

Neutral Citation: [2016] NICC 4	Ref:	TRE9984
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	Delivered:	31st May 2016

**IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE COURT**

—————
THE QUEEN

v

ANGELINE MITCHELL
—————

TREACY J

Introduction

[1] On 11 May 2009 the defendant fatally stabbed the deceased, Anthony Robin and was charged with his murder. The Defendant was previously tried and convicted for the murder of the deceased but this verdict was later set aside for legal reasons and a retrial was ordered. At the start of her re-trial on 20 April 2016 the applicant was re-arraigned and pleaded guilty to manslaughter. The prosecution did not accept her plea so the case proceeded as a new murder trial before a second jury. The case ran for a number of weeks. On the 5 May the second jury returned a unanimous verdict of **not** guilty to murder. Accordingly, the Defendant's plea of guilty to manslaughter stands.

[2] It is now my duty to sentence you for the manslaughter of Mr Robin.

Background

[3] Mr Robin was 44 years old when he died. At that time, 11 May 2009, he lived in the first floor apartment of a terraced house at 78 Fitzroy Avenue, Belfast. He suffered five stab wounds at the hands of the defendant, one of which caused his death. He was pronounced dead 04:12 hours on 11 May 2009.

[4] The deceased and the defendant lived together intermittently for a period of time prior to his death and were described by the prosecution as partners. Their relationship was turbulent, volatile and blighted by the excessive consumption of alcohol. They lived together on occasions at the deceased's apartment, although the defendant also maintained a separate

address in Belfast. She was 38 at the time of his death.

[5] The deceased and the defendant had separated in the period leading up to Sunday 10 May 2009 but on that date they met at around 3pm and shared food at a hotel near the deceased's apartment. That evening they returned to his apartment with a carry out of alcohol which they consumed in the apartment.

[6] Shortly after midnight the deceased received a phone call from his son Thomas about a dispute between his other son Anthony Jnr and Rosena Oliver in their Farnham Street home. The deceased and the accused both made their way to that address. While they were there Anthony Jnr was arrested by the police. The deceased then returned to his apartment with the accused and his 16 year old son Thomas.

[7] After they returned the deceased and the defendant began to argue. After some time the defendant left the living room where the argument had started, followed by the deceased. There was a heated verbal exchange in the landing of the apartment. Both the deceased and the defendant moved about the landing area and at some point the defendant went into the kitchen and armed herself with a knife. Thomas Robin, while he did not witness what had preceded the fatal stabbing, was an eyewitness to his father being stabbed on the stairs outside the living room. The deceased sustained five wounds, one of which was caused his death. This was a stab wound to the left side of the chest about 20 centimetres in depth. The pathologist stated that inflicting this wound would have required a moderate degree of force.

Expert Medical Evidence

[8] The defendant's long history of mental health difficulties is well documented in a series of reports. Detailed evidence was given before the jury by a number of experts regarding her state of mind at the time of the killing. These included Dr Carol Weir, Consultant Clinical Psychologist and Dr Fred Brown, Consultant Forensic Psychiatrist, called on behalf of the defendant. Dr Christine Kennedy, Consultant Clinical Forensic Psychiatrist, was called to give evidence on behalf of the prosecution. The court therefore received a considerable body of detailed information regarding the applicant's sad and unfortunate background which it is unnecessary for me to repeat here. All the experts were agreed that at the time of the offence the defendant was suffering from an abnormality of mind – Alcohol Dependence Syndrome. The principle issue was whether this abnormality of mind was such as to substantially impair her mental responsibility for the act in killing the deceased.

[9] Dr Brown gave evidence that her intoxication is likely to have impaired her capacity to form a rational judgment and to exercise self-control and that there was a psychiatric basis to support the defence of diminished responsibility although ultimately these were matters for the jury. Dr Kennedy did not disagree. It is the court's assessment that the jury accepted this evidence. I must therefore take into account when sentencing the defendant that at the time of the killing Angelina Mitchell was (i) suffering from a mental abnormality; and (ii) that such mental abnormality impaired her mental responsibility (see section 5(1) of the Criminal Justice Act (NI) 1966)

Sentencing

[10] Prior to determining sentence I have considered the victim impact report submitted on behalf of the victim's family by his sister Kim Robin. She recalls her brother as a loving father, fully involved in the care of his two teenage sons and notes that his untimely death deprived both boys of the guidance and support they would have received from him. She states that 'the impact of their father's death on both of them has been monumental'. He was also a loving son towards his mother who has suffered enormously from his death and the two trials which have followed upon it. She has suffered both physically and emotionally since the death of her son and is now described as 'merely a shadow of her former self in every way.... "The deceased is remembered fondly by all his family as a 'very funny person [whose] sense of humour gave us many, many laughs'. He is also remembered as a caring and generous person who displayed fierce loyalty to family and friends, including on many occasions, to the Defendant herself.

[11] I take on board and give full weight to all that the family has said about their tragic loss. I am conscious of what a long and difficult ordeal this family has endured. While this is true for every member of the family it was particularly so for his youngest son who, as an eye-witness to his father's death, was called to give evidence during this re-trial. This young man was only 16 at the time of the killing and in the immediate aftermath he gave a video recorded account to the police of what he had seen. On the video we saw a deeply sad 16 year old boy who was an extremely articulate, intelligent and honest witness. Now 24 years old it was plainly an emotional ordeal for him having to return to these events in a public court. It was clearly difficult, even surreal, for him to be in the witness box in April 2016 observing his younger self in May 2009 recounting to the police in graphic and contemporary detail the horror that unfolded before his young eyes as he watched his father being stabbed to death. These events are likely to have shaped and dominated the years that followed in this young man's life and I can only hope that the conclusion of these proceedings may bring some measure of closure for him and for all this family who have been so deeply affected.

[12] In this case the court is confronted with a violent attack during which you stabbed the deceased 5 times with one of those wounds proving fatal. You took Mr Robin's life and deprived his children of their father. A lengthy custodial sentence is thus inevitable to reflect your culpability. Regardless of the length of your sentence you will never be able to repair the damage you have caused.

[13] 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 requires me to consider both these things. As regards the application of the Criminal Justice (NI) Order 2008 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”.

In the present case both the prosecution and the defence are agreed that the dangerousness test is not satisfied. In light of the contents of the pre-sentence report I accept that the test set out in Art.13(1)(b) of the 2008 Order is not satisfied. The court is not 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.

[14] The defence accept that a custodial penalty is required in this case. What is the appropriate starting point that the court should adopt to assist it in arriving at a just sentence? In R v Magee [2007] NICA 21 at para 26 the Court of Appeal suggested a general guideline range of between 8 and 15 years after a not guilty plea (cf. R v Harwood [2007] NICA 49 upholding a sentence of 13 years imprisonment for manslaughter following a late plea – see paras 25 *et seq*). As noted by Maguire J in R v Gaskin & anor [2013] NICC 22 at para [95] the guideline in Magee has also been used in the context of manslaughter cases arising from diminished responsibility (see R v Crollly [2011] NICA 58 at paras [22] – [26]). In the light of all the evidence in this case I consider that the starting point should be one of 12 years.

[15] You have already spent six years in jail following your arrest in May 2009. You remained continuously in custody from then until your eventual release on bail in June 2015. You are referred to as a model prisoner and it is clear that you have used your time constructively in prison to completely turn your life round. Your rehabilitation has been quite remarkable. I therefore take into account the encouraging progress evident from the pre-sentence report, that you are now assessed as low/medium risk of reoffending and that you no longer meet the PBNI criteria for posing a risk of serious harm. You are also entitled to some credit for your guilty plea but this is significantly diminished by the consideration that it was not forthcoming until the commencement of this trial. You have a minor criminal record. I take the expert medical evidence fully into account. Nonetheless the court is confronted with a very violent attack which is grossly aggravated by the fact that you armed yourself with a lethal weapon which you then used to stab the deceased 5 times with one of those wounds proving fatal. The nature of your attack was vividly related by the deceased's son. You took Mr Robin's life and deprived his children of a father. Taking everything into account I sentence you to 10 years.

[16] Under Art 8 of the 2008 Order I order that you serve a period of 5 years in custody and 5 years on licence. Your period in custody prior to your release on bail will count against this period of 5 years. The pre-sentence report identifies a number of conditions that they want attached to your period on licence. These are set out at the conclusion to the report. Under Art 23 of the 2008 Order the court recommends that those conditions be attached to your licence.