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Judgment: approved by the Court for handing down | *Delivered:* **15/07/2016**
*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

v

ALBERT ARMSTRONG

TREACY J

Introduction

[1] Albert Armstrong, you have pleaded guilty to the murder of Colin Lindsay and Stanley Wightman. I have already sentenced you to the only sentence permitted by law for the crime of murder, namely life imprisonment. It is now my responsibility to determine the period that you will have to serve before you become eligible to have your case considered by the Parole Commission which will thereafter have the responsibility of determining when, if at all, you will be released. I make it clear to you, and through the press, to the general public that the period I shall fix today will not qualify for any remission. Consequently, you will be required to serve, in its entirety, the tariff period that I shall determine, in accordance with the relevant sentencing guidelines.

Background

[2] Since the background to the murder of Colin Lindsay and Stanley Wightman has never been disputed by you and was set out in comprehensive detail at the last hearing I propose to give only a brief summary.

[3] The deceased were known to the defendant but were not close friends, On 8 July 2015, following a telephone conversation with Mr Lindsay, the defendant confirmed that he would come over to his house at Kirkiston Walk on the Belvoir Estate to fix Mr Lindsay's smoke alarm. Whilst at Mr Lindsay's home the two deceased and the defendant, over the course of the day and evening, all consumed a substantial quantity of both beer and vodka.

[4] At some point during the evening an altercation occurred between the defendant and Mr Lindsay. There is no agreement as to the exact circumstances of the altercation which led to the attack on the deceased. The defendant made the case that he was attacked and retaliated. However, the truth or otherwise of his account has not been tested. What is clear is that both deceased died as a result of multiple incised wounds of the neck caused by a Samurai sword wielded by the defendant. There were a great number of blows which are incompatible with the defendant's account of the incident. Autopsy reports concluded three common aspects between each victim. Both died from multiple incised wounds to the neck. Both men had injuries to their arms and hands indicative of defensive wounds from a sharp edged weapon and in both deaths considerable force must have been used to inflict such injuries.

[5] The defendant carried out a brutal attack almost decapitating one of the deceased and almost severing the hand of the other. Both died as a result of catastrophic injuries sustained in the fatal assault. The defendant said that the assault was over "in a flash" and that he left the house believing both men to be dead and that he drove back to his partner's home "in a daze". She could tell he had been drinking, and also noticed he had blood on his hand and forehead. She also saw a blood-stained sword in the passenger footwell of the car, wrapped in a pair of black jeans. When she asked the defendant what had happened, he told her he had killed two people. He said "I have killed Bap Lindsay and Stanley. Nobody is going to fuck me over again."

[6] The defendant asked his partner to help gather his clothes which he was going to burn in the back garden but that never occurred as the police arrived and arrested him at 8.10 pm.

[7] On arrival at the murder scene police were unable to enter the property but an officer saw one stricken man in the front room. They eventually entered the house at 8.30 pm and found a clearly deceased Mr Lindsay on the sofa. The severely injured Mr Wightman was found lying in a pool of his own blood on the living room floor. Despite being rushed to hospital, Mr Wightman died two days after the attack from the wounds to his head and neck. His right hand was almost severed at the wrist as he tried to defend himself.

[8] After his arrest, the defendant was not fit to be interviewed until the following day. He initially denied involvement, making the case that prior to the double murder he had been abstinent from alcohol for a period, but that he had drunk ten tins of beer the day before the incident. He stated that on 8 July, he had taken Mr Wightman to the off-licence, that all three of them had consumed alcohol and that he went back out later that day to buy more alcohol. The defendant also made the case that when he returned from the second trip Mr Lindsay pulled a hatchet out and swung a sword at him. He said "both of them were at me", and that in the struggle he lashed out and he could not remember how many times he had hit both of them.

Basis of Plea

[9] The court had before it a Basis of Plea document which was signed by Senior Counsel on behalf of the prosecution and defence. This document is of central importance in the determination of a just and appropriate tariff within the context of the applicable guidance. It was in the following terms:

(i) Defendant pleads to murder of both deceased.

(ii) It is accepted that the offence was spontaneous. It was not pre-planned.

(iii) The defendant was very heavily intoxicated at the time and the effects of this would have been exacerbated by his diabetes.

(iv) The sword, which was the weapon used, belonged to Mr Lindsay and he kept it in the living room of his own house. There was also a hatchet present in the house which also belonged to Mr Lindsay and which was kept in the living room.

(v) The defendant would not have known the quality of the blade of the sword in advance of its use. It is accepted that in the course of the assault, albeit that it lasted a short time, he would have been aware of the lethal nature of the weapon and that a number of blows were inflicted on each man, as described in the pathology report.

(vi) All three men had been drinking together and there had been no earlier animosity. A dispute erupted between the men whilst they were drinking in the living room and an altercation ensured.

(vii) There is no agreement as to the exact circumstances of the altercation which led to the attack on the deceased.

(viii) This was an attack which did not last very long but it is accepted that multiple blows were inflicted on each man. The defendant was not aware that Mr Wightman was still alive after the assault.

(ix) In the aftermath of the killing the defendant returned to his own house and confessed to the killing to his partner. She phoned the police.

(x) After arrest the defendant was interviewed. Whilst he initially denied responsibility for the killings he later made admissions to police as to having been responsible for the deaths of the two men.

(xi) There is no record for any inter-personal violence.

(xii) The defendant's behaviour was totally out of character as observed by a number of Crown witnesses who knew him well.

(xiii) The defendant's plea should be regarded as being at the first opportunity given that he had admitted the actus reus at arraignment and in interview and this plea was offered shortly after the psychiatric issues in the case had been resolved.

Sentencing

[10] In setting the minimum term that you must serve before you are eligible for release the Court is guided by the applicable principles set out in R v McCandless & Ors [2004] NICA 1. Para l2 of Lord Woolf's Practice Statement, adopted in McCandless, provides that where the offender's culpability is exceptionally high or the victim was in a particularly vulnerable position, the higher starting point of 15/16 years will apply. Such cases will be characterised by a feature which makes the crime especially serious. Para 12 then enumerates a non-exhaustive list of such features, some of which are clearly present in this case. This defendant's culpability is exceptionally high because he intended to kill both victims and did so by the infliction of multiple injuries with considerable force by a Samurai sword - see McCandless para l2(j) and (k).

[11] If a higher starting point is selected it is important to ensure that the same factors are not double counted. As para 8 of McCandless reminds us, not only is the Practice Statement intended only to be guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding a right and appropriate sentence for the instant case:

> "[8]... We think it important to emphasise that the process is not to be regarded as one of fixing each case into one of two rigidly defined categories, in respect of which the length of term is firmly fixed. Rather the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in R v McKeown [2003] NICC 5, a multi-tier system. Not only is the Practice Statement intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case."

[12] Whatever starting point is selected the court must then give consideration to whether 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.

[13] In selecting the higher starting point of 16 years I have taken into account a number of factors, namely that the defendant intended to kill both victims and that he did so by the infliction of multiple injuries using a Samurai sword with considerable force.

Aggravating Features

[14] The prosecution has also sought to rely upon para l8 of the Practice Statement to the effect that a substantial upward adjustment may be appropriate in the most serious cases. Para l8 states that such an 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". You armed yourself with a lethal weapon, inflicted multiple catastrophic injuries, using considerable force to do so and you murdered two men. In doing so you destroyed their lives and the lives of their families. I consider that in this case the presence of these several features requires an appreciable variation upwards of the higher starting point but not to the extent suggested in para l8. Accordingly, I am varying the starting point upwards to 20 years.

[15] In this case the defence submitted that the prosecution was wrong to contend that the consumption of alcohol is not a matter which should be regarded as an aggravating feature. Mr Duffy QC submitted that all three men were heavily intoxicated; all three consumed alcohol voluntarily; the defendant was invited to drink with the deceased; and this is not a case where the defendant had a prior history of violence under the influence of alcohol. It is well recognised that the commission of an offence while under the influence of drink and drugs will usually constitute an aggravating factor – see, for example, DPP's Reference (Nos 2 & 3 of 2010) [2010] NICA 36 at para 4. The Court of Appeal in R v Rush [2008] NICA 43 at Para 11(iv) referred to R v Ryan Quinn [2006] NICA 27 and noted that in that case the court observed that there was no evidence that the defendant's intoxicated state had made it more likely that he would attack the deceased, adding that such evidence should normally be present before the taking of alcohol should be regarded as an aggravated factor. I accept the submissions of Mr Duffy that in the circumstances of this case the consumption of alcohol should not be treated as an aggravating factor.

Mitigation

[16] In terms of mitigation the Prosecution accepted the following:

- Guilty plea notified to the prosecution in advance of trial;
- No significant element of premeditation;
- Absence of previous convictions for violent offending;
- Offender's age (47); and
- Admissions, following initial prevarication, to police during interview.

The defence agrees with the prosecution in respect of the points in mitigation identified except to clarify that this is a case where there was no premeditation as opposed to no "significant element of premeditation". They point out that in the Basis of Plea document the offence was "spontaneous".

[17] The defendant did not dispute anything in the depositions and accepted the prosecution case in its entirety. He never disputed that he had been responsible for killing the two deceased. The actus reus was never in dispute. Mr Duffy QC, at the first appearance, made clear that the actus reus was accepted but that the medical issues were still being explored. Responsibility for the killings was not denied and the sole issue which was then still being medically investigated, was the mental state of the defendant at the time of the offence. Once the medical evidence was complete and the issue of the mental state of the defendant was resolved, precluding any defence to the charge of murder, the defendant was immediately re-arraigned and pleaded guilty.

[18] The defence also contended that the defendant suffers from a series of mental health difficulties, which, whilst not amounting to a defence of "diminished responsibility", should be taken into account in the overall fixing of a tariff. I have had regard to the very helpful reports furnished by Dr Helen Harbinson, Consultant Psychiatrist dated 11 December 2015, Dr Carol Weir, Consultant Clinical Psychologist dated 5 May 2016 and Dr Marc Lyall, Consultant Forensic Psychiatrist dated 13 May 2016. I have taken into account the medical evidence and the personal circumstances of the defendant as set out both therein and in the Pre-Sentence Report. However, in the context of the gravity of the offences I consider that the personal circumstances of the defendant are of limited weight.

Conclusion

[19] I have no doubt that images of the brutal manner in which each victim met his death will remain with the families and I have taken full account of the moving impact statements which they have provided in arriving at my decision.

[20] I have already stated that the starting point in this case is one of 20 years. Having regard to the basis upon which the pleas of guilty were accepted, taking into account all of the matters advanced on behalf of the defendant and, in particular, his plea of guilty at the earliest opportunity I have concluded that the just and proportionate minimum term that I must impose before you can be considered for release is one of 14 years.