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IN THE CROWN COURT OF NORTHERN IRELAND

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-v-

DAVID LYNESS

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RULING ON MINIMUM TERM

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MILLER J

NOTE: The facts of this case are to be found in the opening paragraphs of the Crown submission on sentencing, a copy of which will be appended to the written version of these remarks.

[1] On 27 June 2018 after deliberating for less than two hours the jury of 11 returned a unanimous guilty verdict upon the defendant on the charge of murder. There is only one sentence that can apply in such circumstances and that is one of life, which was handed down that day. Nevertheless in law this court is required to impose a minimum period, which the defendant must serve in prison before he may be considered for release on parole after which he will remain the subject of licence conditions for the remainder of his life. It is that issue that forms the focus of the hearing today.

[2] Before turning to the specific issues for consideration I should place certain matters in context. From the time he was first returned for trial right up until the concluding days of the hearing the defendant adopted an attitude which presented immense difficulties to those instructed to represent him. By the time the trial opened he had parted company with no fewer than three legal teams. Even at the commencement of the trial he engineered a situation whereby he effectively undermined his then counsel, Mr Greene QC (leading Mr Curran) by making allegations of professional impropriety on their part. He did not, however seek to withdraw instructions from them and although counsel and solicitor made an application to come off record I refused on the basis that the caveat to Rule 13.02 (b) of the Code of Conduct of the Bar of Northern Ireland applied and counsel had informed the court that they could

still represent the defendant's best interests. This they did with due professional diligence throughout the trial despite facing considerable obstacles. Nevertheless the relationship between the legal representatives and their client finally broke down after the defendant entered the witness box. Having willingly done so he then refused to answer any question relevant to the issues at trial whether posed by Mr Greene QC or by senior Crown counsel, Mr Connor QC. This led to a renewed application by counsel and solicitor to withdraw coupled with the defendant's stated wish to dispense with their services. I granted this application and the trial then moved to its closing stages after which the jury as aforesaid returned the guilty verdict.

[3] I have referred to the impact of the defendant's attitude upon the trial process and its duration. There is, however another aspect, which must be considered in this context and that is the impact upon the family and friends of the deceased for whom the tragedy of her death was made all the more unbearable by the delays and interruptions caused by the defendant's several changes in legal representation. Too often they were forced to prepare themselves for the traumatic experience of the trial only to find that there was yet another delay necessitated by the defendant's parting company with yet another legal team. Their anguish was only compounded further by his attitude at court particularly when called upon to give evidence and his refusal to acknowledge any sense of responsibility for causing the brutal killing of Ms. Downey. The court is in receipt of heartfelt statements from her father, brother, sister, cousin, ex-husband and closest friend. These all speak with eloquence of the impact upon the family circle of the loss of a much loved daughter, sister and mother who enriched the lives of so many that she met and who was so cruelly taken from them by the defendant's actions. I shall refer to this aspect in more detail later in these sentencing remarks.

[4] I considered that for the purposes of today's hearing, the defendant should have the benefit of experienced counsel and solicitor to appear before the court on the issue of minimum sentence. I am grateful to Mr Kelly QC (appearing with Mr Toal and instructed by KRW Law) for undertaking this role and preparing succinct submissions for the court's consideration. Equally I am grateful to Mr Connor QC (appearing, as he did at trial, with Mr Chambers) for his written observations, taken together with their respective supplementary oral submissions. Whilst for the purposes of these remarks I will not make specific reference to every point raised by each side it should be understood that all have been fully considered by the court.

[5] There is no dispute as to the guiding principles applicable to how a court approaches the fixing of a minimum term. Both Crown and Defence accept that these are to be found in **R v McCandless & Others [2004] NICA 1,** which is the leading case in this jurisdiction. The principles are set out in the Crown written submission, which I adopt for the purposes of these remarks:

[6] The case sets out the *Practice Statement* issued by Lord Woolf, C.J. and reported at *[2002] 3 All.E.R. 412.* The principal sections of the Practice Statement are set out at paragraphs 10 to 19 thereof as follows –

> ***"The normal starting point of 12 years***
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> *10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.*
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> *11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).*
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> ***The higher starting point of 15/16 years***
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> *12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.*

Variation of the starting point

13. *Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.*

14. *Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.*

15. *Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.*

16. *Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.*

17. *Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.*

Very serious cases

18. *A substantial upward 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. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.*

19. *Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.*"

[7] The Crown contends that on the facts Lyness clearly falls to be sentenced within the bracket of cases where the higher starting point applies. The Defence contend that the normal starting point should apply with, perhaps a slight upwards variation, which would still result in a final sentence below that of 15 years imposed in **McCandless.**

[8] Each side has set out the basis for their respective submissions in a clear and commendably concise fashion, focusing in particular on the 11 categories of case that would attract the higher starting point. Mr Kelly QC hones in on what he suggests is the core aggravating feature in this case as identified by the Crown, namely the vulnerability of the deceased, as evidenced by her high level of intoxication coupled with the assault perpetrated upon her by the defendant prior to his murderous attack.

[9] I have considered Mr Kelly's submissions (set out in paragraphs 7 to 9 of the skeleton argument) and as amplified in oral argument today, to the effect that this is not truly a case of a vulnerable victim as envisaged by the Practice Statement. I believe, however that these apply a technical and somewhat abstract interpretation, which does not reflect the true reality of the prevailing circumstances at the time of the murder.

[10] Ms. Downey was clearly highly intoxicated at the time of death. Shane Lyness told the court that when she arrived at his father's house she was "very drunk or paralytic". The post-mortem concentrations of alcohol in her blood produced a reading of 217 mg/dl, which is well over two and a half times the legal limit for driving. The defendant had also consumed a considerable amount of alcohol, though the precise level could not be assessed since a sample was not taken until at least 15 hours after his arrest by which time there was no alcohol left in his system. That said the evidence at trial did not suggest that he was in any way incapacitated as to thought or deed at the time relevant to the attack upon Ms. Downey.

[11] The evidence established that the defendant knocked the deceased to the ground and that he then sat astride her and beat her to the face and head area. Prior to so doing he was recorded by Shane as saying to her "***I'm going to beat you***". The Deputy State pathologist, Dr. Johnston, noted in his report that Ms. Downey's level of intoxication ***"may have reduced her ability to defend herself from an attack".*** I consider that this placed her in a very vulnerable position, which was only exacerbated by the defendant's preliminary assault.

[12] It is clear from the jury's decision that they utterly rejected the defendant's claim that it was the deceased who produced the knife. Shane described how his father got up off Ms. Downey, left the living room, walked

down the hall to the kitchen where he then selected the knife from the magnetic rack on the back wall of that room. He then returned to the living room after pointing the knife at his son and warning him to go back upstairs. Once more he sat astride the still prone Ms. Downey and then proceeded to cut her throat. Shane Lyness described his father's actions as being a "*sawing*" motion, something picked up upon by Dr. Johnston based upon his examination of the horrific and fatal wounds to the neck. The doctor then concluded that: ***"Anita Downey was an otherwise physically healthy 51 year old woman who was subjected to an assault including blows to her face and gripping to her neck which culminated in her receiving an incised wound to her neck, which cut the jugular vein and resulted in her death.***

[13] I cannot over emphasise the brutality of this act. This was not an impulsive and frenzied attack such as is described in **McCandless**. Rather it was a cold and clinical act of deliberate murder, something, which is altogether more chilling and alarming. I am satisfied that the deceased was in a particularly vulnerable state when the defendant attacked her and that his sole aim at that time was to bring about her death. Based on these findings I am in no doubt that this case falls in the higher starting range as identified in the Practice Statement. I also accept, however that none of the factors identified in **paragraphs 18 & 19** of the Practice Statement relating to very serious cases, applies in this instance.

[14] With regard to any variation from the starting point the court is enjoined to consider factors relevant to both the facts of the case and the personal circumstances of the defendant. Whereas there is no suggestion that the defendant set out that evening with the deliberate intention of killing Ms. Downey and to that extent his actions were not premeditated, I do not accept that what happened was a spontaneous act, such as might arise in the midst of a heated verbal argument where the killer reached out to a knife lying nearby and then struck his victim. As previously noted Lyness having assaulted Ms. Downey as she lay on the ground then left her to get the knife from the kitchen with the unambiguous intention of then killing her; his actions are capable of no other logical interpretation. I therefore find that there is no mitigating factor raised on this point.

[15] The fact that the defendant committed this killing in the presence of his own son, who was himself a vulnerable young man and that he, by his not guilty plea, then forced him to give evidence at the trial is but a further example of the defendant's callous disregard for the feelings of anyone other than himself.

[16] The Defendant is now 52 years of age. It is clear that he had a troubled early life and has a history of depression, which I duly note. That said, nothing in that background really amounts to mitigation for the purposes of sentence today. He comes before the court with 67 previous convictions of

which 26 are in this jurisdiction and 41 in Great Britain. These convictions date back to when he was 16 years of age and range from motoring matters, through public order, criminal damage, theft, burglary, forgery, possession of offensive weapons and wounding. He has been the subject of the full range of disposal including several custodial sentences in England. Recurring concerns relate to anger management and addiction issues. Of particular relevance to the current case is what appears to be a fascination with and use of knives, including the aforementioned wounding conviction. Whilst the defendant denies the suggestion that any of these offences arose out of, or were linked to, circumstances of domestic violence, the Thames Valley Police Crime Investigation Plan would suggest otherwise. In her report to the court, Ms. O'Loughlin (PBNI) notes that police investigating an incident in England reported searching the defendant's car and finding it contained 7 knives. Further reference is made to a statement made by the defendant's daughter in which she reported her father carried a meat cleaver in a jacket pocket and that he slept with a machete under his mattress. She also recalled incidents when he brandished knives at her and spoke in a threatening manner, particularly when drunk.

[17] It is significant that in his interview with Ms. O'Loughlin, the defendant maintains a denial of responsibility for Ms. Downey's death. He continues to seek to portray her in unflattering terms as someone who drank excessively, acted aggressively towards him, including attacking him on one occasion with a knife. His expressions of regret for her death and acknowledgement of the devastating impact this has had on her family and friends is effectively undermined by his continued refusal to accept that she plainly died at his own hand.

[18] It is of no surprise that the defendant is assessed as presenting a high likelihood of re-offending and moreover of presenting a significant risk of serious harm. The fact that he has been convicted of an offence carrying a mandatory life sentence renders any determination of dangerousness to be otiose but for the avoidance of doubt I am satisfied that he fully meets the criteria for such a finding.

[19] I referred earlier to the impact upon the family of Ms. Downey caused by her death. This is something to which I attribute considerable significance. It can too often be the case in a trial of this nature that the character and personality of the deceased can be overlooked or overshadowed by the manner of their death. The sadly all too graphic photographs of the murder scene rob the victim of her dignity and the vitality, warmth and vigour of the human being she was. A sense of the real Anita Downey emerges from the statements of family and friends together with the happy family photographs appended to those statements, all of which have been lodged with the court. I do not intend to set out the contents of those statements but suffice to say they speak of a woman who lived for her family and brought great joy to those

close to her in terms of both practical and tender loving support particularly to her children, her parents and her siblings, two of whom are disabled. The picture that emerges from these statements is in stark contrast to that presented by the defendant at police interview, at trial and in his consultations with Ms.O'Loughlin. It is only right that the distorted image created by the defendant is expunged and a proper balance restored to the reputation of Ms. Downey.

[20] In conclusion I am satisfied for the reasons given that there are several aggravating and no mitigating factors in this case. Weighing all these factors in the balance I consider that the starting point of 15 years should be increased to 18 years, which I set as the minimum term that the defendant must serve before he may be considered for parole and release on licence.

Geoffrey Miller QC

Judge of the Crown Court in Northern Ireland

31 August 2018