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

**Ref: McB11677**

**ICOS No: 18/72668**

**Delivered: 25/11/2021**

**IN THE CROWN COURT IN NORTHERN IRELAND**

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**THE QUEEN**

**v**

**STEPHEN McKINNEY**

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**Mr Weir QC with Mr Chambers of counsel on behalf of the Crown  
Mr O'Rourke QC (instructed by Oliver Roche Solicitors) for the Defendant**

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**McBRIDE J**

**Introduction**

[1] Stephen McKinney you have been found guilty by a jury of the murder of your wife, Lu Na McKinney.

[2] You have already been sentenced to life imprisonment which is the only sentence for that crime permitted by law. It is now my role to fix the minimum term or tariff which you must serve before you will be eligible to be considered for release by the Parole Commission.

[3] Having canvassed the matter with defence counsel it was agreed that this was not a case in which a pre-sentence report was necessary given the circumstances of the case and the very limited role for personal mitigation in the sentencing exercise.

[4] Accordingly, I held a sentencing hearing and heard your plea in mitigation on 11 November. I wish to acknowledge the detailed and helpful submissions made by Mr O'Rourke QC on behalf of the defence and by Mr Weir QC on behalf of the Crown. These were of much assistance to the court in its task of setting the appropriate tariff.

## Background

[5] At 1:15am on 13 April 2017 the defendant made a 999 call seeking assistance stating that his wife had fallen into the water at Devenish Island Lough Erne. Police and RNLI personnel were tasked to the scene and arrived shortly later. They saw a body in the water almost touching the stern of the hire boat which was moored at the jetty. They retrieved Lu Na McKinney from the water and carried out CPR. The casualty was then conveyed by boat and ambulance to the South Western Acute Hospital, Enniskillen. The defendant and his two children were transported separately by boat and ambulance to the same hospital. Despite efforts to preserve her life Lu Na McKinney was pronounced dead at 2:52am.

[6] Dr Bentley the Deputy State Pathologist carried out a post mortem and it is agreed that the deceased died as a result of drowning and that she did not have any injuries consistent with a struggle.

[7] Later a blood sample was taken from the deceased which showed that she had Zopiclone in her blood and that this was above the therapeutic level.

[8] The defendant on the 999 call and later to DC McCabe and thereafter to a number of witnesses stated that Lu Na had fallen into the water and her death was a tragic accident and despite jumping into the water he was unable to rescue her.

[9] As the defendant was the only eye witness present at the scene when the deceased entered the water the Crown case against him was of necessity a circumstantial one. There were a number of strands to the Crown case including:

- The varied reasons he gave for the boat trip, mooring at the West jetty and leaving the stern gate open.
- The content and tone of the 999 call and the defendant's presentation in the immediate aftermath.
- Different accounts given by the defendant in the 999 call and that given to DC McCabe and to various other witnesses.
- Failure to obtain sufficient number of lifejackets.
- Lies by the defendant about not seeing the deceased's body in the water and failing to rescue her.
- Defendant's lies about attempting to rescue Lu Na by jumping into the Lough.
- The role Zopiclone played.
- Defendant's lies about the state of the marriage. Far from it being a happy marriage of equals it was characterised by coercive controlling behaviour by the defendant.
- Defendant's lies at police interview.

The Crown case was that when all these strands were considered collectively the inescapable inference was that the defendant had murdered his wife.

[10] The evidence against the defendant consisted of evidence by a number of lay witnesses, police officers together with expert evidence. The defendant denied any involvement in his wife's death and at police interview he stated that his wife died as a result of a tragic accident by falling into the Lough.

[11] After hearing all the evidence in the trial which lasted for over four months the jury found the defendant guilty of the murder of his wife and by doing so clearly rejected his version of events that her death was a tragic accident.

[12] Had it not been for the thorough, comprehensive and painstaking detective work conducted by the local CID team led by Detective Inspector Stevenson and latterly the MIT team led by Detective Chief Inspector McGrory the defendant may well have got away with murder. The investigation team deserve public acknowledgement for their excellent work in this case and I would particularly like to commend the careful investigative work carried out by Sergeant Gary Robinson and Constable Carmel McGuinness, who sadly passed away from Covid before this trial commenced. The dogged detective work of the entire investigative team in gathering all the relevant evidence and submitting it to experts for expert opinion was in my view instrumental in securing the defendant's conviction for this murder.

[13] The defendant Stephen McKinney was born on 5 August 1976. He is originally from the Strabane area. He met Lu Na who was from China when she was studying in Dublin. She was born on 4 September 1981, and at the time of her death she was aged 35 years. After a courtship the defendant and Lu Na married and went on to have two children, a boy and a girl who were both under the age of 18 at the time of the murder. After they married the defendant and Lu Na initially lived in Ireland but then moved to China where they lived for a number of years. They later returned to live in Ireland in 2016 and resided in Co Donegal.

[14] The marriage was characterised by difficulties which culminated in Lu Na attending with a solicitor on 11 November 2016. Lu Na brought with her a typed letter in which she set out details of the difficulties in the marriage which included the fact her husband had had an affair when they lived in China. She advised the solicitor that the defendant told her that "fucking her was like fucking a wet vegetable." She also stated that he sent her a video of him and a naked woman in a hotel room. The court also heard evidence from a number of friends of the deceased who gave evidence which was not challenged that she had told them that she had arguments with her husband and that although there was no physical violence there was mental violence. The court was also shown a short video of a domestic argument between the defendant and Lu Na.

[15] The court also admitted bad character evidence contained within SkypeChat 25. It was admitted as evidence of the defendant's coercive controlling behaviour of

Lu Na. As appears from reading the SkypeChat the defendant coerced the deceased against her will into engaging in various sexual activities including a threesome and anal sex against her will all of which were video recorded by the defendant. He knew that these were activities which she found uncomfortable, degrading and disgusting. Further, in the SkypeChat he speaks to Lu Na in an abusive and controlling manner. As appears from all the evidence given I am satisfied the jury was satisfied beyond reasonable doubt that at the date of the incident the marriage was in serious difficulties and at the time of Lu Na's death it was characterised by major arguments, the defendant's adultery and his coercive and controlling behaviour. The deceased was a vulnerable individual as she had limited support networks in Ireland. She had no family support and she was very isolated living in Co Donegal. She had a limited number of people in whom she could confide and the only people she could speak to were work colleagues in local Chinese restaurants and a man she befriended who frequented one such restaurant. This is not an untypical profile of a person who is frequently the subject of coercive control. I am satisfied that the defendant manipulated and controlled the deceased and treated her in an abusive and degrading fashion throughout the marriage.

[16] Against this background the defendant hired a day boat at the Manor House Marina on 6 April 2017 and he and Lu Na went out on the boat for a few hours. The defendant then booked a cruiser on 11 April 2017 for a family holiday from 12-14 April notwithstanding the fact he knew his wife and daughter were prone to travel sickness and Lu Na could not swim.

[17] On 12 April he and his wife Lu Na and their two children boarded the hired boat the Nobel Cadet II at the Manor House Marina and after some instruction and practical demonstration they went out on to the Lough. They moored at Devenish Island and the defendant and the children walked across the island to some historical ruins. Later that evening they went for a short boat trip before returning to moor for the night at the West jetty Devenish Island, Lough Erne. This is a quieter jetty than the East jetty which is located closer to the ruins and could be described as a remote location and, indeed, on the night in question no other cruisers were parked up on the West jetty.

[18] It is not in dispute that it was the defendant who planned the trip as a family holiday and consequently the children were present on the boat. As I have already outlined, later that evening or in the early hours of the morning of 13 April the defendant murdered his wife. Although the defendant has always maintained that his wife died as a result of an accident the jury did not accept that version of events and have found that he murdered his wife.

[19] Mr O'Rourke in a carefully crafted submission submitted that the factual circumstances grounding the jury's verdict were not clear due to the manner in which the prosecution presented its case. The Crown case was that the defendant by his unlawful act caused Lu Na "to be or to enter the water." This gave rise to two possible scenarios either Stephen McKinney pushed Lu Na into the water when she

was out on the boat deck or on the jetty or alternatively he lifted her into the water when she was asleep. The Crown could not say what exactly happened on the night in question. Mr O'Rourke then submitted that if the defendant for some reason pushed his wife into the water when out on the boat deck or on the jetty the jury could have still found the necessary *mens rea* for murder based on an intent to cause her really serious harm rather than an intent to kill on the basis he knew she was not able to swim and had taken sleeping tablets. He further submitted that such a finding by the jury meant that they did not necessarily reject the defendant's account he jumped into the water in a failed rescue bid. Accordingly, he submitted the court must sentence the defendant on the evidence most favourable to him and on this basis the jury's verdict required sentencing the defendant on the basis that he pushed Lu Na into the water with intent to cause really serious harm and his unlawful act in pushing her into the water arose from something said or done at the time and not as a result of premeditation.

[20] Whilst the court is enjoined to sentence the defendant in accordance with the verdict of the jury, its obligation is to sentence him on a factual basis which has been established beyond reasonable doubt by the evidence and the defendant is then entitled to be sentenced on the factual basis which on the evidence is most favourable to him.

[21] The court had the benefit of hearing all the evidence in this case which lasted over several months. During that time I heard detailed evidence by a number of expert witnesses including Dr Simic who dealt with the effect of the drug Zopiclone.

[22] Dr Simic's evidence was to the effect that the deceased took two or more, likely three, tablets of Zopiclone. The defendant accepted that his wife took Zopiclone in or around 10pm. A photograph taken by the defendant at around 10:30pm shows the deceased asleep and therefore at that stage she had achieved Zopiclone induced sedation. According to Dr Simic the only way a person who has achieved induced sedation can be awoken is by partial awakening or external stimuli. In this case there was no evidence of partial awakening. I am also satisfied that the jury was satisfied beyond reasonable doubt that there was no external stimuli on the night to awaken Lu Na after she had achieved Zopiclone induced sedation. According to the defendant in his 999 call the boat never moved. The other evidence indicated that it was a clear still night with no wind. Accordingly, I am satisfied the jury accepted the defendant lifted Lu Na and placed her in the water. Because she was comatosed as a result of Zopiclone Lu Na was vulnerable and unable to resist. If I am wrong about that the alternative possibility is that he pushed her into the water. Dr Simic's evidence was that a person under the influence of Zopiclone is vulnerable as they have limited functionality and poor co-ordination, have slower reaction times and it is dangerous for them to be near water. The defendant knew Lu Na took Zopiclone that evening and he was aware of the effects it had on her. Accordingly, he knew she was vulnerable once in the water as her ability to respond to danger was substantially impaired and although she could not swim the fact she was under the influence of Zopiclone meant she did not

know how to save herself even by reaching out to hold onto the handle at the side of the boat. 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 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.

[23] The factual circumstances contended for by the defence I consider are against the weight of the evidence. I am satisfied the jury found the defendant's intention was to kill his wife. This is clearly established beyond all reasonable doubt in the scenario where he set her into the water. It is also established in the scenario where he pushed her into the water given his knowledge that she had taken Zopiclone and was unable to swim or react to the danger and he must have intended to kill her. 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 push her into the Lough on the spur of the moment, for example, due to an argument. I am further satisfied that the jury found beyond reasonable doubt that his 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 Lu Na, the evidence of Professor Tipton, who, although accepting it was possible for the defendant to re-board the boat, stated 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 I consider the jury was satisfied beyond reasonable doubt 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 is corroborated by the evidence that despite seeing the deceased in the water when the first responders arrived he failed to do anything to rescue her in the 4 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 all of which were nearby.

### **Victim Impact**

[24] Before determining the appropriate minimum sentence in this case it is important that I highlight the Victim Impact statements I have received. I have read a detailed statement from Lu Na's cousin. The statement in its own individual and elegant way brings home the devastating impact that Lu Na's death has had on all members of the family not least her mother as Lu Na was her only child. I have also read the report by the senior social work practitioner on behalf of the deceased's daughter. As a result of the murder of her mother her world has tragically changed. She has been affected by the tragic circumstances of her mother's death becoming a child who is Looked After. She has had to manage the enormity of grieving for her mother with the knowledge of the role her father played in her mother's death. As a result she has missed out on many important attachment and development experiences. She has had to move home and has been significantly affected emotionally and psychologically. She experiences sleep difficulties and although her

career and academic prospects are very positive she struggles with relationships and trust. This statement, in particular, has brought home to me the impact of the murder of Lu Na McKinney and how lives have been altered irretrievably as a result.

## **Legal Principles**

[25] 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 of the combination of the offence and one or more offences associated with it.”

[26] The relevant legal principles the court should apply in fixing a minimum term were set out in *R v McCandless and others* [2004] NICA 1 in which the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 LER 412 should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order. The relevant parts of the Practice Statement for the purposes of this case are as follows:

### **“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."

### **The appropriate minimum tariff**

[27] The principles set out in *McCandless* are guidelines and should not be applied in a rigid compartmentalised structure. Similarly, sentencing in other murder cases are of limited assistance because they are of necessity fact specific.

[28] Although defence counsel submitted that the appropriate starting point was the normal starting point of 12 years I consider that the appropriate starting point in this case is the higher starting point of 15/16 years. I do so 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 consumption of Zopiclone meant she was unable to defend herself and she lacked the necessary awareness to react to the danger that she was placed in.

[29] I have determined this case attracts a higher starting point based on Lu Na's vulnerability due to the fact that she was under the influence of Zopiclone. I therefore will not use this as an aggravating feature as that would amount to double counting in coming to the appropriate tariff.

[30] Nonetheless, I consider that there are a number of other serious aggravating features.

[31] Firstly, I am 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 presented 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 that 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.

[32] Secondly, the children were both present when this murder was carried out. It is accepted the children did not witness the incident but they were present. The children were not present by accident but rather by 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. Indeed, reference to the impact of being present at the scene of the incident is something the defendant's daughter specifically refers to in the victim impact statement prepared on her behalf.

[33] Thirdly, I find that Lu Na's murder was the culmination of the coercive controlling behaviour of the defendant throughout the marriage. 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. When confronted with the prospect of her divorcing him with all its consequences the defendant murdered her. 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 violence I consider that this category 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.

[34] Finally, I consider that the defendant breached the trust of Lu Na. 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.

[35] I do not consider there are any matters by way of mitigation.

### **Conclusion**

[36] 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 damaged. 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.

[37] 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.