

Neutral Citation No:	Ref:	OHA12567
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No:	23/070919
	Delivered:	03/07/2024

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

THE KING

v

VIKTORIA MAKSYMOWICZ

**Mr F O'Donoghue KC with Mr I Tannahill (instructed by the PPS) for the Crown
Mr G Duffy KC with Mr M Boyd (instructed by Joe Mulholland & Co) Solicitors for the
Defendant**

SENTENCING REMARKS

O'HARA J

Introduction

[1] The defendant pleaded guilty on 10 May 2024 to the following charges:

- (1) Murder of Anthony Browne on 14 October 2022.
- (2) Possession of Class B drugs, namely cannabis, on 14 October 2022, contrary to section 5(2) of the Misuse of Drugs Act 1971.
- (3) Possession of an offensive weapon (a knife) on 13 October 2022 without reasonable excuse, contrary to section 139 of the Criminal Justice Act 1988.
- (4) Assault occasioning actual bodily harm, contrary to common law and section 47 of the Offences against the Person Act 1861, on 13 October 2022.

[2] Charges 1 and 4 are aggravated offences because of the provisions of section 15 of the Domestic Abuse and Civil Proceedings Act (NI) 2021. That legislation applies because at the time of the murder there was a relationship between Mr Browne and the defendant. They were living together, at least from time to time.

As a result of that relationship, the offences are regarded as aggravated by reason of the fact that they involved domestic abuse. I must treat that as an aggravating factor and when imposing sentence explain how the fact that the offences are aggravated affects the ultimate sentence imposed – see section 15(4) of the 2021 Act.

[3] On 10 May 2024, when the defendant pleaded guilty, I sentenced her to life imprisonment for the murder of Mr Browne. I must now set what lawyers call the tariff which is the minimum period which she must serve in prison before her release will even be considered. At the end of the tariff period, it will be for the Parole Commissioners to assess what, if any, continuing risk she poses to the public and whether she should be released at that point or whether she must wait until a later date. The sentence which I impose must also reflect the other offences to which she has pleaded guilty.

Background

[4] In October 2022, Mr Browne was 54 years old. He had led a difficult life because of issues with alcohol which contributed to him separating from his wife. However, he had been sober, according to the depositions, for about 10 years before he met the defendant approximately six months before his death. She was 33 in October 2022 and is now 35 years old.

[5] After meeting the defendant, Mr Browne soon began drinking again, and drinking to excess. The relationship was a cause of concern to his family and to his friends. Despite his previous difficulties with alcohol, he was still very close, not just to his children but also to his ex-wife.

[6] Their various concerns about the relationship with the defendant were not just confined to the fact that both of them were drinking to excess. There are statements in the depositions from a number of witnesses, including two neighbours, a Mr McFadden and a Ms Rafferty and from a friend, a Mr Connolly. They all saw the defendant on different occasions strike Mr Browne, whether by punching or elbowing or slapping him. No action was taken when any of that happened and no reports were made to the police.

[7] At about 4pm on 13 October 2022, the day before the murder, the defendant and Mr Browne were drunk and drinking on a glider bus on the Falls Road in Belfast. They were seen to have a knife. That is the basis for the possession charge. The knife was not produced nor was it used to threaten anyone.

[8] Their actions were reported by the driver with the result that two customer protection officers boarded the bus and challenged the couple. They were eventually escorted off the bus. It appears that on that occasion Mr Browne was probably the more aggressive and belligerent of the two and that the defendant was, to a degree, restraining him.

[9] Later that day, Mr Browne's nephew called at Mr Browne's home and found the defendant and Mr Browne still drinking alcohol. They appeared to be in good form, with no arguments or confrontation. That made it all the more shocking that the defendant went into the kitchen, returned with a dinner knife and stabbed Mr Browne just above his knee (the actual bodily harm charge). The defendant herself then cleaned up the blood and got a bandage. Nothing more was said or done.

[10] The next day, 14 October at approximately 1:20pm, the neighbour Mr McFadden called in and found both Mr Browne and the defendant very drunk. That very night, just before 10pm, a 999 call was made requesting an ambulance be sent to Mr Browne's home. When ambulance personnel attended a short time later, they found Mr Browne lying on the floor of a bedroom beside the bed. The defendant was in a distressed condition, crying and holding what looked like a tea towel to his neck. Mr Browne was unresponsive and was not breathing. He had a severe wound to the right side of his neck. He was taken to the Royal Victoria Hospital at approximately 10:30pm and was confirmed at 10:57pm to be dead.

[11] Police were summoned to the address. They arrived not long after 10:00pm. The defendant was present and was arrested for attempted murder. What she said to the police at the scene included the words "tell me that they will help him, stupid vodka, fuck sake." She also made other comments including "I tried to save him, I tried to protect him" and "I did not kill him."

[12] Forensic evidence confirms that at the time of his murder Mr Browne was heavily intoxicated. He was found to have 381mgs of alcohol per 100mls, more than four times the legal limit for driving. This is consistent with him being unconscious due to alcohol. The defendant's reading was probably in the range of 240-275mgs per 100ml, approximately three times the legal limit for driving. This is consistent with her being somewhere between heavily drunk and extremely drunk. Traces of a variety of drugs were also noted to be in the blood systems of both Mr Browne and the defendant.

[13] The cause of death was a solitary stab wound to the neck. According to the autopsy report "no more than moderate force is likely to have been required for the infliction of the wound."

[14] Some cannabis was found in the home - this is the basis for the possession of drugs charge.

[15] During interview the defendant confirmed that she and Mr Browne were the only two people in the house at the time that he was killed. When pressed about the detail of what had happened, she stated that she could not remember anything about the evening's events. That may be correct but as will appear below that is a recurring theme of the defendant's responses.

Victim impact evidence

[16] I have received victim impact reports from Dr Kierans, clinical psychologist, about the effect on Mr Browne's twin daughters of his murder. In addition, I have received victim impact statements from a niece, from his sister and from his ex-wife.

[17] It is clear from all of these reports how much he was loved by his family and how much he is still missed. The fact that he had recovered from his earlier troubles with alcohol and that he maintained close and loving relationships with those who had lived through those difficult times says so much about him. The fact that he was then murdered without provocation and when he was completely vulnerable to the point of being unconscious makes the whole event infinitely more difficult for his family and friends to understand and come to terms with. Dr Kierans' two reports show that his daughters have suffered and continue to suffer very badly to the extent that they each have a diagnosis of PTSD. Not only does this affect them but it also affects those around them. Such are the consequences of the defendant's murder of Mr Browne.

The defendant

[18] On behalf of the defendant I have received a neuropsychiatric report from Dr Michael Isaac. In that report he records that she told him that she had been sexually abused by an uncle in Poland for a few weeks when she was five or six years old. She was unable to get help for this and it led to her starting to drink alcohol when she was about 11 or 12 years old. On her version of events, "the alcohol took over." She told him that her period in custody since October 2022 had been the longest period of sobriety on her part since she started drinking.

[19] Her medical history in Northern Ireland shows that she had reported alcohol related problems from at least 2013. In 2014 she gave birth to a child who was removed from her care when three years old.

[20] In Dr Isaac's opinion, her overarching condition was alcohol use disorder which was in early remission because of the controlled prison setting which she has been in since her arrest. His report, however, confirmed that there was no tenable basis for a plea to manslaughter by reason of diminished responsibility. It was following this report that discussions were opened which led eventually to the plea of guilty to murder.

[21] The defendant has no criminal record in Northern Ireland nor does she have one in Poland or in the Republic of Ireland.

Basis of plea

[22] The plea to murder was accepted by the prosecution on the following basis:

- (i) The cause of death and sole relevant injury was the stabbing to Mr Browne's neck with a knife that was within Mr Browne's home and would have been used ordinarily for a purpose other than for the infliction of harm.
- (ii) The prosecution cannot gainsay the defendant's claim that this was a spontaneous act performed in a state of high intoxication in which the defendant may not have formed an intention to kill.
- (iii) There is no evidence that the stabbing occurred in the context of a fight or disagreement. The toxicology evidence suggests that Mr Browne was unconscious through alcohol consumption at the time of the fatal wound being inflicted.
- (iv) The pathologist's conclusion is that no more than moderate force was likely to have been required.
- (v) Immediately after the infliction of the wound the defendant regretted her action and contacted emergency services.
- (vi) The defendant was attempting to tend to the wound when the emergency services arrived.
- (vii) The defendant did not dispute committing the act and the sole issue which prevented an earlier plea to murder was the need to explore her psychiatric condition at the time.

Pre-sentence report

[23] Ms Mullan of the Probation Board for Northern Ireland has provided a helpful pre-sentence report in which the defendant's background, already referred to above, has been detailed. When Ms Mullan asked the defendant about the witness statements which detail previous violent behaviour by her towards Mr Browne, she claimed to have no memory of those incidents but she still accepted responsibility for them.

[24] Ms Mullan assessed her as posing a medium likelihood of reoffending. Among the factors which incline Ms Mullan to that view were the defendant's extreme violence without any known trigger or provocation, witness reports of recent domestic abuse of Mr Browne, her alcohol dependency and her lack of insight into her offending behaviour. In terms of protective factors, Ms Mullan identified the defendant's expression of remorse, her acknowledgment of the benefit of being abstinent and the fact that she appeared to have engaged well since she was admitted to prison in October 2022. At the risk management meeting held on 18 June 2024, it was decided within the Probation Board that the defendant does not currently meet the threshold for significant risk of serious harm. In the event of her

eventual release, licence conditions are suggested in the report which would, I agree, be helpful, assuming the defendant stays in Northern Ireland.

Sentencing Principles

[25] In Northern Ireland the courts continue to take as their starting point for tariffs in murder cases, the approach which is adopted in *R v McCandless* [2004] NICA 4. In that case the Court of Appeal endorsed the Practice Statement issued in England & Wales by Lord Woolf [2002] 3 All ER 412.

[26] Paragraphs 10 to 19 of the Practice Statement read 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.

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."

[27] By reference to those principles, the prosecution has accepted that the lower starting point of 12 years is appropriate here because of the absence of factors which take the case into any of the higher categories. While that proposition may be correct, the guidelines are only that, guidelines rather than chains. In my judgment, what emerges from a close analysis of the papers is a pattern of domestic abuse similar to that more often seen inflicted on women by men. In this case the fatal stabbing may not have been premeditated but it can hardly be said to have been spontaneous given that there had been an entirely unprovoked stabbing of Mr Browne the day before. And that stabbing was unashamedly committed in front of Mr Browne's nephew. Allied to that is the history of almost casual domestic violence as described in the witness statements to which I have referred above and which were admitted to by the defendant when Ms Mullan of PBNI interviewed her for the pre-sentence report. These points rather undermine the proposition advanced on behalf of the defendant by Mr Duffy that there was no significant domestic history even though he is correct in saying that there were no prior reports to the police. It should also be noted for the record in this context that there is no suggestion on behalf of the defendant that she was ever physically abused by Mr Browne. The domestic violence in this relationship, which culminated in Mr Browne being murdered, was all one way.

[28] What I have set out above is exactly what was contemplated by the 2021 Act which requires domestic violence to be treated as an aggravating factor. The legislation simply requires what was already emerging in judgments to be set out more clearly and to be treated more definitively as aggravation.

[29] For the defendant it was contended that the mitigation of her guilt which is relevant to sentencing would include the fact that the Crown cannot prove that there was an intention to kill and that the court should accept that the intention here was "only" to cause serious harm. I have to wonder how helpful that point really is for the defendant when she had a knife and Mr Browne was in all probability unconscious. I was also urged to accept that the defendant's remorse is genuine as

evidenced by her expressions of regret and by her immediate effort to assist Mr Browne. She is also entitled to have her clear criminal record acknowledged along with the fact that she entered a guilty plea very soon after Dr Isaac's report became available.

Conclusion

[30] Having set out all the various and relevant factors, I now turn, step by step, to finalise sentence.

[31] While the starting point is 12 years, that figure has to be increased because the aggravating factors substantially outweigh the mitigating factors which in some cases, but not this one, might allow the sentence to be reduced. Setting aside the plea of guilty for the moment, I move the starting point from 12 years to 16 years. In part, that is because that is the only way in which I can impose any sentence for the additional offences and in particular for the stabbing which caused actual bodily harm on 13 October. In part also it reflects the pattern of domestic abuse which goes beyond that earlier stabbing and includes acts of apparently minor violence which the defendant inflicted on a vulnerable man in a humiliating manner in front of others.

[32] So far as the guilty plea is concerned, I make some allowance for that. It came very soon after Dr Isaac's report which was sought for good professional reasons and it saved everyone involved from having to relive the dreadfully distressing events of 13-14 October 2022. Having said that, the plea was the only possible outcome in this case. There were only two people in the house when the killing took place, Mr Browne who is dead, and the defendant. In the circumstances, I reduce the tariff to 14 years.

[33] For completeness, I confirm that sentences of three months for the possession of the Class B drugs, three months for possession of the knife on the bus and one year for inflicting actual bodily harm are to run concurrently with the tariff. The reason that those sentences are concurrent rather than consecutive is that it is not possible to impose a tariff with a consecutive sentence, even for separate offending. The only way to reflect the other offences against Mr Browne is to treat them as aggravating factors in the murder.

[34] Finally, I order the destruction of the knife used to murder Mr Browne and of the drugs found in the home.