

Neutral Citation No: [2023] NICC 22

Ref: OHA12222

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

ICOS No: 22/073537

Delivered: 5/07/2023

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING IN BELFAST

THE KING

V

THOMAS RAINEY

**Mr R Weir KC with Mr R Connell (instructed by Public Prosecution Service) for the
Crown**

**Mr G Berry KC with Mr S Devine (instructed by J J McNally and Co Solicitors) for the
Defendant**

O'HARA J

Introduction

[1] The defendant was arraigned on 11 November 2022 on the single count of the murder of Katrina Rainey, his wife. On that date he pleaded not guilty but it was made clear that he accepted responsibility for killing her and was awaiting a psychiatric report. That report from Dr Bunn dated 2 May 2023 led to the defendant being re-arraigned and pleading guilty to murder on 12 May 2023. On that date I imposed the mandatory sentence of life imprisonment.

[2] The next and final step for me is to decide on the minimum number of years which the defendant must serve in jail before his release is even considered by the Parole Commissioners. In this task I have been assisted by the helpful written and oral submissions of counsel for which I am grateful. I have also been aided by a pre-sentence report from Mr Doyle of the Probation Board for Northern Ireland which has also been helpful.

The murder

[3] On 12 October 2021 at approximately 05.42 am the Fire and Rescue Service received a report of a fire at an address in Knockloughrim, County Derry. When the

crew arrived, they found a car on fire and Mrs Rainey (who was 53 years old) lying on the ground beside it. Her children were putting wet towels on her because it turned out she had been in the car when it had been set alight. She had suffered severe burns over large parts of her body from which she died that night.

[4] Before she was taken from the scene in an ambulance Mrs Rainey was able to tell a Dr Green who had come to her aid that she had been on her way to work in the car when her husband opened the passenger door, threw liquid over her and set her on fire.

[5] The police recorded a statement from Mrs Rainey on body worn video at the scene. She said:

“I was going to work, I came out of the house and got into the car and turned the ignition on. My husband opened the passenger door, he threw something in a bucket over me and then he says, he held onto my fleece so I could not get out of the car, and he lit me with a torch or lighter or something. I had my seatbelt on, and I could not get out of the car but then I tried to get out and I threw myself on the ground and kept hitting the horn and screaming. I needed to get some help, so I put my hand on the horn.”

[6] Mrs Rainey continued that she had told the defendant that she wanted him out of the house and that she had been to a solicitor. This had happened around April. When she was asked by the police was there anything else she would like to say she added:

“I never thought he would do this. My mother said be careful and I am just so sorry my children have seen this, but I love them so much and thank you for everybody that is helping.”

[7] The police also spoke at the scene to some of the Rainey children including Rebecca, Emily and Rachel. They were woken by screaming. With their brother Sam they rushed outside and discovered to their horror that it was their mother who was on fire. Rebecca described her as “covered in flames”. They did what they could to help her before the ambulance took her away, Rachel accompanying her.

[8] Mrs Rainey managed to tell Rachel that the defendant had put the petrol over her. As she said this Mr Rainey was denying it saying, “I wouldn’t do that I love you”. Rachel also said to the police that her parents did not get on, that they had been arguing “this long time”. In addition, she said that their sister had died, that their father became depressed and tried to commit suicide and that they have not really got on since.

[9] The defendant himself suffered some burns during these events and was treated at hospital. When he was later interviewed by the police, he said that he had been up at 05.00 am as he had a heifer calving, that he had heard the car horn blaring and saw it was on fire and that he ran to help but could not get Mrs Rainey out because of the flames. He also said that she sometimes put petrol in the car because she was a keen gardener.

[10] The defendant was interviewed four more times but refused to answer any more questions.

Background

[11] The Rainey marriage was in trouble before the murder of Mrs Rainey. Her solicitors had written to Mr Rainey on 1 June 2021 to say she believed the marriage was over and to invite him to nominate a solicitor so that discussions could take place to work out an appropriate arrangement. No response was received. On 27 August 2021 the solicitors wrote again, indicating that proceedings might now be started and recommending that he contact a solicitor to represent him. Once again he did not respond. As Mrs Rainey told the police at the scene, she believed this pending divorce was the cause of the attack on her.

[12] On the defendant's behalf that was not really challenged but a context was given for his actions in his plea of mitigation and in the psychiatric reports from Dr Kane and Dr Bunn as well as the presentence report. The suggested context is along the following lines:

- The defendant had a difficult childhood, particularly at the hands of his 'rough' father.
- He moved to live with an aunt from the age of 8.
- He had a serious road traffic accident in 1990 which left him incontinent.
- He and his wife had six children but one of them, Heather, died when she was only 6 in July 2002 in an accident on the farm for which he felt some responsibility.
- Heather's death had a serious negative impact on both parents and on the marriage.
- The defendant has had a recurring depressive disorder over about 35 years for which he has had four admissions to Holywell Hospital.

- He took at least one overdose but survived.
- He had a stroke in 2019.

[13] At the time of the murder the defendant was facing the prospect of divorce which may have led to the sale of the family farm to which he was especially attached. This added to the existing significant stressors in his life.

[14] Dr Bunn examined the defendant in November 2022 and was asked to advise on whether the defendant was fit to plead to the murder charge. He advised that he was fit. He was further asked to advise on whether a defence to the charge of murder by reason of diminished responsibility might be available. For such a defence to be available, a defendant must suffer from a recognised medical condition which substantially impairs his ability to understand the nature of his conduct and/or form a rational judgment and/or exercise self-control.

[15] Dr Bunn confirmed that the defendant was suffering from a recognised medical condition, namely a depressive disorder of moderate severity. However, he did not believe that this condition had substantially impaired the defendant's ability in any one of the three required ways. In other words, his depression was not so severe as to prevent him from understanding the nature of his conduct or forming a rational judgment or exercising self-control.

[16] On foot of that report the plea of guilty to murder was entered.

[17] The pre-sentence report from Mr Doyle highlights a number of issues including:

- (i) The defendant's remorse for what he did and for the effect that has had on his children and on his wife's family.
- (ii) His criminal record for offending such as theft and handling stolen goods does not involve any form of violence.
- (iii) On assessment the defendant was regarded as presenting only a medium likelihood of further offending.

[18] In part this assessment must reflect the progress which the defendant has made within the prison system where treatment and counselling appear to have helped him considerably. In addition, the assessment must inevitably reflect the fact that the defendant who has no history of violence is already 61 years old and will serve a long spell in prison before his release can be considered.

Victim impact statements

[19] In her statement Mrs Sandra Heasley, the mother of Katrina Rainey, has conveyed how her life has changed since 12 October 2021. She feels that “my life has been taken too”. She describes her daughter as having been a “gentle, caring, sincere, beautiful girl that made time for everyone”. Mrs Heasley is particularly devastated by the fact that her grandchildren witnessed the horrific death of their mother, and she worries about how that agony will impact on them in the future.

[20] Her husband, Mr George Heasley, has written in similar terms. He describes how he constantly thinks about his late daughter and how he regularly wakes up in the middle of the night with an image of Katrina lying in a hospital bed. It is clear from these statements that Mr and Mrs Heasley were very close to Katrina and her family, that they visited most Saturdays and that Katrina would have called to see them most Sundays. Mr Heasley recalls how during COVID his daughter called every week with groceries and left them at the door for them. He says:

“We only had the one daughter, and her death has left a void that can never be filled.”

[21] One of the Rainey children, Alan Rainey, also provided a statement about the consequences of his mother’s death. He describes how he has taken on responsibility for the family, running the family home and the farm as well as looking after his siblings. He describes how living at home is a constant reminder of what happened to his mother. The struggle which his mother’s death has caused him is captured in his closing lines:

“I miss my mum about the house, she was always in the garden. I don’t have many words to describe how I feel, maybe one day I will be able to talk more about my feelings but not now.”

Sentencing

[22] In murder cases in Northern Ireland the guidelines laid down by the Court of Appeal in *R v McCandless and others* [2004] NICA 1 still apply. In that judgment the Court of Appeal adopted at para 9 the principles which were laid down in England and Wales in a practice statement which includes the following:

“The normal starting point of 12 years

[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.

[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).

The higher starting point of 15/16 years

[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."

[23] How then are these guidelines to be applied in this case? I start by emphasising that these are guidelines only, not rules and that the various factors identified in them are not exhaustive. In addition, it should be noted that the exercise of fixing a sentence is not a mathematical one so it is more than a question of adding three aggravating factors and taking away two mitigating factors - the process is more nuanced than that.

[24] In my judgment the normal starting point cannot possibly apply in this case despite the submissions on behalf of the defendant. This murder was not remotely akin to one where there was a quarrel or loss of temper. To spell it out, the defendant planned this murder to the extent that he put petrol in the bucket, he had the bucket to hand as his wife went to drive off to work and he threw the petrol over her. He also had a lighter to hand which he used to start the fire in the confined space of the car which she was strapped into.

[25] I reject the defence submission that culpability is significantly reduced because the case comes close to the borderline between murder and manslaughter. Dr Bunn does not say that in his report – it is a submission too far.

[26] Instead I regard this as a case in which the higher starting point of 16 years is appropriate because Mrs Rainey was in a particularly vulnerable position in the car when she was suddenly attacked. She had no realistic hope of escape, even if she got out of the car. She also suffered extensive injuries in the most harrowing of manners.

[27] Having taken that starting point, I recognise the following major aggravating features:

- The murder was the ultimate act of domestic violence – Mr Berry was right when he submitted that on the evidence there was no history of domestic violence but the murder of a wife who is seeking a divorce is in itself a definitive act of domestic violence.
- It was witnessed by the children who heard the screams and ran out to see something they will never be able to forget, their mother in flames.

[28] In terms of mitigating factors, I recognise the defendant's age, his history of depression and the remorse which he has expressed. Taking all of these issues together, and seeking to avoid double counting of overlapping factors, I conclude that the aggravating features significantly outweigh the mitigating features so that a sentence of 21 years is appropriate.

[29] It is customary to make allowance in favour of the defendant for a guilty plea. In part this is because, especially in a case such as this, the plea of guilty has saved the family from going through the additional ordeal of a trial. For the defendant it is suggested that I give maximum credit for his plea but that would be too much. The defendant denied his guilt at the scene, even when his dying wife was telling their daughter Rachel what he had done. He also denied it to the police, suggesting instead in some oblique way that the fire might somehow be Mrs Rainey's own fault for keeping petrol in the car.

[30] In the circumstances I consider that a reduction of 3 years is appropriate. I therefore impose on the defendant a tariff of 18 years. That is the minimum sentence which he must serve in prison before the Parole Commissioners consider whether he should be released. This is a significant prison sentence for a man of 61 but given the horror of what he did to his wife it is the least he deserves.