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IN THE CROWN COURT OF BELFAST

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R

v

FRANCIS LANIGAN

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SENTENCING REMARKS

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HORNER J

INTRODUCTION

[1] The defendant was found guilty at Belfast Crown Court of the murder of John Stephen Knocker (deceased) ("JSK") on 31 May 1998 and of the possession of a firearm and ammunition with intent, by means thereof to endanger life or property, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981. In giving judgment I commented that this was an act of barbarous inhumanity; not content with having carried out this brutal murder, the defendant chose to parade before those patrons who were leaving the late night disco at the Glengannon Court Hotel, Dungannon, Co Tyrone ("the Hotel"), revelling in his infamy. It now falls upon me to determine the appropriate sentence for what were two heinous crimes. These sentencing remarks are to be read in conjunction with and in the context of the judgment I had previously handed down.

VICTIMS

[2] I have read the heart-breaking statements of Sabrina Dunbavin, formerly Sabrina O'Prey, the then partner of JSK who was pregnant with his child at the time of his murder. That child, Rhea Knocker, is 20 years old and she has also made a statement. I have carefully considered what they have had to say about the murder of JSK and the effect on their lives. Their stories are immensely moving, telling as they do of the terrible times they both suffered as a consequence of the cold hearted and callous murder of JSK. Sabrina Dunbavin lost her soul-mate. Following JSK's

murder she lived in fear and suffered enormous mental upset and anxiety. Her only means of coping was to leave Ireland behind and all her family and friends. She complains with good cause that the defendant robbed her of a family life, has denied her a happy life, has sentenced her to misery and upset and has left her trapped in a nightmare that has lasted for 21 years to date. Rhea, the daughter JSK never saw, has also suffered from mental issues attributable to the tragic circumstances of the loss of her father. She continues to be haunted by the spectre of her father's murder. JSK's parents are still alive and his mother describes in moving detail how their son's murder left a broken family, mired in grief for all time.

[3] So it is important to remember that when the defendant shot at point blank range into the defenceless and prone JSK, not only did he extinguish JSK's life but he blighted and continues to blight the lives of the loved ones JSK left behind.

DISCUSSION

[4] Following the conviction of the defendant for murder I sentenced him to a life sentence as I am obliged by law to do. It is now necessary for me to determine the minimum term which the defendant must serve before he can be considered for release by the Parole Commissioners per Article 5 of the Life Sentences (Northern Ireland) Order 2001. I must also determine the appropriate sentence for the firearm offence. I have performed this exercise in the absence of any Pre-Sentence Report because the defendant chose not to have one carried out.

[5] In setting the minimum term which the defendant must serve before he is eligible for release I must follow and apply the principles set out in *R v McCandless and others* [2004] NICA 1. In that case Carswell LCJ giving judgment in cases involving mandatory life sentences for murder said:

> "[6] On 13 November 2001 the Sentencing Advisory Panel in England and Wales published a consultation paper entitled "Tariffs in Murder Cases". The panel proposed dividing such cases into three groups, a central group representing what might be regarded as a standard case, with higher and lower groups of cases lying in a bracket significantly varying above or below the central group in culpability. The proposed middle tariff was 12 years, rather than the term of 14 years thitherto regarded as the starting point. The lower tariff was put at eight or nine years and the higher tariff at 15 or 16 years. Where a case fell within any of these brackets, aggravating or mitigating factors could then be taken into account to vary the term within the bracket.
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> [7] The Sentencing Advisory Panel published its advice to the Court of Appeal on 15 March 2002. Differing

views had been expressed during the consultation process and opinion was to some extent divided among the members of the Panel. The Panel recommended adherence to its three-tier framework, the majority recommending the terms propounded in the consultation paper, while the minority preferred a figure for the middle group of 14 years, with a lower starting point of 10 or 11 years and a higher starting point of 17 or 18 years.

[8] It was against this background that Lord Woolf CJ on 31 May 2002 issued a Practice Statement, reported at [2002] 3 All ER 412, in which he dealt in more detail with the appropriate minimum terms for both adult and young offenders. It replaced the previous normal starting point of 14 years by substituting a higher and a normal starting point of respectively 16 and 12 years, rather than adopting the Panel's recommendation of three groups. These starting points then have to be varied upwards or downwards by taking account of aggravating or mitigating factors. We think it important to emphasise that the process is not to be regarded as one of fixing each case into one of two rigidly defined categories, in respect of which the length of term is firmly fixed. Rather the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in R v McKeown [2003] NICC 5, a multi-tier system. Not only is the Practice Statement intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case.

[9] The Practice Statement set out the approach to be adopted in respect of adult offenders in paragraphs 10 to 19:

> "***The normal starting point of 12 years***
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> 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) 6 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.
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> 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."

> [10] In a number of decisions given when imposing life sentences and fixing minimum terms, including those the subject of the present appeals and applications, judges in the Crown Court have taken account of the principles espoused by the Sentencing Advisory Panel and by Lord Woolf CJ in his Practice Statement and have fixed terms in accordance with those principles and on a comparable level with the terms suggested in them. We consider that they were correct to do so. We have given careful consideration to the level of minimum terms which in our view represent a just and fair level of punishment to reflect the elements of retribution and deterrence. We are not unmindful of the mandatory minimum terms prescribed in England and Wales for certain classes of case by the Criminal Justice Act 2003, but we consider that the levels laid down in the Practice Statement, which accord broadly with those which have been adopted for many years in this jurisdiction, continue to be appropriate for our society."

[6] I consider in this case the defendant's culpability was exceptionally high and the victim was in a particularly vulnerable position. Therefore, this merits a higher starting point of 15 years. This was a shooting where the defendant shot and injured JSK from a distance as JSK sought to escape. However, the defendant was not content with merely shooting and severely injuring him from afar. The defendant was intent on taking his life. Eric Morrow described the defendant kicking JSK as he lay defenceless on the ground before he leant down and fired the fatal shot at point blank range, when there could be no doubt as to the outcome. According to the

witness, Mulryan, the defendant reached down with his left hand before he shot a completely vulnerable man at the closest of ranges into his brain to make death a certainty.

[7] I then have to consider the aggravating factors and mitigating factors. The aggravating factors are:

(i) I am satisfied that at the very least the defendant knew there was a loaded gun available for him to use that night. It is also obvious that he knew how to use it effectively.

(ii) On the basis of all the evidence adduced I conclude that the defendant made the decision not to fight back when initially struck by JSK but instead decided to wait and to exact a bloody revenge in front of the spectators who had witnessed his earlier humiliation. As I have found, he knew he had a loaded gun available, and he knew he was going to use it. This was not a spur of the moment impulse. This was a calculated decision to use a gun against a defenceless man in full view of members of the public and so demonstrate to any onlookers who was the boss.

(iii) The use of the firearm itself is an aggravating feature and, in particular, the decision to use it at a point blank range. In *R v Wilkinson* [2009] EWCA Crim 1925 Lord Judge CJ said:

> "**Gun Crime**
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> [2] The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals want them: that is why they use them: and that is why they organise their importation and manufacture, supply and distribution. Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community.
>
> [3] ... whenever a gun is made available for use as well as when a gun is used public protection is the paramount consideration. Deterrent and punitive sentences are required and should be imposed."

(iv) The defendant had previous convictions for possession of a firearm with intent to commit an indictable offence, namely false imprisonment and also of possession of firearms, namely a .455 calibre revolver, a .38 special revolver and a 9mm Browning pistol and a quantity of ammunition with intent to

endanger life, possession of ammunition, namely 12 rounds of .455 ammunition and one round of .450 ammunition following a trial which completed on 2 May 1986. Those offences pre-date the present offences by some 12 years. He was given 10 years imprisonment for possessing a firearm with intent to endanger life, a sentence which singularly failed to act as a deterrent to this future offending.

(v) The defendant's brazen boastfulness of his commission of this cruel crime in front of those leaving the nightclub is a further aggravating feature, accompanied as it was, and is, by a complete absence of remorse.

(vi) There has been a significant impact upon the close family members which I have already outlined. There is no doubt that the period of 21 years from JSK's death until the defendant's trial has been an exacerbating factor.

[8] I do not accept that there are any mitigating factors whatsoever. As I have said the defendant displays a complete absence of remorse or contrition. The suggestion that there was provocation which I should take into account is wholly undermined by:

(a) My conclusion that even as the defendant was being attacked he was planning his bloody revenge. This was not a heat of the moment reaction. This was a cold and calculated decision to take another man's life in as public a way as possible

(b) The defendant had to seek and obtain a weapon after the assault.

(c) The defendant did not consider it sufficient to shoot JSK at long range. He had to apply the kill shot up close.

[9] In the circumstances I fix the minimum term to be served before the defendant can be considered for release at 20 years. The defendant will then be considered at the end of that period by the Parole Commissioners who will have to be satisfied that it is safe for him to be released on such conditions as they shall determine.

[10] In order to be sure that I have not been guilty of double counting I have also carried out the exercise with a lower starting point but then taken into account those features which made the defendant's culpability exceptionally high and the victim at the time of the murder exceptionally vulnerable. It has made no difference to the calculation of the ultimate sentence of 20 years. I am satisfied in all the circumstances that this is the appropriate period to impose as a minimum term.

[11] In respect of the firearms offence I observe that in *R v Avis and others* [1998] ICR App 42 and *R v Ian Weir* [2015] NICC 1 the following factors are considered relevant in fixing the term of imprisonment:

(a) This was a real weapon, a Browning 9mm pistol in working order.

(b) The defendant brought the gun to the nightclub, he was well able to use it as is demonstrated by his shot which brought down the fleeing defendant.

(c) The defendant had previously been convicted of firearms offences.

(d) The defendant has exhibited no signs, whatsoever, of remorse.

[12] I also accept that the sentence imposed upon the defendant in respect of the firearm offence must bear some comparison with the sentences imposed on Nuala Delaney and Gregory Fox. But these were offences of a less serious nature and they pleaded guilty. The culpability of the defendant is of a wholly different order.

[13] In *R v Thomas John Hazlett* [2004] NICA 20 Kerr LCJ in imposing a sentence in respect of a defendant who was found guilty of possession of a firearm and ammunition, namely a sub-machine gun and 30 rounds of ammunition with intent by means thereof to endanger life or cause serious injury, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981 said:

> "We consider, however, that the range of sentences for this type of offence, in order to reflect contemporary conditions, should normally be between 12 and 15 years."

[14] I also note the sentence imposed in *R v Kieran Edward McLaughlin* [2015] NICC 10, although, inter alia, the defendant in that case had a significantly worse record than the present defendant.

[15] I am also aware of what Hart J said in *R v Morrin* [2011] NICA 24 in delivering the judgment of the Court of Appeal where he reinforced what Lord Woolf CJ had said in *R v Milberry* [2003] 2 Cr App R(s) at page 155:

> "… it is essential that having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Double counting must be avoided and can be the result of guidelines if they are applied indiscriminately."

[16] In the circumstances I consider that the appropriate starting point is 12 years and the appropriate sentence taking into account the aggravating factors is 14 years. The defendant will have to serve 7 years in custody and then 7 years on licence. This sentence is to run concurrently with the one imposed for the murder.

[17] Normally I would take into account as a mitigating factor that there has been a delay in dealing with these offences from 1998 to date, a period of some 20 years. However, in this case the delay is wholly attributable to the decision of the defendant to go on the run instead of facing up to what he had done. It is also a delay which has necessarily exacerbated the upset and pain felt by JSK's close family.

CONCLUSION

[18] The defendant is sentenced to life imprisonment for the murder of JSK. He must serve a minimum term of 20 years in custody before he can be considered by the Parole Commissioners for release on whatever conditions as they determine. He also will have to serve a concurrent sentence of 14 years for the firearms offence comprised of 7 years in custody and 7 years on licence. The defendant shall be given credit for his time in custody up to the date when the life sentence was imposed. The remainder of his tariff shall commence on that date.