

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

*Delivered:* **26/09/2006**

**IN THE CROWN COURT IN NORTHERN IRELAND**

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**THE QUEEN**

**-v-**

**WILLIAM JOHN LIAM BRADY**

**BILL NO: 103/05**

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**WEIR J**

[1] Mr Brady, you have pleaded guilty to the manslaughter of your wife, Kathleen Brady, by reason of provocation. You have indicated from the earliest opportunity your willingness to enter such a plea and did in fact enter it at the commencement of your trial. Although it was at that time rejected by the Prosecution, after prosecution evidence had been heard in the trial for three days it was then accepted by Mr Terence Mooney QC on behalf of the Prosecution and you were re-arraigned accordingly.

[2] In approaching the task of passing sentence upon you I must therefore, as a matter of law, begin by making a number of assumptions in your favour:

Firstly, I must assume that at the time when you committed this killing you had lost your self control.

Secondly, I must assume that you were caused to lose your self control by things said or done, or both, by your wife.

Thirdly, I am obliged to assume that your loss of self control was reasonable in all the circumstances.

Fourthly, I have to assume that the circumstances were such as to make your loss of self control sufficiently excusable to reduce the gravity of your offence from murder to manslaughter.

See: *R. v Smith (Morgan)* [2001] 1 A.C. 146 and *A.G.'s References (Nos. 74 ,95 and 118 of 2002) (Suratan and Others)* [2003] 2 Cr App R (S) 42

[3] Because the trial did proceed to a partial hearing I have had the invaluable opportunity to see and hear the evidence of your sons, Seamus and Liam Junior, and of your daughter Michelle about life in your family during the last few years and the last few hours before your wife's death. It cannot have been easy for them to give that evidence but they clearly did their best to present a balanced account of the situation and Mr Mateer for the Prosecution has accepted that their evidence was true. Indeed he has informed me that it was as a result of their evidence (and that of Dr Bentley the Pathologist to which I will later refer) that the Prosecution changed its view about accepting your plea to Manslaughter.

[4] As a result I have been able to gain a much better insight into life within your family and its dynamics than could have been possible had your plea to Manslaughter been accepted at the outset and my knowledge been confined to reading the papers and considering Counsel's submissions, invaluable though the latter have been. Without now going into all the considerable detail of the evidence, it is clear that your wife was prone to violent outbursts of temper and of violence, the latter directed mainly at Liam Junior and Michelle, sometimes causing them injuries. Their evidence, which I also entirely accept, establishes that you frequently attempted to intervene in order to keep the peace but had not been violent either to your wife or the children. Police and Social Services had been involved on various occasions when your children had consistently confirmed to them that any violence had come from your wife and not from you. On one occasion the children indicated to Social Services that they did not wish to return to live at home with their mother but you persuaded them to do so. It was quite usual for her to swear at you and blame you for things that were not your fault to which your reaction was to walk away to another room or try to calm her down, sometimes by gripping her arms.

[5] For some time before her death your wife had been trying to obtain from the Housing Executive a transfer to an area near Teemore, Derrylin. She did not have enough points as public housing in that area is scarce and in demand. She first told the Executive that her husband was pestering her and later that she was subject to domestic violence and they gave her details of Women's Aid and enquired from the Police whether they could confirm this allegation. The Police replied that they could not. It is significant that, notwithstanding these repeated allegations, Mrs Brady does not seem to have ever to have applied for a non-molestation order or taken any other form of matrimonial proceeding against you. As a result of the contact with Women's Aid the Housing Executive allocated her additional points but these were still insufficient for her to obtain a house at Teemore. Mrs Brady was offered temporary accommodation but declined it. The witness from Women's Aid

who gave evidence at the trial agreed that they had no evidence of any violence suffered by Mrs Brady, had not seen any injuries and that in detailed notes in their possession written by Mrs Brady there was no suggestion of physical violence. I am satisfied that, certainly during that period of your marriage with which we are concerned, you did not hit or verbally abuse your wife or your children and that any allegations she made to the contrary were false and designed either to help her in her efforts to be re-housed in her area of choice or to counter what I am satisfied were the truthful accounts of her own violent language and behaviour given by you and your children to the Police and Social Services on the occasions when they became involved.

[6] During 2004 your wife formed a friendship with a Welshman who had come to Fermanagh on a fishing trip. After he returned home they kept in frequent touch by text messages, according to Liam Junior up to as many as fifty a day. She frequently mentioned in your home that she was thinking of moving to Wales and spoke of the man to Michelle as a friend and as a boy friend and said in front of you that this man had asked her to marry him. She also said that she was going, that that was that and that "she didn't want us and she didn't want daddy". Michelle said that she spoke about him more as time went on. At some point your wife instructed Liam Junior to pack the family computer in its box as she intended to take it with her. The packed computer can be seen in the police photographs of your home taken during the investigation. At Christmas 2004 you bought your wife some modest presents but she bought you nothing having said that she had bought and sent a present to the man in Wales.

[7] On New Year's Eve you went with your wife to "Charlie's Bar" in Enniskillen to see in the New Year. Michelle was also in the bar. At midnight when good wishes were being exchanged between the three of you Michelle was ushered away by your wife as she was in the middle of sending a text message. After that you hugged each other and later went home in apparently happy mood. The following morning you got up first and at some time around midday made your way to the "Roadhouse", your local pub, where you planned to watch the New Year's Day sport on television. Shortly afterwards your wife came downstairs and on learning where you had gone flew into a violent temper saying that you should not go anywhere without her permission. When she was reminded that you had said the night before, without objection, that you intended spending the day in that way she threw a glass at Michelle which narrowly missed her because she moved her head and instead smashed against the wall. Michelle left the house and went to the "Roadhouse", her mother telling her to tell you to come back home before she "wrecked the house" which appears to have been a threat that she had frequently made.

[8] When Michelle arrived at the "Roadhouse" at about 1.00 p.m. she was in a state of distress. She told you what had happened at home after you left,

about her mother throwing the glass and what she had said about you coming home. You said that you would not go down then but would give your wife time to calm down. It is clear that you stayed on for quite a time drinking until you did go home at about 4.30 p.m. What happened then we have only your account of as the children were not there. During your interviews when you were plainly genuinely distressed you told the Police that when you went home you were a bit nervous. You hoped your wife would be all right but when she opened the door she started on you there and then. You followed her up the hall and she turned and began to abuse you verbally and pushed you back on to the fridge. You continued:

“I never thought I’d seen her so bad....it was unbelievable, just never seen anyone so vicious, straight into my face, called me names and the kids what she was going to do. The first chance she’d get she’s gonna kill me and kill everybody else, fed up with them, just constantly right in my face. The fridge is here and over here is the cupboard which and I was scared of her going for something she kept going in my face saying about Michelle she was going to kill her the minute she comes down home. I just lost it and just grabbed her and just lost it then.....”

[9] After you had strangled your wife you left her lying on the kitchen floor, did not attempt to summon assistance, returned to the “Roadhouse” and continued where you had left off. This apparently callous behaviour might be categorised as reprehensible and an aggravating factor were it not for the explanation provided in the report of Dr McDonald, Consultant Psychiatrist, who considers that you probably entered a period of dissociation in which you could not adequately take in the magnitude of your actions. He believes that for a period after the killing you did not believe that you had committed the killing and so were quite capable of returning to the bar. When, on your later return to the house, you were confronted with the consequences of your actions you were quickly able to reconcile what you had done. While I accept that explanation as being more likely than not, the result of your leaving the house and saying nothing on your return to the “Roadhouse” was that Liam Junior was the one who found his mother dead on the kitchen floor when he returned to the house and he it was who had to summon help and phone you and the others to come home. When the Police arrived and it was discovered that your wife had been strangled you made no effort to deny your guilt. As you were taken from the house you said to the children something like “you have peace now, no more worries” and on arrival at the Police Station “I don’t want a solicitor. I know the score. My kids are free and that is the important thing.”

[10] Before leaving the evidence in the case I want to refer to the evidence of Dr Bentley, the pathologist, which as I have said was one of the factors influencing the prosecution's change of approach to the charge of Murder. His evidence was that death was due to manual strangulation but that while pressure must have been maintained for some period of time unconsciousness can occur in a matter of seconds and, it is believed, death results after a period between ten and thirty seconds. He said that a great deal of pressure is required to crush the windpipe but that did not occur here. He also agreed that **the grip of** a strong person such as the manual labourer that you are would bring about strangulation more easily.

[11] I turn now to the principles applicable to sentence. I have had the benefit of lengthy and carefully - considered submissions by Mr Mateer for the Prosecution and Ms McDermott QC for the Defence and I am indebted to both of them. Both were confined to authorities from England and, in the case of Mr Mateer, dwelt at length upon the guideline issued by the English Sentencing Guideline Council entitled "Manslaughter by Reason of Provocation" which of course has no legal status in Northern Ireland. Nonetheless it is a valuable resource in that it identifies and discusses many of the factors that require to be considered by a sentencer whether here or elsewhere. I shall therefore begin by recording the expressed attitude of the Prosecution to the most significant of those factors applicable to your case:

- The four assumptions in *Suratan and Others* supra are accepted as relevant although Mr Mateer questions, in my view rightly, the relevance to sentencing of the ideal expressed in the rider to the third assumption "that, as society advances, it ought to call for a higher measure of self-control". In *Suratan* at para. 11, Mantell LJ in referring to this comment which originated in the speech of Viscount Simon L.C. in *Holmes v DPP* [1946] 588 and a not dissimilar remark by Lord Hoffman in *Smith (Morgan)* said:

"But those expressions of opinion, sensible though most people will think them to be, go to the availability of the defence rather than the consequences of a verdict arrived at by a jury that does not share Lord Hoffman's point of view. For our part we cannot see how this provides an argument that there should be heavier sentences once a verdict of manslaughter by reason of provocation has been entered."

- "To some extent" there was a threat to the children in your and your wife's care from her behaviour.

- There was nothing in the evidence to justify your wife going to Women's Aid.
- You had experience of abuse and domestic violence at the hands of your wife and Michelle had seen you slapped on repeated occasions. You, by contrast, had not offered violence to your wife.
- There would have been a cumulative effect upon you as a result of the marital disharmony over time.
- The impact of provocative behaviour can build up over time and there appears to be a basis for that in this case. Cumulative provocation is very much in point.
- There is evidence of past physical violence against you including an incident of an assault with a bread board.
- The prosecution could not disprove the existence of a "slow burn" reaction.
- The balance of power in the family seems to have been with your wife.
- There are none of the additional aggravating factors identified in the guideline.
- Each of the five identified additional mitigating factors is present to a greater or lesser degree.

[12] Ms McDermott QC, in the course of her characteristically sensitive and realistic submissions, submitted that Mrs Brady's provocation was "gross and extreme". The threat to the children was serious and not "at the low end". The throwing of the glass on that morning could have blinded or scarred Michelle, the assault in the past on Liam Junior involved banging his head off the doorstep and there was clear evidence that the danger posed by your wife's violent behaviour was escalating. The texting to the man in Wales at the ringing in of New Year the night before her death is described by Dr McDonald as "a potent insult and the inclusion of [Michelle] in this insult magnified it further". She correctly pointed out that you were distraught during police interview and that as soon as it began your account "came tumbling out." She submitted that you will never forgive yourself for killing your wife and that any sentence of imprisonment will also be difficult for your children who continue to live with you and are happy. This was confirmed by your employer, Mr Cassidy, who in the course of his evidence on your behalf described you as a very genuine man and probably the best employee he has ever had. He said that he never knew you to be violent, or to lose your temper or to say a cross word. He said that yours is now a happy

home and that if you received a prison sentence there would be a job for you with him on your release. His view of your disposition is confirmed by the evidence at the trial of Mr Trevor Cullen and Mr Kieran Rooney who work as barmen in the "Roadhouse" and who respectively described you as a person who never betrayed any violent tendencies and as a "nice friendly man."

[13] I am unable to accede to Ms McDermott's primary submission that I should not sentence you to a term of immediate imprisonment. As I made clear at the conclusion of the sentencing hearing, I consider that such a sentence is inevitable. As I am satisfied you well recognise and bitterly regret, you have by your actions ended your wife's life and thereby deprived your children of their mother and yourself of the wife who, despite everything, I believe you still loved. With the benefit of hindsight it might have been better if at an earlier stage you had decided to live apart but instead you tried to keep the family together under one roof with the dreadful consequence that I now have to deal with. You have, apart from a minor matter many years ago and that I disregard, a clear criminal record and an excellent working history. In addition you are plainly a loving father and a loyal, hard-working employee but your crime is such that the public interest clearly requires that you be punished by the imposition of a significant immediate custodial sentence. In deciding what sentence to impose I have had close regard to the observations of our Court of Appeal in *R. v Murray* and *R. v Curry* but have born in mind that the circumstances of and therefore the culpability of those guilty of manslaughter on the ground of provocation are infinitely variable. I do not consider that the circumstances of your crime require a deterrent sentence. I am conscious too that your imprisonment will during that period deprive your children of their remaining parent and of the stability that you have striven to provide for them since the death of your wife.

[14] The probation officers, Ms McKelvey and Mr Connolly, in their impressive and extremely well-researched joint report which could serve as a model for such reports, have expressed the conclusion that a period of post-release probation supervision could usefully address the offending-related factors of alcohol consumption, anger and aggression and the impact of domestic violence upon your family. I accept that assessment. I also consider that your continued abstinence from alcohol, which Ms McDermott informs me has been in place since the death of your wife, would assist in lowering any future risk to the community or of your re-offending although I consider those risks to be modest. In those circumstances I consider that you meet the qualifying requirements prescribed by our Court of Appeal in *Attorney General's Reference No. 1 of 1988 (McElwee)* [1998] NI 232 at pp. 238 and 239 for the imposition of a custody/probation order.

[15] Accordingly I intend to offer you the opportunity to have a custody/probation order made in your case. Such an order would require you to serve the immediate custodial sentence which I am satisfied is

required in your case and then, on your release from custody, to be under the supervision of a probation officer for a further period.

[16] I want to make it clear to you that a probation order is not an easy option. If you agree to accept such an order you will have to follow any directions that the probation officer may give you and attend any counselling, courses or appointments that may be arranged for you. If you fail to do so you will be in breach of the order and will be liable to be punished accordingly.

[17] If you do not wish to accept a custody/probation order I shall impose a sentence of 5 years' imprisonment upon you. If you do wish to accept custody/probation the sentence will be 4 years' imprisonment together with eighteen months' probation supervision to commence upon your release from prison.

[18] Do you agree to the making of custody/probation order? Very well, as you agree to a custody/probation order I sentence you to 4 years' imprisonment together with eighteen months' probation supervision to commence upon your release from prison.