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Judgment: approved by the Court for handing down | *Delivered:* **17/6/2016**
*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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BELFAST CROWN COURT

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THE QUEEN

-v-

ALUN KINNEY EVANS

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TREACY J

Introduction

[1] The Defendant was originally charged with the murder of his mother, Margaret Evans. Following the receipt of medical evidence on behalf of all parties he was arraigned on 3 May 2016 and pleaded guilty to manslaughter on the grounds of diminished responsibility. The plea was accepted by the Prosecution.

Background

[2] Mrs Evans, a popular hairdresser who owned Madame Margo's Salon in Portstewart, was aged 69 at the time of her death. On 4th June 2014 her son, Alun Kinney, aged 34, was in a drug-induced psychosis after taking the ketamine substitute Methoxphenidine (MXP), which he purchased online, when he launched the brutal and fatal attack in the garden of the family home. Mrs Evans sustained multiple injuries and died as a result of blunt force trauma to her head and chest.

[3] When police officers arrived at the scene Mr Evans was naked, had covered himself in cow manure, which he also ate, and was seen drinking water from a birdbath. He told police "I think I have killed my mum ... she was a witch". He also told police that his mother had been trying to get him to drink water to flush the ketamine substitute out of his system.

Post Mortem

[4] The Assistant Statement Pathologist, Dr Peter Ingram, conducted a post mortem examination and reported the cause of death as "Blunt Force Trauma of Chest Wall and Head".

[5] Dr Ingram commented as follows:

> "Death was due to injuries she had sustained in a serious assault. There were at least six bruises on the chest and breasts and these were associated with bruising in the underlying soft tissues as well as fractures of seven of the right and seven of the left ribs, three of them in two places. These chest injuries would have caused significant respiratory embarrassment compromising her ability to breathe. The nature of these injuries was consistent with her having been kicked, or more probably stamped upon, several times."

[6] Dr Ingram reported that there were fifteen or so lacerations of the face and scalp, up to 9 cm long. These were associated with widespread bruising of the face, puffy bruising of the eyelids, bruising on the under-surface of the scalp and fractures of the nasal bones. These injuries had been sustained as a result of blunt force trauma, most likely due to her head having been struck repeatedly with a heavy weapon, such as a piece of wood. Whilst the underlying skull was intact and there was no evidence of any injury to the brain, these wounds would have bled heavily and the scene photographs show evidence of considerable blood staining. Death is therefore likely to have been as a result of the combined effects of the chest injuries and the bleeding from lacerations of the face and scalp.

[7] Dr Ingram reported that there was bruising and lacerations of the lips also caused by blunt force trauma, most probably as a result of her having been punched There were also four bruises on the surface of her neck as well as two bruises within the muscles of the neck associated with a fracture of one of the small bones of the voice box. This would indicate that her neck had been forcibly grasped during the assault but these injuries do not appear to have significantly contributed to the fatal outcome.

[8] Dr Ingram also reported that there were numerous bruises on the arms and hands including confluent bruising of both forearms and hands as well as sizeable lacerations on the back of each hand. Most or all of these, he stated, were likely to have been sustained as a result of direct blows and particularly those on the forearms and hands were very likely to have been sustained when she raised her arms in an attempt to defend herself. Other injuries included a few bruises on the lower limbs and some bruises on the back but these were of minor significance.

The Defendant

[9] The Defendant lived with his parents for most of his life save for periods spent in Portrush in 2004 and Belfast in 2010.

[10] To his peers, Alun Evans was known as 'Chops'. He moved to Belfast in or around 2010. There were issues which arose out of the Defendant's lifestyle culminating in an incident on 10 February 2012 when he accidentally set fire to his room at a house he shared at Wellington Park, Belfast. As a result of this fire he received burns to his leg. He then returned to live with his parents in Portstewart.

[11] Alun Evans was supported and protected by his mother. He was the last child of 3, some 8 years younger than his sister. In accounts gathered from him and others, it is clear that he and his mother had a very close relationship right up to her death. Accounts by those in a position to know the family, friends and indeed Alun Evans himself, portray a mother who continually tried to help her youngest son, despite his 'problems' with depression and drugs.

[12] The Defendant had a very strong affiliation to and passion for music. Friends recall his 'partying', being a DJ and his involvement with a local band. Despite the nature of his lifestyle, Alun 'Chops' Evans remained a popular individual and was described as non-aggressive and 'soft' in nature.

[13] It is apparent that for some years the defendant had suffered from health issues around depression and use of drugs.

Circumstances and Events Leading Up to 4 June 2014

[14] The Defendant's parents had travelled to Nottingham, England on 24 May 2014 to spend a week with their daughter and family.

Purchase of Methoxphenidine

[15] In the early hours of Thursday 29 May 2014, the Defendant conducted extensive online research and enquiries around chemicals or drugs that produced effects associated with the use of Ketarnine. This internet research identified a substance called MXP, a so called legal high.

[16] This research lead the Defendant to a company called 'Chemwire', a self-ordained supplier of 'Research Chemicals' online. Via this site, interested parties can purchase 'Research Chemicals' and the web site even provided a customer telephone service. Additionally Chemwire has a listing with Companies House. The Defendant visited forums associated with such 'drugs' seeking reassurance about both the product and the reliability/validity of Chemwire. Ultimately the Defendant used this platform to purchase MXP from Chemical Technologies, a company based at Milton Keynes.

[17] Delivery of the MXP took place via Royal Mail, to the family home at 55 Knockancor Drive on Friday 31 May 2014.

[18] On the weekend of 30 May to 1 June, the Defendant hosted a number of friends at his home. Here they drank alcohol and certainly in the case of one of the friends, the Defendant provided them with some of the MXP he had purchased online. One of his friends recalled messages he received from the Defendant concerning this substance and how he extolled its virtues, despite his friend warning him of its potential side effects from a previous experience he had had whilst taking this drug.

[19] Upon the return of his parents on Monday 2 June, the Defendant was, according to his parents, his sister and his GP, in good spirits, convinced that the MXP was responsible for his improved mood. During a phone call with his sister on the evening of Tuesday 3 June, he told her of his improved outlook, allegedly reporting he felt like 'Superman'.

[20] In response his sister encouraged him to seek help from God, a suggestion he agreed with prompting his sister to pray for him on the phone.

[21] Despite this, later that evening, on foot of an invite from a friend, the Defendant cycled from his home to a house used by a male friend. This friend was already in the company of another male. All three partook of alcohol and each subsequently used some of the MXP brought along by the Defendant.

[22] It is evident from the reaction of these two individuals to having taken this drug that both suffered significant side effects ranging from delusional thoughts and rapid pulse.

[23] Further contact was made between the Defendant's sister Samantha and her mother on the morning of Wednesday 4 June. Her mother told her she had had a disturbing night owing to Alun's behaviour. Samantha also spoke to Alun who told her of his hallucinations and how he had made the decision to get rid of the remaining drugs. He again expressed his desire to turn to God for help.

[24] Margaret Evans's concerns regarding her son's behaviour also lead her to contact a retired minister known to the family.

[25] The Defendant also made contact with a male friend via text messages on 4 June encouraging him to 'get rid of the drugs'. His last telephone contact appears to have been at 12:15:38 on 4 June 2014 when a telephone call was made to him from the landline belonging to the Evans family. This went unanswered with the Defendant leaving a voicemail message.

[26] Prior to this, at 11:50:18hrs, a call was made from the Evans landline to the Defendant's GP.

Report from Dr Kennedy

[27] Dr Kennedy, on behalf of the Prosecution has provided an extensive and very helpful psychiatric report.

[28] Dr Kennedy notes the Defendant's personality deficits relating to his earlier attachments to both parents and the parental relationship. He has long term anxiety symptoms and addiction problems. She refers to an event which resulted in him acquiring the drug MXP to manage emotional reaction and that appears to have triggered his subsequent psychotic breakdown.

[29] She notes:

> "The combination of the drug(s) he had taken, which caused a psychotic breakdown, added to an underlying pathological personality structure was sufficient to lead to a homicidal attack on his mother. From the PM report this assault was a brutal assault."

[30] She further notes that there is evidence of psychotic symptoms before the offence to his mother, sister and the Minister. A diagnosis of drug induced psychotic disorder with most symptoms having resolved by the time of his transfer to Shannon Clinic on 24 June 2016 was made.

[31] On the basis of Dr Kennedy's report the Defendant, therefore, fulfilled the criteria for diminished responsibility. She notes however that he has no current need for mental health inpatient care. He has little insight into his difficulties and if he resumed his addictive behaviour "further psychosis and its potentially disastrous corollary are a likelihood."

Dangerousness

[32] Dr Kennedy provided an addendum report dated 19 May 2016 to deal specifically with the issue of dangerousness. This requires an assessment of whether there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences. She notes that this is a complex exercise and that it cannot be forecast with certainty at an individual level.

[33] She notes that dangerousness implies an individual has a particular characteristic which makes him unsafe. This is different from risk. She notes that violent risk is assessed by a specific diagnostic tool which considers 10 historical factors —5 clinical and 5 risk management. She notes that out of 10 historical items 6 are fully met and 3 items are partially or possibly met. One does not apply. These factors include a history of violence; a history of problems with intimate and non-intimate relationships; a history of problems with employment; a history of problems with substance abuse; a history of problems with major mental disorder; a

history of problems with traumatic experiences. She notes that there is partial evidence to support the history of antisocial behaviour and problems with personal disorder and a history of problems with treatment or supervision response. There is no evidence of a history of violence attitudes.

[34] Dr Kennedy indicates that there is no tool that predicts whether a further serious offence will occur. She states that what can be said is that:

> "The risks are around his personality style and poor coping and his chronic use of substances from early adolescence onwards. He is aware that use of drugs, especially MXP or similar legal highs could precipitate a recurrence of psychosis and serious violence. Personality traits are generally considered persistent over time. Addiction is an ongoing disability and even if abstinence is achieved the condition can always relapse. It is not possible at present to say when these two risk factors of personality and addiction might be sufficiently addressed. If drugs are taken in the future the outcome is unpredictable but mindful that the most severe level of violence has already occurred, this has the potential to reoccur. The risk, in my view, is thus a significant one which will require indefinite management and supervision." [My emphasis].

Report from Dr Bownes

[35] Dr Bownes provided a report on behalf of the Defendant dated 19 January 2016. He notes his presentation to his GP with symptoms of depression and anxiety and its debilitating nature in the period of 3 years prior to the index offence. He had a long standing tendency to engage in self medicating with alcohol and other substances. He states that the mental health problems he had displayed prior to 3 June 2014 were "consistent with psychological effects of life circumstances, personality based inadequacies and habitual psychoactive substances misuse."

[36] He concludes that:

> "At the time of the index offence Mr Evans was suffering from a mental illness episode that fulfilled diagnostic criteria for a psychotic disorder as defined in the lCD classification of mental and behaviour disorders with symptoms that had included hallucinatory experiences and delusional thinking on paranoid and bizarre themes of a nature liable to have substantially impaired his capacity to form rational

> judgement and contributed significantly to Mr Evans' actions at the material time."

Legal Principles

[37] Manslaughter is a 'specified offence' and a 'serious offence' for the purposes of the Criminal Justice (NI) Order 2008 Chapter 3 Schedules 1 & 2.

[38] Where a Defendant is convicted of manslaughter on the ground of diminished responsibility, if the psychiatric reports recommend and justify it, and there are no contrary indications, a hospital order is the likely disposal [see R v Chambers 5 Cr App R (S) 190 CA (applied in R v Crolly [2011] NICA 58); Archbold para 19-97; Sir Anthony Hart 'Sentencing in cases of Manslaughter, Attempted Murder and Wounding with Intent' September 2013 JSBNI para 12].

[39] Lord Lane stated in R v Chambers:

> "There will however be cases in which there is no proper basis for a hospital order; but in which the accused's degree of responsibility is not minimal. In such case the Judge should pass an indeterminate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."

[40] Based on the available medical evidence the Prosecution and the Defence both agree that the Defendant does not satisfy the conditions set out in Article 44 of the Mental Health (NI) Order 1986. In light of the medical evidence in this case I conclude, in agreement with the parties, that a hospital order with or without restriction would not be an appropriate disposal.

[41] The law gives guidance as to what factors must be considered when arriving at a sentence. Among these factors are the seriousness of the offence and the level of risk to the public of a repeat of such offences by the same offender. The Criminal Justice (NI) Order 2008 ("the 2008 Order") requires me to consider both these things. As regards the application of the 2008 Order it is common case that the offence of manslaughter is both a "serious" offence for the purpose of Schedule 1 Part 1 of the Order and is a "specified violent offence" for the purpose of Schedule 2. The court is therefore required to determine whether the 'dangerousness test' is satisfied. This test is found at Article 13(1)(b) of the 2008 Order and it is met where a person is convicted on indictment [as here] and …

> "(b) the court is of the opinion that there is a significant risk to members of the public of serious

> harm by the commission by the offender of further specified offences".

[42] In the present case both the Prosecution and the Defence are agreed that the dangerousness test is satisfied. In light of the contents of the medical evidence I accept that the test set out in Article 13(1)(b) of the 2008 Order is satisfied. The court is of the opinion that there is a significant risk to members of the public of serious harm by the commission by the offender of further specified offences.

[43] In R v Kehoe (2008) 1 Cr App R(S) 41 para 17 the Court stated:

> "When ... 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 the 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."

[44] he above passage was cited with approval by our Court of Appeal in R v Sean Hackett (2015) NICA 57 para 52. At para 53 the Court cited a passage from the judgment of Lord Judge CJ in R v Wilkinson (Grant) (2009) 1 Cr App R(S) 628 at para 19:

> "In our judgment it is clear that as a matter of principle the discretionary life sentence under section 225 should continue to be reserved for offences of the utmost gravity. Without being prescriptive, we suggest that the sentence should come into contemplation when the judgment of the court is that the seriousness is such that a life sentence would have what Lord Bingham observed in R v Lichniak (2003) 1 AC 903 would be a 'denunciatory' value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years."

[45] In R v Hackett a son who killed his father was charged with murder but convicted of manslaughter on the grounds of diminished responsibility. He was

found to be dangerous within the meaning of the 2008 Order. He was found to be suffering from a delusional disorder at the time of the offence and a hospital order was considered as a disposal but rejected through fear that he may be released by a Tribunal while still dangerous. Nevertheless it was found that his culpability was low but not minimal and a discretionary life sentence with a minimum term of ten years was replaced on appeal by an indeterminate custodial sentence with a specified minimum term of 7 years.

Indeterminate Custodial Sentence or Extended Custodial Sentence

[46] In R v Pollins [2014] NICA 62 it was recognised that the imposition of an indeterminate custodial sentence is a sentence of last resort and that the Court must have regard to whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the offender.

Conclusion

[47] The only debate between the Prosecution and the Defence so far as the sentencing in this case is concerned was whether, as the Defence contended, an extended custodial sentence was appropriate or whether, as the Prosecution contended, an indeterminate custodial sentence was required. It was agreed that this is not a Hospital Order case.

[48] By virtue of Article 13(1) of the 2008 Order if the Court considers and is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, then under 13(2)(a) and (b), if the court considers that the seriousness of the offence and associated offences justify a life sentence the court shall impose a life sentence; if in a case not within paragraph (2) and under sub paragraph (3) the Court considers that an extended custodial sentence ("ECS") would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of a further specified offence, the Court shall —

(a) impose an indeterminate custodial sentence; and
(b) specify the minimum period.

[49] I agree with the Prosecution that an extended custodial sentence would not — in light of the circumstances of the offence, the background of the offender and the medical evidence — be adequate to protect the public. I therefore determine that the Court must, in these circumstances impose an indeterminate custodial sentence. I must now specify the minimum term that you must serve. In specifying the minimum period the court takes into account that at the time of killing his mother the defendant was (i) suffering from a mental abnormality; and (ii) that such mental abnormality impaired his mental responsibility (see section 5(1) of the Criminal Justice Act (NI) 1966). But as Lord Taylor highlighted in R v Stubbs "it has to be remembered that diminished responsibility does not mean ... totally extinguished

responsibility. It is not a defence which necessarily involves that there is no blame, no culpability deserving of punishment and indeed of custody in the person who has committed the offence".

[50] I consider that the specified minimum term should be one of 5 years. In arriving at this figure I take into account the fact that the Defendant pleaded guilty at the earliest opportunity and that this plea was accepted by the Prosecution. I also take into account that the Defendant has no relevant record for violence or otherwise and that this episode is not only out of character with his relationship with his mother but was an incident that was triggered, wholly unintentionally by the Defendant, by the consumption of a drug which he did not know was likely to produce this horrific psychotic episode. It appears that his research online into this drug wrongly reassured him that it was a panacea for his depression whereas in fact it resulted in a nightmare for his family and him. It is abundantly clear that the psychotic episode leading to the brutal death of his mother was triggered by the inaptly named 'legal high'.

[51] The Court takes fully into account the moving Victim Impact Statement from the Defendant's sister who stated that she was grateful and thankful to all the teams and individuals who have been involved in this tragic case. The Defendant's sister has been the main family contact for the authorities. She described her feelings for her brother as being very mixed.

> "Sometimes I feel angry and other times I worry about how he is coping with knowing what he has done. I feel very grieved for him as I know he wasn't in his right state of mind when he did this awful thing.
>
> …
>
> As a family we all feel that Alun needs ongoing treatment and support as well as mentoring and supervision. We don't wish to see him rot in a prison cell and then be sent on his way, we would rather see Alun receive the help that he has needed for so long."

[52] It is anticipated that in prison you will continue to receive such ongoing treatment, mentoring and supervision and the help, as your sister says, that you have needed for so long.