

Judicial Communications Office

25 November 2021

COURT SENTENCES FOR MURDER OF LU NA MCKINNEY

Summary of Judgment

Madam Justice McBride, sitting today in Belfast Crown Court, imposed a minimum period of 20 years imprisonment on Stephen McKinney for the murder of his wife Lu Na McKinney on 13 April 2017.

Factual Background

At 1:15 am on 13 April 2017, Stephen McKinney (“the defendant”) made a 999 call stating that his wife had fallen into the water at Devenish Island, Lough Erne. When the police and RNLI arrived they saw a body in the water almost touching the stern of the boat which was moored at the jetty and which had been hired by the defendant for a family break. The police and RNLI retrieved Lu Na McKinney (“the deceased”) from the water and carried out CPR but she was pronounced dead at 2:52 am. A port-mortem report found that the deceased died as a result of drowning and that she did not have any injuries consistent with a struggle. A blood sample showed that she had Zopiclone, a drug for insomnia, in her blood and that this was above the therapeutic level.

The Crown case against the defendant was a circumstantial one as he was the only eye witness present when the deceased entered the water. The defendant denied any involvement in his wife’s death contending that she died as a result of a tragic accident by falling into the lough. The Crown evidence was comprised of a number of strands and contended that when considered collectively the inescapable inference was that the defendant had murdered his wife.

The court heard evidence that the deceased had attended a solicitor on 11 November 2016 with a typed letter setting out the difficulties in her marriage to the deceased including that he had an affair when they lived in China. The court also heard evidence from friends of the deceased about the defendant’s coercive controlling behaviour. The judge was satisfied that the defendant manipulated and controlled the deceased and treated her in an abusive and degrading fashion throughout their marriage.

The court also heard from an expert on the effect of the drug Zopiclone. A photograph taken by the defendant at around 10.30 pm on 12 April 2017 showed the deceased asleep and it was agreed that at that stage she had achieved “Zopiclone induced sedation”. The expert stated that the only way a person in this state can be awoken is by partial awakening or external stimuli. The judge was satisfied the jury were satisfied beyond reasonable doubt that the defendant lifted the deceased and placed her in the water and because she was comatose as a result of Zopiclone she was vulnerable and unable to resist. She added that if wrong about that the alternative possibility was that the defendant pushed the deceased into the water. He knew the deceased had taken Zopiclone that evening and was aware of the effects it had on her:

“In either scenario therefore the deceased was vulnerable due to the consumption of Zopiclone. Further, in both scenarios the actions of the defendant show premeditation. He organised the trip and ensured that his wife Lu Na was placed in a situation where

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he could put her into the water knowing that she could not swim and knowing that as a result of the consumption of Zopiclone she could not save herself.”

The judge was further satisfied the jury were satisfied that the defendant’s intention was to kill the deceased:

“He knew when she was in the water that she would be vulnerable and unable to swim and therefore would die. There was no evidence that anything happened which caused him to do push her into the Lough on the spur of the moment, for example, due to an argument.”

The judge was further satisfied that the jury found beyond reasonable doubt that the defendant’s intention to kill was corroborated by the fact he did not attempt to rescue his wife. Although he gave evidence that he jumped into the water to save the deceased an expert considered that this was highly improbable having regard to the defendant’s level of fitness, and the fact he had a scar on his torso as a result of recent surgery. The judge considered the jury found that the defendant did not re-board the boat but rather doused himself with bottled water to make it look like he jumped into the Lough. This conclusion was corroborated by the evidence that when the first responders arrived the defendant failed to do anything to rescue her in the four minutes or so it took them to moor notwithstanding he could easily have reached out to her or thrown her a life ring or boat hook which were nearby.

After hearing all the evidence the jury found the defendant guilty of the offence of murder which the judge said indicated that the jury clearly rejected his version of events that her death was a tragic accident. On 21 July 2021, the court imposed a sentence of life imprisonment, the only sentence permitted by law for that offence. Today, it determined the length of the minimum term that the defendant will be required to serve in prison before becoming eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence. A life sentence is not subject to remission and the defendant must serve the term in full. If, and when, released the defendant for the remainder of his life will be liable to be recalled to prison if at any time he does not comply with the terms of that licence.

Legal Principles

Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 provides that the minimum term “shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or the combination of the offence and one or more offences associated with it”. The court applied the legal principles on fixing the minimum term established in *R v McCandless & Others* and the *Practice Statement*¹ commenting that they should not be applied in a rigid compartmentalised structure.

The court considered that this was a case where the higher starting point of 15/16 years was appropriate. This was because of the deceased’s vulnerability arising from the influence of Zopiclone:

“I am satisfied that on either scenario, that is whether the deceased was set into the water or pushed into the water, she was in a vulnerable position because the

¹ See Notes to Editors.

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consumption of Zopiclone meant she was unable to defend herself and lacked the necessary awareness to react to the danger that she was placed in. I therefore will not use this as an aggravating feature as that would amount to double counting in coming to the appropriate tariff.”

The court considered there were a number of other serious aggravating features:

- Firstly, it was satisfied beyond reasonable doubt on the basis of the evidence that the jury considered the murder was premeditated:

“The defendant planned the boat trip. He knew that his wife could not swim and he knew that she took Zopiclone. He knew the effects Zopiclone had on her and I am satisfied beyond reasonable doubt that the evidence in this case established that he organised a boat trip so that he could murder her. He knew that she either would not awaken from Zopiclone once placed in the water and would die by drowning or he knew that she could not react to the dangers present once pushed into the water because of her consumption of Zopiclone and therefore she would drown. I am further satisfied that he moored at a remote location so that he could murder his wife without there being any eyewitnesses and in circumstances where he would have a cover story that she accidentally drowned. After he murdered her the defendant put in chain a number of carefully prepared scripts she had died by accident which he relayed on the 999 call, to various witnesses and to the police. He further attempted to point any finger of suspicion away from him by stating he attempted to rescue her when in fact he failed to take any such action but rather doused himself with water to make it look like he had jumped into the Lough to save her.”

- Secondly, the children were both present when the murder was carried out. The court accepted they did not witness the incident but they were present:

“The children were not present by accident but design as the defendant sought cynically to use his children’s presence to throw suspicion away from him for the murder he intended to commit. As a result the defendant put his children through the additional trauma of being removed by the police from their cabin in the middle of the night from an island in circumstances where they must have known their mother was gravely ill or deceased.”

- Thirdly, the judge found that the murder was the culmination of the coercive controlling behaviour of the defendant throughout the marriage. She said that although there was no violence in the marriage the defendant subjected his wife to coercive control and forced her to engage in a number of sexual activities against her will:

“It was recognised in *McCandless* that particularly in domestic violence cases the fact that the murder was a culmination of cruel and violent behaviour by the offender over a period of time is an aggravating factor. Although *McCandless* refers to domestic violence cases I consider that this should also cover cases of coercive controlling behaviour. Coercive control is something that has only recently been recognised as a crime in this jurisdiction and I consider that it is a particularly aggravating factor in cases involving the death of a spouse.

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- Finally, the court considered that the defendant breached the trust of the deceased: “The defendant was the person she lived with, loved and married and he used his position as her husband to lure her to the location where he then killed her. “

The court did not consider there were any matters by way of mitigation.

Conclusion

In concluding her sentencing remarks, the judge said the following:

“Stephen McKinney you have been found guilty of the most heinous crime. You have treated your wife throughout the marriage with disrespect. You abused, degraded her and manipulated and controlled her and finally you took away her life. It was such a needless and cruel action. You were someone that she should have been able to trust but you betrayed that position and you ended her life prematurely. Lu Na has been described as gentle and light hearted. She was only 35 years old when she died. You denied her the opportunity of seeing her kids grow up, going to college and having their own families. You have left a trail of destruction in your wake. Two young children have been deprived of their mother’s love, care and support. As a result of your action you have left the children without parents to care for them and their lives have been irreparably adversely affected. You have also deprived a mother of her only child and have caused endless hurt and pain by your cruel and callous actions. You committed this crime in cold blood. It was carefully planned and ruthlessly executed and carried out when Lu Na was entirely defenceless. Due to the number and the gravity of the aggravating factors I consider that this case requires a substantially higher minimum term than one of 15/16 years and I consider that the appropriate minimum term is one of 20 years. I make it clear to you and to the public that a minimum term is exactly that, it does not attract remission. You will therefore receive no remission for any part of the minimum term that I have imposed upon you.”

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).
2. The minimum term is the term that an offender must serve before becoming eligible to have his or her case referred to the Parole Commissioners for them to consider whether, and if so when, he or she can be released on licence. Unlike determinate sentences, the minimum term does not attract remission. If the offender is released on licence they will, for the remainder of their life, be liable to be recalled to prison if at any time they do not comply with the terms of that licence. The guidance is set out in the case of R v McCandless & Others [2004] NI 269.
3. A Practice Statement [2002] 3 All ER 417, sets out the approach to be adopted by the court when fixing the minimum term to be served before a person convicted of murder can be considered for release by the Parole Commissioners. It also sets out two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. The

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Practice Statement also identifies that in very serious cases a minimum term of 20 years and upwards may be appropriate with cases of exceptional gravity attracting a minimum term of 30 years. The minimum term is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This sentencing exercise involves the judge determining the appropriate starting point in accordance with sentencing guidance and then varying 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.

ENDS

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