.

[3] In September 2009 Mrs Millican had parted company with her husband Kenneth. During their separation she had embarked on a relationship with the Defendant and had lived at various addresses in the north Antrim area. That relationship broke up permanently in or about December 2010. There were episodes of serious violence by the Defendant towards Mrs Millican during their brief relationship. This included an incident when she was rendered unconscious by a blow from the Defendant and another incident when he strangled her. It was this last incident which precipitated the end of the relationship. In the months before her death Mr and Mrs Millican were in the process of reconciliation and on the threshold of resuming their marriage.

[4] Shortly after 1.00pm on Friday 11 March 2011 Mrs Millican and her co-worker and friend Mrs Pamela Henry were in the kitchen of the launderette intending to have their lunch. At approximately 1.20pm the Defendant entered the premises through the front door carrying a double barrelled shotgun.

[5] Once inside the building he went into the kitchen area and took hold of

Mrs Millican by the arm and told her she was coming with him to talk to him. She told him she would not go outside with him because she did not want bundled into a car. He then fired the gun into the ground close to both women. At that point Pamela Henry ran out of the kitchen area and to the toilet at the back of the building as the Defendant was pulling Mrs Millican to the door. Once inside the toilet Mrs Henry locked the door and heard the Defendant say "...where the Ef is she..." and he then broke the toilet door in. He tried to get Mrs Henry's mobile phone but he failed and Mrs Henry escaped from the launderette and raised the alarm. She also phoned her husband, Thomas Henry, and he made his way to the scene.

[6] Shortly after 1.30pm Mrs Gillian Johnston had been walking her dog and decided to call in to the launderette to see Mrs Millican and Mrs Henry who were her friends. Seeing no one in she shouted "hello" before entering and as she did she saw Mrs Millican's body lying on the floor, she also saw blood. She backed out of the launderette and went to the bottom of Harbour Hill where she noticed Mr Henry. Both she and Mr Henry returned to the launderette and went closer to the body of Mrs Millican. Shortly after the Deceased's husband arrived and he went to his wife and cradled her in his arms

[7] Paramedics and police arrived at the scene but it was clear that Mrs Millican was dead having sustained a significant chest wound. Dr Dearbla Harley attended the scene and formally pronounced Mrs Millican dead some time later.

[8] Mrs Millican died at the scene as a result of a gunshot wound to the centre of her chest which caused extensive internal injuries outlined in the report and evidence of the Assistant State Pathologist's Dr Ingram. He considered that the shot was not likely to have been caused in a struggle, inter alia, because of the position of the wound.

[9] At approximately 2.25pm that day Sheila Donnelly, the older sister of Gladys Donnelly, who formerly had a relationship with the Defendant was at work in her office at the Toberdonny Fold, New Row, Kilrea when a knock came to the front door. When she looked out she saw the Defendant. She went to the door and he asked to use the toilet and she let him in. On his return she noticed him shaking and she asked whether there was a problem. He told her he had shot someone and on further enquiry he said "I shot a girl in Portstewart". He went on to tell her he had gone to the launderette in Portstewart and fired a shot in the air, that the other lady ran and hid in the toilet and that he had kicked the door and said something like "You're as bad as she is". He went on to say that he had the gun in his hand and just wanted to talk to her. He said she grabbed the gun and they both struggled falling to the floor. They both got up and still struggling he then told her to let go of the gun but she didn't. He then said that the gun went off. Concerned about the gun Sheila Donnelly asked him where it was and he told her he had thrown it in a ditch somewhere.

[10] As police were searching for the Defendant they made telephone contact with

him and established his whereabouts. He had conversations with various police officers by phone and when they arrived at the Fold. On arrest and when asked if he wished to make a reply he said "No". The Defendant told police the location where he had disposed of the shotgun and went with them to the location where it was retrieved. The Defendant was then conveyed to Antrim police station and subsequently interviewed.

[11] The police investigation led them to discover that the Defendant had contact with various counsellors prior to his arrest and during that contact had described suicidal ideation and homicidal ideation towards Mrs Millican revealing that "My plan is to kill my girlfriend and then myself".

[12] Police also discovered that the Defendant stored painting equipment in a garage at the home of his friend Stephen Brown. Mr Brown stated that approximately two weeks prior to 11 March 2011 he had observed the Defendant reverse his car into his garage, which was unusual, and that on 11 March 2011 he did the same again. It was submitted that it was a reasonable inference that this was the Defendant stashing the gun and then retrieving it for use on 11 March 2011.

[13] Before he was interviewed the Defendant was medically examined a number of times and was determined fit to be interviewed. During interview he declined to reply to questions and at one stage his solicitor read a statement as follows:

"... it was my intention to kill myself on Friday the 11th of March and that Marion would witness my suicide. I did not intend to kill Marion. I did not intend to harm Marion. Marion's death was accidental. I am truly sorry ..."

[14] Despite his claim that he had, by accident, killed the woman he professed to love he made no effort whatsoever to call an ambulance or the emergency services. The Defendant when charged with the murder of Mrs Millican on Monday 14 March 2011 made no reply. At his trial the Defendant did not give evidence.

[15] The Court was provided with a Pre-Sentence Report and Victim Impact Reports from her four children, her husband and others:

- (a) Pre-Sentence Report from Terry McLaughlin, Probation Officer.
- (b) Victim Impact Reports:
 - (i) Aaron Millican
 - (ii) Suzanne Davis
 - (iii) Steven Millican
 - (iv) Jamie Millican
 - (v) Ken Millican

- (vi) Pamela Henry
- (vii) Eileen Lindsay
- (viii) Cynthia Hegarty
- (ix) Kyle Vaults

I have carefully read and considered these moving personal accounts which bear testimony to the love and affection of the Millican family and the irreversible and devastating loss caused by the murder of Marion.

[16] I have taken all these reports into account as well as the medical evidence regarding the Defendant's depressive illness. I have also taken into account the very helpful written and oral submissions of both the prosecution and defence.

Sentence & Tariff

[17] The Defendant has been convicted of the murder of Mrs Millican by a unanimous verdict of the jury on 5 November 2014 and has been sentenced to life imprisonment. In convicting the Defendant of the murder of Mrs Millican the jury has rejected the suggestion that her death resulted from an accidental discharge of the shotgun or that the Defendant's responsibility for her death was diminished by reason of an abnormality of mind. By its verdict, the jury has found that the Defendant was fully responsible for the deliberate and intentional shooting of the Deceased on the date in question.

[18] The exercise upon which the Court must now embark is to set the minimum tariff that the Defendant must serve before he can be considered eligible for release by the parole commissioners. If in the future he is released on licence he will for the remainder of his life be liable to be recalled to prison if at any time he does not comply with the terms of that licence. The minimum term which I will now sentence the Defendant to is the actual term he must serve before becoming eligible to have his case referred to the parole commissioners. He will receive no remission for any part of the minimum term that I shall impose.

[19] I have been referred to the practice statement issued by Lord Woolf CJ on 31 May 2002 adopted in R v McCandless & Ors [2004] NICA 1. The practice statement sets out the approach to be adopted in fixing the minimum term to be served by those convicted of murder. It provides detailed guidance for judges in sentencing persons guilty of murder. Paras 10-19 of the practice direction are in the following terms:

"The normal starting point of 12 years

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 para 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 overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the

starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young

child. In such a case, a term of 20 years and upwards could be appropriate.”

[20] The present case does not easily fall into the specific categories identified in the guidelines. But whichever starting point is selected it may be appropriate to vary the starting point upwards or downwards to take account of aggravating or mitigating factors, which relate either to the offence or the offender, in the particular case. The task of the court is to arrive at an overall sentence which is appropriate to the circumstances of the case. This is not a mechanistic or formulaic exercise. With the assistance of the guidelines the court proceeds to a consideration of what in the circumstances of this case it considers is a just and proportionate sentence. In my judgement the offender’s culpability is high and Mrs Millican was vulnerable and completely defenceless. She was taken by surprise at her place of work and immediately confronted by the armed Defendant. She had no means of escape and was subjected to a terrifying ordeal which involved an initial discharge of the weapon which was designed to terrify and subdue the Deceased and her work colleague. The severe injury to her chest, caused by the second shotgun discharge, was responsible for her rapid death.

[21] In this case the offence is aggravated by the fact that the Defendant armed himself with a shotgun in advance. In mitigation I take into account that the Defendant was suffering from a depressive illness characterised by homicidal and suicidal ideation for which he had sought treatment in the weeks and months leading up to the murder. As to the issue of remorse this has to be seen in the context of his claim to the Probation Officer that he did not murder the Deceased and his rejection of the finding of guilt by the jury. The Defendant’s expression of remorse is however in an entirely different context from that which the jury has found to be the true circumstances of the killing. The jury by its verdict rejected the defence of accident or that the Defendant’s responsibility was diminished by abnormality of mind. The jury has found that the Defendant was fully responsible for the deliberate and intentional shooting of the Deceased. As in the case of Conway [2004] NILST 23 [see Kerr LC] at para 31] I am not leaving his expression of remorse entirely out of account but I cannot accord this factor such weight that it would have been due had it recognised the effect of the jury’s verdict.

Conclusion

[22] Having regard to what I have said above and taking into account all the material that has been put before me including the victim impact statements, pre-sentence report, various expert reports and the very helpful submissions of the Prosecution and Defence Counsel I consider that the appropriate tariff that the Defendant must serve before being considered eligible for release is 16 years.