

Neutral Citation No: [2022] NICC 19

Ref: OHA11832

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

ICOS No: 21/024791

Delivered: 04/05/2022

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT LAGANSIDE COURTHOUSE

THE QUEEN

v

STEVEN ARTHUR ANDREW McBRINE

**Mr D McDowell QC with Mr P Henry (instructed by the Public Prosecution Service) for
the Crown**

**Mr J Kearny QC with Mr T Campbell (instructed by Donnelly & Wall Solicitors) for the
defendant**

SENTENCING REMARKS

O'HARA J

Introduction

[1] The defendant has pleaded guilty to killing Frances Murray and Joseph Dutton on 23 December 2019. He was originally charged with murdering them but ultimately the prosecution accepted pleas of guilty to manslaughter by reason of diminished responsibility. As the sentencing hearing developed it was accepted by the defence that the only appropriate sentences were either life sentences or indeterminate custodial sentences. The circumstances which dictate one of those two outcomes are set out in detail below.

[2] I am grateful to counsel for their valuable written and oral submissions which have identified the relevant issues and both clarified and explored the proper approach to those issues.

Background

[3] Ms Murray (who was 37 years old), Mr Dutton (who was 47 old), and the defendant (who is now 38 years old) all lived in flats provided by a housing association in Kinnaird Close off the Antrim Road in North Belfast. They also shared a common problem in that to varying degrees alcohol had played a devastating part in their lives. According to one neighbour, a Mr Boyd, who lived in No: 28, Ms Murray had an additional difficulty in that she suffered from epilepsy. As a result she rarely left her flat so he did messages and generally looked out for her.

[4] On the evidence before me it appears that these three adults were at least acquaintances, if not friends, within Kinnaird Close. There was certainly a close relationship between Ms Murray and Mr Dutton. No history of antagonism or conflict before the 22/23 December 2019 between the defendant and his two victims is referred to anywhere in the depositions.

[5] Insofar as the events of 22/23 December can be pieced together, with the help of CCTV footage from the hallways within the flats, it appears that the defendant and his victims had been drinking a lot of alcohol through the night of the 22nd and into the early hours of the 23rd. For much of the time they were in Ms Murray's flat, sometimes two of them, at other times three.

[6] Mr Dutton left Ms Murray's flat (No: 29) at about 13:30am and returned to his flat (No: 32) which is on the same floor. The defendant who lives on the floor below at No: 20 appeared at about 1:30am at No: 31, apparently looking for drugs. Ms Murray may have heard the defendant because she came to her door and after a few minutes talking, which involved Mr Dutton, the defendant and Ms Murray went into her flat.

[7] The defendant left at around 5am. Ms Murray briefly followed him out before returning to her flat. The defendant then reappeared at her door and began to bang on it. She came to the door and he held up what appeared to be a bank card and they spoke. When she went to close the door he prevented her, putting his hand on the door and stepping inside the flat. A minute or so later when she was trying to get out, he violently pushed the door and entered the flat. Shortly afterwards Ms Murray left her flat shouting back to the defendant inside. At that point she had an injury to her left eye.

[8] The defendant followed her out and appeared to be appealing to her. She went to the stairwell and again he followed, pushing open the double doors aggressively. He spoke to her as she was on the first flight of stairs up from the second floor. At times he appeared to remonstrate with her; at others he was calm. On occasion he could be seen pushing out towards her.

[9] She then walked back past him and returned to her flat. Again, he followed. He stood outside her open door and was again speaking to her. After a time he

entered. A few minutes later she ran out her door and downstairs to the first floor. (This must have been the time at which Mr Boyd said she was hiding under the stairs.) The defendant followed her and was looking about for her, returning to her flat at one point. As Mr Boyd had described the defendant also went to his door at flat 28 before again looking downstairs.

[10] At around 5:30am the defendant went to Mr Dutton's flat. Mr Dutton answered the door. They both went into Ms Murray's flat where the door had been left open. Ms Murray could then be seen making her way back to her flat somewhat apprehensively, looking out for the defendant and looking through the window of her flat before entering.

[11] A couple of minutes later Mr Dutton left her flat and she followed. She returned briefly to again look in her window before going back to Mr Dutton's door. The defendant then came out to the corridor and after discussion Ms Murray returned to her flat and closed the door on him.

[12] The defendant then went to Mr Dutton's, seemingly to enlist his help in getting Ms Murray to open her door. Mr Dutton came out and pushed her door before returning to his flat, to the defendant's objections. He was persuaded to knock on her window but she did not answer. He eventually went back to his flat and the defendant left and went downstairs to his own flat. At around 6:20am the defendant left the building.

[13] The defendant returned at about 7:45am in the company of another man and they went into the defendant's flat. The other man left at 8:10am and at the same time the defendant returned to Ms Murray's flat upstairs, knocking the door before attempting to force it twice with his shoulder. He then knocked the window before moving to Mr Dutton's flat and knocking his door. Mr Dutton came out and they both tried to look through the window of flat 29. The defendant again tried to force the door. They were outside her flat for about 10 minutes and at one point Mr Dutton looked through her letter box and knocked her door. It is apparent from his demeanour that he too was intoxicated. They then went into Mr Dutton's flat.

[14] Just before 10:00 am Ms Murray came out of her flat. The injury to her left eye was more apparent by this stage. It had swollen up and was black in colour. She went to Mr Boyd's flat next door and after a number of trips back and forth between that flat and her own she went into his flat.

[15] At 10:20am the defendant and Mr Dutton came out of Mr Dutton's flat. The defendant went out into the stairwell but Mr Dutton stopped at Mr Boyd's flat and through the window appeared to be signalling to someone to come out. The defendant joined him there. After a couple of minutes Mr Boyd came out and spoke with him. Mr Boyd said the defendant smelled strongly of alcohol and was complaining that £250 had been taken from his wallet while he was in Ms Murray's flat. While they were talking Ms Murray appeared. Mr Boyd described her as

scared and pushed her back into the hallway. He then told everyone to leave. Ms Murray was very frightened and told Mr Boyd that the defendant was going to kill her and that he had told her the previous night that he was going to slit her throat. Mr Boyd said the defendant at that point said "I am going to do you in", looking angry but speaking calmly and drawing his finger across his throat. Mr Dutton told Mr Boyd that she did not take his money and told him not to worry as Mr Dutton thought the defendant would not do anything when he was about.

[16] Ms Murray came out of Mr Boyd's and went to her own flat. Mr Dutton and the defendant followed. At about 10:45am she came out again and went to a window at Mr Boyd's. The defendant followed her and can be seen pushing her. She returned to her flat and closed the door on him. He then pushed the door open and went in. That was the last time Ms Murray was seen on the CCTV at Kinnaird Close.

[17] James Black who knew the defendant from prison was at home in his flat nearby at Cliftonville Road. He received a call from the defendant at 11:19am. He and his partner, a Ms Neill, heard the defendant saying "Jim I have the money I owe you but this bitch stole it." They could hear a girl crying and saying "stop hitting me leave me alone." They then heard the defendant shout "Joe, come here, I fucking want you." Ms Neill screamed down the phone "You fucking woman beating bastard" causing Mr Black to end the call.

[18] At 11:20am two women arrived at Ms Murray's door, delivering Christmas presents. No one answered the door and they left. Almost an hour later at 12:12pm the defendant left in haste with his head down. He left the door open behind him. Staining could be seen down the leg of his tracksuit bottoms. He made his way downstairs as if to leave the building although he encountered someone at the front door, took a detour and then went back upstairs into his own flat. A minute or so later he left, speaking to a person at the front door who was trying to open it.

[19] Mr Boyd had gone out to get his hair cut and do a few messages. He returned at around 12:45pm and went to Ms Murray's flat to check on her and Mr Dutton. He looked through the window and could see her lying on the floor. At first he thought she had taken a fit as she suffers from epilepsy but then he saw Mr Dutton's legs lying over by the radiator. The door was half open so he went inside. He saw Ms Murray lying on the floor between the television and the sofa. Her throat had been cut. Mr Dutton was on the floor under the radiator by the sink. His throat also appeared to have been cut (although it turned out not to have been) and he was still bleeding out. Mr Boyd said that there was blood everywhere and that they were both dead.

[20] Mr Boyd ran back to his flat and told his mother to call the police and the ambulance. Ms Murray and Mr Dutton's support worker arrived and Mr Boyd told her what had happened. He was panicking and screaming.

[21] The defendant made his way to Mr Black's flat at Cliftonville Road. He had blood patches on the legs of his tracksuit bottoms and his trainers were covered in blood. Mr Black asked him what had happened. The defendant claimed that he had been jumped by "three wee lads" and asked whether he could get changed in his flat. Mr Black's partner, Ms Neill, shouted at him again, again calling him "a woman beating bastard." Mr Black gave him a pair of tracksuit bottoms, he said to get him out of the flat. He noticed what he thought was a knife in the defendant's coat pocket. He then received a call from another resident of Kinnaird Close a couple of minutes later and he told him that the defendant had come to his door. He also gave that information to the police when they arrived.

[22] The defendant got changed into the tracksuit bottoms at the bottom of the stairs. He was seen by someone else in the flats whom he knew, a Mr Bradley. Mr Bradley noticed that both the defendant's trainers were soaked in blood to the ankles and he asked what had happened. The defendant replied "You don't want to know." He then said "You won't believe it, they ended up robbing me last night and I ended up murdering them, your man Jim or Joe came in on me and I ended up stabbing the two of them to death." Mr Bradley did not believe him but noted that he was "out of it" and foaming at the mouth as if he was on drugs.

[23] Mr Bradley gave the defendant a bag for his tracksuit bottoms and he put them in it the handle of a knife fell out on to the floor although there was apparently no blade attached to the handle. The defendant told him that he was drinking with these people in Kinnaird and that the money had gone missing, that they had got into a scuffle and that he had murdered them. He then gave Mr Bradley a big hug, told him that he would never see him again and that he had been a good friend.

[24] As the defendant hugged Mr Bradley he started to "kind of punch him" on the shoulder. Mr Bradley asked him what he was doing this for and the defendant said he was doing it for the CCTV cameras, presumably to try to exonerate Mr Bradley for having helped him. While he was in the hallway Mr Bradley saw the defendant drop a foil strip of tablets. Mr Bradley later sent the defendant a text suggesting that he hand himself into the police.

[25] Police attended the scene at Ms Murray's flat at approximately 1:20pm and were met by Mr Boyd. Ms Murray was on the floor in the living room. There was an appreciable amount of blood on the floor and projected blood on the walls, skirting and floor indicating that a sustained attack had occurred. Clumps of black hair were found beside her as well as in the bedroom. Mr Dutton lay in the kitchen, his head under the radiator. In the kitchen too there was projected blood on the walls and cupboards and particularly by the radiator.

[26] A search was undertaken for the defendant. CCTV showed that he had left the flats at Cliftonville Road just before 12:40pm and gone in the direction of the Antrim Road. He went to a bar on Baltic Avenue and was seen having a cigarette outside before going in and ordering a drink. Less than 10 minutes later he was seen

walking off in the direction of Atlantic Avenue. Just before 1pm he was captured on CCTV walking on the Limestone Road towards York Road. He was seen to throw the plastic bag he was carrying into a garden. He was then seen by CCTV at a funeral home walking up York Road. Ms Murray's bank card was later found there and was handed into a branch of the Ulster Bank by a Mr Ellis who had found it near a cash machine and was anxious that the owner would not be without it over Christmas.

[27] Later that afternoon at around 4:00pm the defendant took a bus from Gray's Lane into Royal Avenue. He had bought a box of cider. On his arrival at Royal Avenue he walked off towards Castle Street and was next seen in an off-licence on the New Lodge Road at around 5:45pm buying a bottle of Buckfast.

[28] At 6:08pm armed police were tasked to a possible sighting of the defendant on Clifton Park Avenue. On arrival they saw him walking on the footpath, holding a bottle of Buckfast in his hand. He put his hands up on instruction but refused to get to his knees. He appeared dazed and confused. The bottle was removed from his hand and he was handcuffed and arrested by the police. Under caution he replied "What? What? I didn't murder anybody."

[29] The defendant was taken to Musgrave Street Police Station where it was noted that his shoes were covered in blood. Later analysis confirmed this to be the blood of the two deceased. He was agitated from the start when his clothing was seized and non-intimate samples were taken. He was foaming from the mouth and had his fists clenched in an aggressive manner. He greeted one officer by asking him "What the fuck are you looking at?" His breath smelled of alcohol and his eyes were glazed and his speech slurred. He threatened police and custody staff on a number of occasions, telling one officer that he would knock his teeth out when the handcuffs were off. He also banged his head of a wall and was placed on the ground by two officers.

[30] It took an hour to seize his clothing and take non-intimate samples. In respect of his jacket which he was reluctant to hand over he said only "I only put the jacket on afterwards, youse don't need it." It was not possible to take a blood sample at that time although one taken more than 18 hours later showed the presence of Pregabalin and Diazepam.

Posts mortems

[31] Dr James Lyness, State Pathologist, recorded that Ms Murray died of blunt force trauma to her head and compression of her neck. He found multiple injuries to her head and neck consistent with a sustained physical assault.

[32] He found severe bruising of her face and scalp and incisions and stab wounds. These injuries were consistent with punching, kicking and stamping, possibly all three.

[33] The multiple stab wounds and incisions to her neck were possibly caused by a knife but more probably by the neck of a broken bottle. While not fatal these wounds and the bleeding they caused contributed to her death.

[34] Death was caused by the head injuries or by her neck being grasped and compressed or by both.

[35] There were multiple other areas of bruising and injury on her body also consistent with a prolonged and brutal assault.

[36] In addition, Dr Lyness found a very high level of alcohol in Ms Murray's blood which may have contributed to her death but did not cause it.

[37] The post mortem report on Mr Dutton is very similar in that the cause of death is recorded as blunt force trauma of head and chest and compression of the neck.

[38] Dr Lyness stated that there were multiple injuries primarily to the head, neck and chest consistent with a prolonged physical assault, probably involving punching, kicking and stamping. The bruising to Mr Dutton's neck is consistent with him being forcibly grabbed and compressed much like Ms Murray.

[39] His alcohol reading was also extremely high to the extent that it was a potential contributory factor in the sequence but not the cause of death.

[40] Mr Dutton was not stabbed repeatedly in the neck as Ms Murray was but in all other respects the attack which caused his death was every bit as brutal and prolonged.

Police interviews

[41] The defendant told the police that he had got into a fight with Ms Murray and Mr Dutton and then run. While admitting that he had murdered them he asserted that "I didn't mean to." His version (for which there is no supporting evidence) is that he was invited into Ms Murray's flat for a drink, that he went to the toilet and that when he came back he discovered that she had stolen money from his wallet. He claimed that he had left but then returned with Mr Dutton who he wanted to assist him in retrieving the money.

[42] On this version Ms Murray and Mr Dutton were laughing at him and he lost control of his temper. He then claimed that he blacked out and when he came round he saw them lying there. He further claimed that Ms Murray or Mr Dutton had run at him though there was no sign of any injury of any sort to him consistent with him having been attacked.

[43] Later in his first interview he admitted stabbing Ms Murray in the neck repeatedly with a broken bottle and to punching her, kicking her and stamping on her. His claim was that he attacked Ms Murray first and that he then assaulted Mr Dutton but only after Mr Dutton had run at him. He also claimed that he had not changed out of his bloody clothes after the attack.

[44] During the second interview the police played the available CCTV footage. He was asked about the injury to Ms Murray's eye which was visible from that footage and confirmed that he had caused it. He was also asked about going to the Cliftonville Road flats. He confirmed that he knew the building but when he was asked why he went there after killing Ms Murray and Mr Dutton he said that he did not know. Then he was asked about changing his tracksuit bottoms and was shown the CCTV footage which made it clear that he had done so but he again claimed that he did not recall. Nor did he recall disposing of the plastic bag with his bloody tracksuit bottoms.

Previous convictions

[45] The defendant has a criminal record showing 39 previous convictions. These include four for assaults on police, 12 for common assault, one for robbery, one for threats to kill and four for serious assaults. In 2004 he was given a six year custody probation order for attempted robbery and wounding with intent. Even more noteworthy is a conviction for wounding with intent to cause grievous bodily harm in 2011. In that incident he stabbed a friend in the neck with a knife. The sentence imposed in 2012 was an extended custodial sentence, five years' imprisonment with a licence period of two years. As it turned out he was recalled to prison during that licence period and was not finally released until 2019. In March and April 2019 he reoffended - a common assault, an assault on the police and disorderly behaviour.

[46] The extended custodial sentence was imposed in 2012 for the 2011 stabbing offence, in part at least because a pre-sentence report from the Probation Board deemed the defendant to be dangerous in the sense that there was a significant risk that he would cause serious harm. To explain that concept further, there was judged to be a high likelihood that he would commit a further violent offence causing death or serious personal injury.

Victim Impact Statements

[47] The violent and brutal killings of Ms Murray and Mr Dutton have left two extended families traumatised. Their statements show clearly that the fact that both victims had struggled in life does not diminish in any way the pain and loss which their deaths have caused. In her earlier life Ms Murray was a childminder and very active in her church community. As her father wrote "the fact that she succumbed to addiction is not what defines her. Instead, she will be remembered as a caring and loving daughter, sister, cousin and niece."

[48] Mr Dutton's family have expressed similar feeling about losing him, especially in such a brutal way. His son had hoped that his father would soon be turning his life around. Instead that life has been taken from him. Mr Dutton's son and brother have also written about his loss and, in addition, expressed incredulity about the reduction of the charges from murder to manslaughter. That issue will be addressed below.

Psychiatric evidence

[49] A plea of guilty to manslaughter by reason of diminished responsibility is accepted only if the following four conditions are satisfied:

- (i) The defendant was suffering from an abnormality of mental functioning;
- (ii) That abnormality arose from a recognised medical condition;
- (iii) That abnormality impaired the defendant's ability to understand the nature of his own conduct or to form a rational judgment or to exercise self-control.
- (iv) That abnormality provides an explanation for the defendant killing Ms Murray and Mr Dutton.

[50] Dr G Loughrey, consultant psychiatrist, reported in October 2021. His diagnosis was mixed personality disorder, alcoholism and harmful use of drugs.

[51] Dr C Kennedy, also a consultant psychiatrist, then provided a report in December 2021, largely but not entirely agreeing with Dr Loughrey. On her analysis the defendant has an abnormality of mental functioning in the form of recognised medical conditions, namely alcohol dependence syndrome and mixed personality disorders. In her opinion this abnormality impaired the defendant's ability to exercise self-control. Whilst she recognised that it is for the court to determine if these abilities were substantially impaired, in her view they were. She also believed that the abnormality of mental functioning explains the defendant's conduct on 23 December 2019.

[52] Dr Kennedy provided an addendum report in January 2022 for the purposes of which she reviewed the defendant's extensive social work records. Her remit was to consider whether the content changed her original opinion in any way. The records showed the very poor circumstances in which the defendant grew up, surrounded by neglect, limited and hopelessly inadequate parenting, parenting by alcoholics and then no better experiences in the care system where he experienced physical and some sexual abuse.

[53] At paragraph 8.8 of that report Dr Kennedy stated:

“The social work records record a number of violent incidents during his time in care where similar dynamics to those of the index charges are apparent. It is clear he is very impulsive and has been so since childhood, is easily threatened or provoked by minor issues, will pick on more vulnerable individuals, has a pathological anger response and takes a long time to calm. This is the case even without alcohol or drugs which serve to accentuate his difficulties. He also has particular issues with women though can be aggressive to both males and females.”

[54] The prosecution went back to Dr Kennedy for one further report which she provided in April 2022. This report was to assist on the issue of dangerousness in the context of the sentencing options which the court has.

[55] Taking into account all that she knew about the defendant Dr Kennedy applied an assessment known as Historical Clinical Risk (HCR20). This considers 10 historical factors which are relatively fixed along with five clinical risk factors and five risk management factors. These latter two aspects can be changed (improved) by interventions and supports. They are not therefore set or fixed as the historical factors.

[56] Out of the 10 historical factors which include a history of violence, problem with relationships, substance misuse, traumatic experiences and violent attitudes the defendant met nine in full and one in part. This disturbed Dr Kennedy who believes that a lot is still unknown about the defendant who, in her view, lacks internal controls. Ominously she said at paragraph 3.10 that “there are no identified external controls that could effectively manage him in the community.” She also concluded at paragraph 3.11 in respect of future interventions that:

“It is impossible to say how long they might take and, indeed, whether he is able to engage meaningfully at all or benefit from interventions.”

[57] Her final advice was that there are no medical options to consider in sentencing (such as a hospital order) and that a future risk management plan can only be determined on the basis of the risk factors at a point in the future which cannot be anticipated now. On any view however, the defendant, she said, is likely to require robust external controls for an indefinite period.

[58] In light of all of this medical analysis I am satisfied that the prosecution was correct to accept the two pleas to manslaughter by reason of diminished responsibility rather than pursue the charges of murder. In saying that however, I emphasise that diminished responsibility does not mean no responsibility. The extent of the defendant’s residual responsibility falls to be assessed. I also emphasise that there is a difference between alcoholism which is a recognised medical

condition leading to an abnormality of mental functioning and being drunk. Being drunk is not in itself enough to reduce murder to manslaughter.

Sentencing

[59] What then is the correct sentence to impose on this defendant who is not in law guilty of murder but who has killed two defenceless people in such a brutal way? This has never been an easy question for courts to answer. Whatever sentences are imposed there remain two dead people, two grieving families, a defendant with an abnormality of mental functioning and the public who need to be protected.

[60] As already indicated there cannot be hospital orders in this case because personality disorders and addictions are both excluded from the provisions of the Mental Health (NI) Order 1986.

Dangerousness

[61] I am required by Article 13 of the Criminal Justice (NI) Order 2008 (“the 2008 Order”) to consider whether the defendant is dangerous in the legal sense i.e. is there a significant risk to the public of serious harm (death or serious personal injury) as a result of him committing more serious violent offences? The answer to that question is not in dispute in these cases. Mr Kearney correctly conceded that the test of dangerousness is satisfied in light of Dr Kennedy’s unchallenged third report and the pre-sentence report of April 2022 from the Probation Board. Neither of these reports is binding on me but I accept them in full.

[62] That leaves me with three sentencing options under the 2008 Order:

- (i) Discretionary life sentences with a fixed minimum number of years which must be served before release can be considered.
- (ii) Indeterminate custodial sentences which also involve me setting a fixed minimum number of years which the defendant must serve before release can be considered.
- (iii) Extended custodial sentences which mean I set today a number of years which are to be served with a further period, the extension period, during which the defendant is subject to licence for such period as is necessary to protect the public.

[63] It is conceded, again correctly, for the defendant that extended custodial sentences are not appropriate in this case in light of Dr Kennedy’s third report and especially paragraph 3.11 which is referred to above. I would add that it is also inappropriate because of the failure of the 2012 extended custodial sentence to

achieve any positive results and because of the level of violence and the whole circumstances of these two killings.

[64] That leaves a choice between life sentences and indeterminate custodial sentences. Despite their different titles the differences between these two options is, in fact, very limited. If life sentences are imposed the defendant will be on licence and therefore liable to recall to prison for the rest of his life after he has been released from prison. With indeterminate custodial sentences the defendant can apply after 10 years on licence for the licence to expire so that he is entirely free from obligations. Critically, what the two sentences have in common is that the defendant can only be freed from prison at the end of his minimum fixed term after an assessment of the risk to the public by the Parole Commissioners.

[65] One of the key questions for me in deciding whether to impose discretionary life sentences or indeterminate custodial sentences is what is the defendant's residual responsibility or culpability for the killings, separate from the diminished responsibility recognised in law as a result of his abnormality of mental functioning.

[66] Mr Kearney has contended that the level of personal responsibility is relatively low, highlighting the fact that the defendant has not one but two mental abnormalities – alcohol dependency syndrome and mixed personality disorder. It is part of that mixed personality disorder that according to the doctors causes him to perceive slights, not to calm down and to pick on vulnerable people.

[67] My difficulty in accepting that submission is that unusually we have CCTV footage to help understand what happened. There is no audio but what is beyond dispute is that for whatever reason (and there is no evidence of theft or of the defendant being mocked apart from his own unreliable word) he violently attacked Ms Murray at around 5am, that he then stalked her around the building threatening and confronting her, that he threatened in front of a witness to cut her throat and that he did do so but did not cut Mr Dutton's, that he killed two people, who on the evidence, did not attack him in any way, that he had the presence of mind to try to hide his bloody trousers and that he stole Ms Murray's bank card.

[68] The defendant was drunk when he did all of this but we do not know how drunk he was. He was certainly not falling or staggering around from what we could see on the CCTV footage.

[69] All of this and all of the circumstances lead me to conclude that the defendant's responsibility in this case is far from low – it is quite considerable.

[70] Counsel helpfully referred me to a number of relevant authorities especially *R v Hackett* [2017] NIJB 274; *R v Crollly* [2011] NICA 58; *R v McEntee* [2018] NICC 12 and *R v Dolan* [2020] LICC 7. I take from them that discretionary life sentences should be reserved for offences of the utmost gravity, where the seriousness of the

offences is such that life sentences would have a denunciatory value reflecting public abhorrence.

[71] In my judgment that level of gravity is present in these two cases. There are two killings, not one. Ms Murray and Mr Dutton both died from blunt force trauma of the head and from compression of the neck. In other words, not just one cause of death but two. And Ms Murray was repeatedly stabbed in the neck exactly as the defendant threatened.

[72] And in case there is any doubt about it, the defendant was uninjured and unmarked in this whole episode. In other words, at no point was he under attack and at no point did either Ms Murray or Mr Dutton mount any effort to fight him off.

[73] For these reasons I impose two discretionary life sentences on the defendant, one for killing Ms Murray and the other for killing Mr Dutton.

Setting the tariff

[74] Having done that I must now set the minimum number of years in jail which the defendant must serve before he can be considered for release on licence by the Parole Commissioners. To be clear, the Parole Commissioners will not release the defendant without considering the need to protect the public from serious harm. Even if his release is approved he will be on licence, with the conditions of that licence determined at that time. Presumably these will at the very least include prohibitions on him from consuming alcohol or taking drugs.

[75] Despite imposing two discretionary life sentences I must distinguish these two killings from murder. While this is an exceptionally grave case of double manslaughter it is not a double murder. For that reason the tariff must be less than it would be in murder cases.

[76] For the prosecution it was contended (and not challenged) that the aggravating factors are:

- (a) Two victims were unlawfully killed, not just one.
- (b) Both were vulnerable, very drunk and no match for the defendant with one being a woman.
- (c) The attacks were brutal and sustained with more than one cause of death in each case.
- (d) A broken bottle was used on Ms Murray and a shod foot was used on both.
- (e) The defendant expressed an intention to kill.

- (f) Ms Murray was killed in her own home.
- (g) The defendant has a relevant serious record for violence.
- (h) The impact on two bereaved families.

[77] On the mitigation side I accept that the defendant admitted responsibility for the killings early at interview with pleas of guilty only being delayed by the justified gathering of medical evidence. It is also urged on me that the defendant has shown remorse but I note Dr Kennedy's hesitation in assigning much weight to that. At paragraph 2.11 of her third report in April 2022 she states that while he said he was sorry there was no apparent emotional expression and no depth of discussion. Instead he avoided meaningful discussion and blamed alcohol.

[78] The defendant was effectively caught red-handed for these killings with CCTV, forensic and DNA evidence as well as eye-witnesses pinning full responsibility on him from the start. He is nevertheless entitled to some discount on the sentences for his guilty pleas.

[79] If this was a plea to double murder the tariff would be very considerably higher but given that the pleas are to manslaughter by reason of diminished responsibility I impose a tariff of 13 years which in each case is reduced to 11 years for the limited mitigating factors including the plea of guilty.

[80] I do not envy the task facing the parole commissioners in due course. It is part of the plea of mitigation which I confirm that I have taken into account that the defendant has been a well-behaved prisoner since December 2019. That is to his credit but is of very limited value when considering whether he would be dangerous if released. It is foreseeable that he will behave tolerably well in a controlled prison environment, especially without access to alcohol and drugs. Whether it is possible to turn around the life of this man who is already 38 years old is another matter entirely. That will depend on what interventions he is offered in prison and how he responds to them.

[81] For the moment and for many years to come he leaves two bereaved families who must now face the rest of their lives without their loved ones, Frances Murray and Joseph Dutton.

[82] The two sentences are to run concurrently and the defendant is to be given credit for time spent on remand in custody since December 2019. That will not include the time spent from 14 January 2020 serving a sentence of two months for assaulting the police.