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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

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BELFAST CROWN COURT

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THE QUEEN

-v-

AHMED NOOR

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McBRIDE J

Introduction

[1] The defendant was charged with the murder of Mohsin Bhatti and possession of offensive weapons namely two black handled knives, with intent to commit an indictable offence, namely murder, contrary to Section 93 of the Justice Act (Northern Ireland) 2011.

[2] The defendant originally pleaded not guilty to both charges but on the morning of trial, he pleaded guilty to manslaughter on the grounds of diminished responsibility. In light of the agreed medical evidence the prosecution accepted the plea. The second charge was left on the books.

The factual background

[3] Mr Bhatti was a 29 year old Pakistani national. At the time of his death he lived at 18 India Street, Belfast and was a confirmed asylum seeker. He died on 29 January 2015 as a result of multiple stab wounds inflicted by the defendant.

[4] When the defendant was interviewed by Dr Fred Browne, Consultant Forensic psychiatrist on 22 and 29 April 2016 and by Dr Bunn, Consultant Forensic psychiatrist, on 29 February 2016 he reported that on 28 January 2015 he had been smoking cannabis throughout the day. That evening he returned to his cousin's home, where he was staying, and continued to smoke cannabis until 4.00 am. About 20 minutes before the offence he got the idea to kill Mr Bhatti and voices told him to

do this. About 10 minutes before the killing he took a knife from his cousin's kitchen and walked to the deceased's home, which was five minutes away. He broke into Mr Bhatti's home using a fire extinguisher to break a window. Forensic examination has confirmed that a window at 18 India Street was broken, possibly with a fire extinguisher. The defendant reports that the deceased was awake and a struggle ensued. Forensic examination again revealed blood spots throughout the flat. The deceased ran out of his home pursued by the defendant. The defendant caught up with him in Botanic Avenue and repeatedly stabbed him until he died. The defendant remained at the scene until police arrived.

[5] On 29 January 2015 at 5.00 am a telephone call was received via the 999 system from the deceased asking for police. It is clear from the transcript of this call that the deceased was in fear and distressed. CCTV footage shows the deceased running along Botanic Avenue.

[6] At 5.08 am another telephone call was received via 999 and the caller reported seeing a male, who was in fact the deceased, lying on the road in Botanic Avenue. He reported that the deceased was covered in blood and had been stabbed with a knife.

[7] Police attended the scene and observed the defendant a short distance away. Police noted that the defendant's hands were covered in blood. The defendant said "I killed the king, I am the king. I killed him. I've removed a disease, I put it in his fat gut, I killed him and I've killed him, I won't kill you. I am the king. I have been sent on a mission, now my mission is complete, I will kill nobody else. I have killed the poison and done you a favour. Lock me away for life now my mission is complete, I am the king".

[8] The police observed a male lying on the ground, who was the deceased, with open wounds to his chest and abdomen. There were no signs of life.

[9] Two knives and a broken mobile phone were found lying beside the deceased's body. The defendant was arrested at the scene. Due to injuries he had sustained, the defendant was taken to the Royal Victoria Hospital. On route to the hospital he made a number of unsolicited comments while under caution. He said, "This is the happiest day of my life. I can properly go to sleep now". Later he said, "I am the king. Allah sent me to kill him. I am Allah's assassin. He was my enemy. I was sent to kill him and I have done it now".

[10] Once treated the defendant was transported to Musgrave Custody Suite. On route to the custody suite he again made a number of unsolicited comments. By way of example he said, "I have just murdered a man and I don't feel guilty. He was screaming agh, agh, please don't kill me". He later said "I will get rid of all suicide bombers, they are not true Muslims, you will lose your job and I will keep you on when I am the ruler".

[11] Before interview the defendant was medically assessed and following this he was detained under the Mental Health Order and transferred to Knockbracken Healthcare Unit. On route to Knockbracken the defendant again made a number of unsolicited comments including "If I failed in my mission I would have gone to Hell but now I'm going Heaven. I am going to rule the world, my army will be marching soon, I can hear their footsteps. When I take over the police station, you will all be sacked. I'm the one in handcuffs but I have all the power".

[12] On 4 February 2015 the defendant was released back to police custody and charged with the murder of Mohsin Bhatti. He made no reply after charge.

[13] A post mortem examination was carried out by Dr Peter Ingram on 30 January 2015 and he concluded that the cause of death was "incised wounds of chest and abdomen and multiple stab wounds." He noted the following stab wounds: a wound to the chest causing four incisions of the heart which penetrated the entire thickness of the heart wall into its main pumping chamber; two stab wounds to the front of the chest; a large gaping incised wound on the right side of the front of the abdomen causing incisions in the attachment of the bowel, nicking of the loops of the small bowel and complete bisection of the pancreas gland; stab wounds on the left side of the abdomen; stab wound to the front of the abdomen; six stab wounds in the back which penetrated both the left and right chest cavities, causing incision of the kidney and aorta; five stab wounds of the neck causing an incision of the jugular veins and carotid artery and three stab wounds to the face. The combined effects of the injuries and in particular the incised wounds on the front of the chest and the penetrating stab wounds on the back caused profuse brisk bleeding leading to rapid death.

Expert medical evidence

[14] Dr Richard Bunn, Consultant Forensic psychiatrist, engaged on behalf of the defendant provided to the court a report dated 13 April 2016 together with an undated supplemental report. Dr Fred Browne, Consultant Forensic psychiatrist, engaged on behalf of the Prosecution, provided to the court a report dated 25 May 2016. From these reports it appears that the defendant who is now aged 33 years was born in Somalia. He is the second eldest of six children. When he was eight years old the family left Somalia due to the civil war and came to live in London. The defendant reports he left school with limited qualifications and thereafter worked in London. In 2012 he came to Northern Ireland. He was initially unemployed but thereafter found employment in a restaurant. He remained in employment until shortly before this offence. At the time of the offence he was staying with his cousin. There is no known history of the defendant having any contact with mental health services before this offence. The defendant reported that he had been consuming cannabis daily for five or more years before the offence and he craved cannabis despite its negative effects on him such as paranoia. Since 2003 he reported a number of episodes when he heard voices. These became more persistent and marked before the offence. He described paranoid delusion for example believing

he was "the king" and two days before the offence he believed the deceased was the devil and he thought that by killing him he was going to become the king and that the army of the prophet was coming.

[15] Dr Browne and Dr Bunn both agree that at the time of the killing the defendant was suffering from paranoid schizophrenia which substantially impaired his ability to form a rational judgment and to exercise self-control. Dr Browne concludes that the paranoid schizophrenia was the significant contributory factor in causing the defendant to carry out the offence. Dr Browne also considered that the defendant satisfied the criteria for cannabis dependence syndrome.

Sentencing

[16] Prior to sentencing I have considered a victim impact statement submitted on behalf of the victim's family by the deceased's brother-in-law Mubashar Karin together with statements made by friends.

[17] The deceased was born and lived in Pakistan until approximately five years ago. He came to live in Northern Ireland and was a confirmed asylum seeker. He suffered from paranoid schizophrenia. This was controlled by medication. The deceased had no criminal record. Although he had no relatives living in Northern Ireland he had a number of friends in the migrant community and was well respected by them. As appears from these statements the deceased was a quiet, gentle, hospitable and friendly man who got on well with others. The deceased's parents are still alive and live in Pakistan. He also has a sister who lives in England. As appears from the statement from his brother-in-law, Mr Bhatti's death has had a profound impact on the family causing his sister and parents mental upset and trauma. This moving and well-expressed statement brings home starkly the far-reaching consequences for the family of this unprovoked brutal killing of their vulnerable son and brother.

Sentencing options

[18] When a defendant is convicted of manslaughter on the grounds of diminished responsibility there are a number of sentencing options open to the court. These include:-

- A determinate sentence,
- A discretionary life sentence,
- An indeterminate custodial sentence,
- An extended custodial sentence,
- A Hospital Order.

Dangerousness

[19] The offence of manslaughter comes within the provisions of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"). It is a "specified offence" and a "serious offence" and accordingly under Article 13 the court has to decide whether "there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences". In accordance with Article 15:

> "The court in making the assessment –
>
> (a) shall take into account all such information as is available to it about the nature and circumstances of the offence;
>
> (b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
>
> (c) may take into account any information about the offender which is before it."

[20] In R v Kelly [2015] NICA 29 at paragraph [41], Gillen LJ distilled from a long line of authoritative case law, the following principles which are to be applied when making an assessment of dangerousness:-

> "1. The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and can be taken to mean 'noteworthy, of considerable amount or importance'.
>
> 2. Factors to be taken into account in assessing the risk include the nature and circumstances of the current offence, the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, whether the offending demonstrated any pattern and the offender's thinking and attitude towards offending.
>
> 3. Sentencers must guard against assuming there was a significant risk of serious harm merely because the foreseen specified offence was serious. If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant."

[21] The court has had the benefit of a pre-sentence report together with supplemental reports from Dr Browne and Dr Bunn in respect of the issues of risk and disposal. In addition the court has had the benefit of oral evidence given by Dr Browne.

[22] Dr Bunn in his addendum report dated 28 June 2016 considers the issue of dangerousness and concludes:

> "Mr Noor presents a likelihood of further offences as specified within the criminal justice legislation that is more than a mere possibility. The harm that Mr Noor has inflicted was serious and caused death. I would therefore submit that Mr Noor has demonstrated the capacity to cause serious harm and taken with his paranoid schizophrenia, the propensity to carry or use weapons, severe mental illness and cannabis dependence, I would submit that the likelihood of future offences causing serious harm is more than a mere possibility. I believe that given his presentation Mr Noor should be described as dangerous within the meaning of the criminal justice legislation and as such could be considered as a candidate for sentence for the purpose of public protection."

Similarly Dr Browne in his addendum report dated 20 June 2016 reports on the issue of risk and disposal. Using an assessment tool to formulate information on risk he lists a number of concerns relating to the defendant's substance abuse, major mental disorder, withdrawal from service, failure to participate in therapeutic activities, poor insight, lack of motivation, failure to engage fully with mental health services, hallucinations and problems with compliance with therapeutic programmes. Dr Browne concludes:

> "Mr Noor poses a substantial likelihood of serious physical harm in the future and that this relates particularly to the risks of his abusing cannabis and not complying with mental health services and other supports leading to acute relapse of his illness with attendant risk of harm, particularly to others."

He further states:

> "I am concerned that Mr Noor has shown a pattern of on-going psychosis and that factors such as substance misuse, non-compliance with treatment and exposure to stress may precipitate relapse of his condition. Mr Noor raised ideas that he had been able to control his

> illness in the past and this demonstrated his poor insight into schizophrenia."

The pre-sentence report also concludes that there are a number of factors present which indicate a high likelihood of re-offending. These are set out as follows:-

> "A long history of cannabis abuse and a diagnosis of cannabis dependency syndrome, long history of mental health issues – diagnosis of paranoid schizophrenia, failure to engage in previous and current therapeutic interventions, absence of family and social supports and absence of problem-solving skills and coping strategies."

In relation to the risk of serious harm the Probation Board concluded that Mr Noor fulfilled the Probation Board criteria for representing a significant risk of serious harm. This was because his behaviour resulted in death, he used two weapons, he lacks insight, he will have difficulties managing future anxieties without resorting to drug abuse, he has used cannabis whilst in Knockbracken Clinic, he has disengaged with therapeutic interventions, he has had no inclination to address his drug or mental health problems and he still experiences symptoms of psychosis.

[23] Based on all the information about the nature and circumstances of the offence and the information contained within the medical reports and the pre-sentencing report I consider that the defendant satisfies the provisions of Article 13(1)(b) and that he is dangerous.

Hospital Order

[24] Before turning to the sentencing options set out in Article 13 of the 2008 Order it is necessary to consider whether the court should make a Hospital Order. Under Article 44 of the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order") the court has power to make such an order provided two conditions are met. The first condition is that an RQIA approved medical practitioner gives oral evidence that the offender is suffering from mental illness or severe mental impairment of a nature or degree that warrants his detention in hospital for medical treatment and another medical practitioner supports that conclusion. Neither Dr Browne nor Dr Bunn make such a recommendation and accordingly this condition is not met. The second condition is that the court is of the opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and the other available methods of dealing with him, that the most suitable method of dealing with the case is by means of a hospital order. In making this assessment, the court, inter alia, will invariably have to consider, as Lord Thomas noted in R v Vowles [2015] EWCA Criminal 45 "the protection of the public including the regime before deciding release and the regime after release".

[25] If a Hospital Order was imposed in this case it would have to be with restriction under Article 47 of the 1986 Order without limitation of time. A restricted patient may apply under Article 78 and is entitled to be discharged absolutely when the condition in either Article 77 (1)(a) or (b) is met. The condition in Article 77(1)(a) relates to the Tribunal being satisfied that the person is not suffering from a mental illness or severe mental impairment and the condition in Article 77(1)(b) relates to the Tribunal being satisfied that the person's discharge would not create a substantial likelihood of serious physical harm to the person or to other persons.

[26] Dr Brown gave evidence that apart from Mr Noor's self-report of voices there are currently few overt signs to help establish the presence of mental illness. In circumstances where the defendant no longer suffers from a mental illness or severe mental impairment he would be entitled to be discharged absolutely by the Mental Health Tribunal even though he remained dangerous. I therefore consider, in view of my finding that the defendant is dangerous, the risk to the public is such that a Hospital Order is not the most suitable means of dealing with this case.

Life sentence

[27] Under Article 13(2) of the 2008 Order I must consider whether the court should impose a life sentence. If the case does not fall within Article 13(2) then under Article 13(3) if the court considers that an extended custodial sentence would not be adequate for protecting the public the court shall impose an indeterminate custodial sentence and thereafter specify "such a period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence …".

Extended Sentence

[28] Mr O'Donoghue QC on behalf of the defendant accepted that the addiction difficulties the defendant continues to face means that an extended sentence may not be considered a suitable disposable. In light of the medical evidence and the court's findings about risks posed by the defendant to the public I am satisfied that in order to protect the public there will be a continuing need for some form of compulsory medical oversight or continuing review of the defendant's medical condition after any release from custody that may be ordered by the Parole Commissioners and as such supervision cannot be provided by an extended custodial sentence, such a sentence would not be a proper disposal in the present case.

Life sentence v indeterminate custodial sentence

[29] Thus the only remaining appropriate custodial sentences are either a life sentence or an indeterminate custodial sentence. The only practical difference between a life sentence and an indeterminate custodial sentence is that the person sentenced to life imprisonment remains subject to being recalled to prison at any time during his natural life if he has been released by the Parole Commissioners

after serving the minimum term of imprisonment prescribed by a court. A person sentenced to an indeterminate custodial sentence is also released on licence when it is considered appropriate to do so by the Parole Commissioners. Unlike a life sentence prisoner however he has the right to apply to the court to have his licence condition revoked ten years after release, having served the minimum term of imprisonment imposed by the court.

[30] The circumstances in which it is appropriate to impose a life sentence in a case of manslaughter on the grounds of diminished responsibility was considered in R v Kehoe [2009] 1 Cr App R(S) 9 and R v Wood [2010] 1 Crim App R (s) 2. In R v Kehoe, Openshaw LJ at paragraph [17] observed:

> "When as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public are now properly protected by the imposition of a sentence of imprisonment for public protection. In such cases, therefore the cases decided before the Criminal Justice Act 2003 came into effect no longer offer guidance on when a life sentence should be imposed. We think that now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave."

[31] Similarly in R v Wood, Lord Judge, CJ at paragraph [18] stated:

> "… The mere fact the case is one of manslaughter on the grounds of diminished responsibility does not preclude a sentence of imprisonment for life. In reality this sentence will be rare in such cases, usually reserved for particularly grave cases where the defendant's responsibility for his actions, although diminished, remains high."

[32] The prosecution urged the court to find that the defendant's culpability was high in this case and that the offence was particularly grave due to the presence of the following aggravating features: the attack was unprovoked, two weapons were used, the deceased was a vulnerable individual, the attack was violent and sustained, the deceased sustained multiple stab wounds and injuries, the defendant was in a state of self-induced intoxication due to consumption of drugs, he was emotionally indifferent at interview and did not accept any wrongdoing and expressed joy in killing the deceased as shown by his comments after the offence.

[33] In contrast Mr O'Donoghue QC on behalf of the defendant, whilst accepting it was technically possible to take that view on the facts and to impose a life sentence the reality was that at the time of the offence the defendant was suffering from paranoid schizophrenia and therefore his culpability and the seriousness of the offence must be judged by reference to his underlying medical condition.

Consideration

[34] All the medical practitioners agree that the defendant was suffering from paranoid schizophrenia at the time of the commission of this offence and this substantially impaired his ability to form a rational judgment and to exercise self-control and Dr Browne opined that his paranoid schizophrenia was "a significant contributory factor" in causing the defendant to carry out the offence and his abnormality of mental functioning helped provide an explanation for his conduct.

[35] This is the basis on which the prosecution accepted a plea to manslaughter on the grounds of diminished responsibility. It is clear from the medical evidence that the defendant's responsibility, whilst diminished was not totally extinguished. It therefore falls to this court to assess the level of the defendant's residual responsibility and to assess the gravity of the offence in light of all the circumstances.

[36] Dr Browne gave evidence that the defendant's illness was aggravated or precipitated by the use of cannabis and that prior to the offence the defendant knew that the use of cannabis made him paranoid. He had been warned by his family not to take drugs. Notwithstanding this advice he resisted their attempts to help him stop taking cannabis and instead he chose to take a more potent form of the drug. At the time of the offence the defendant was in a psychotic state and at that stage was addicted to cannabis. The defendant has no criminal record save for a caution for possession of cannabis.

[37] Whilst the defendant knew he became paranoid when under the influence of cannabis, there is no known history of the defendant being violent when under the influence of cannabis, prior to the subject offence. In these circumstances it appears that the defendant had no knowledge that he might become violent whilst under the influence of cannabis.

[38] In my view, the defendant's culpability must be assessed having regard not only to the nature of his mental illness but also to any actions he took which either precipitated or aggravated his mental illness. Taking all these factors into account I find that his residual responsibility was not minimal especially as his use of cannabis precipitated/aggravated his mental illness. Equally so however, I do not find that his residual culpability is 'particularly high' as the defendant had no prior knowledge that he might be violent whilst under the influence of cannabis.

[39] There is no doubt that this was a truly horrific offence. It was an unprovoked, violent and sustained attack on a vulnerable individual which resulted in his death from multiple stab wounds inflicted by two knives.

[40] The medical evidence however provides an explanation as to why the defendant acted as he did before, during and after the offence. Therefore, what may amount to aggravating features in another case, does not do so in this case due to the nature of the medical condition the defendant is suffering from and the medical evidence about the impact his condition had on his behaviour.

[41] Taking account of all the circumstances I do not consider that this is one of those rare cases in which a life sentence should be imposed and accordingly I consider the appropriate disposal is an indeterminate custodial sentence.

Tariff

[42] The 2008 Order requires the court to "specify a period … being such a period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence …"

[43] In determining the appropriate tariff in this case I have derived assistance from the paper on Sentencing in Cases of Manslaughter given by Sir Anthony Hart on 9 March 2011. I note the references to a number of paranoid schizophrenic cases where the tariff imposed ranged between five and six years. Since that paper was delivered the Court of Appeal in R v Hackett [2015] NICA 57 imposed a tariff of seven years in a case where the defendant suffered from a delusional disorder. Mr O'Donoghue QC, who appeared on behalf of the defendant and Mr Murphy QC who appeared on behalf of the prosecution both agreed that the range was between five and seven years.

[44] The tariff which I intend to impose reflects my assessment of the defendant's culpability and my assessment of what period is appropriate to protect the public and to reflect the public abhorrence that this offence was committed.

[45] For the reasons already outlined I find that the defendant's residual culpability was not minimal. Taking this into account together with all the circumstances of the actual offence and having regard to the defendant's very limited record and giving him full credit for his guilty plea (which was agreed by the prosecution notwithstanding that the plea was only entered on the first day of trial), I impose an indeterminate custodial sentence with a minimum term of six years. The period on remand should count towards that period.

[46] I emphasise that this means that the defendant will serve six years before he is eligible to be considered for release by the Parole Commissioners. Then he will only be released if the Parole Commissioners are satisfied that it is appropriate to release him having regard to the need to ensure the safety of the public.