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

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**IN THE CROWN COURT FOR NORTHERN IRELAND
SITTING AT LAGANSIDE COURT, BELFAST**

THE QUEEN

v

SARUNAS NAUBURAITIS

SENTENCING REMARKS

**Mr C Murphy QC with Ms R Walsh (instructed by the Public Prosecution Service)
Mr D McDowell QC with Mr R McConkey (instructed by Holmes & Moffitt Solicitors)
for the Defendant**

O'HARA J

Introduction

[1] The defendant was born in Lithuania on 15 April 1986 and is now 35 years old. On the indictment he was charged with:

- (i) Murder of Maris Ludborzs, contrary to common law, between 14 and 24 May 2020.
- (ii) Fraud by false representation, contrary to section 1 of the Fraud Act, in that on 17 May 2020 he used the deceased's bank card.
- (iii) Theft of the deceased's bank card, on a date unknown between 14 and 18 May 2020.

[2] The defendant was arraigned and pleaded not guilty to all counts on 12 March 2021. He was then examined by Dr East, Consultant Psychiatrist, on 10 August 2021. Following receipt of that report dated 23 August the defendant asked to be re-arraigned. This occurred on 7 September 2021 on which occasion he pleaded guilty to all three charges.

[3] The defendant having pleaded guilty to murder I imposed upon him on 7 September the only sentence permitted by law, that of life imprisonment. It is now my obligation in accordance with Article 5 of the Life Sentences (NI) Order 2001 to determine the length of the minimum term which the defendant must serve in prison before he will first become eligible to have his case referred to the parole commissioners for them to consider whether he might be released on licence. I emphasise that even if such a time comes and he is released, he will be liable to be recalled to prison at any time for the remainder of his life if he does not comply with the terms of that licence.

[4] I am indebted to all counsel for their considerable assistance which has assisted me greatly in identifying and applying the relevant legal principles.

Factual Background

[5] At about 9:50pm on 23 May 2020 the defendant who lived in the upper Crumlin Road area of Belfast went to Musgrave Street Police Station and said that he killed a man in his home. When the police went to his address they found the body of Mr Ludborzs. It was on the kitchen floor covered with a sleeping bag, with a plastic bag attached to the top of his head. The only item of clothing on his body was boxer shorts. A toy rat skeleton had been placed inside them and the letters 'PIG' carved with a knife into his chest.

[6] It was clear from the decomposition of the body that the murder had taken place some days before. The exact timescale is not known but seems to have been in or around a week. There was dried blood around the head and blood spatter on the wall and radiator. The deceased who has no family in Northern Ireland was identified by his fingerprints.

[7] The scene inside the house was one of squalor with empty bottles and cans of alcohol scattered in different rooms.

[8] A post mortem report from Dr James Lyness shows that the deceased's medical history includes alcoholism and a previous head injury in 2007. The doctor was unable to identify the date of death beyond it being at least a number of days earlier. While the decomposition had caused discolouration or breakdown of the skin, Dr Lyness was able to identify lacerations on the right and left side of the back of the scalp, within both eyebrows, on the right side of the forehead, through the upper part of the left ear and on the inside of the left upper lip. The number of injuries and their distribution was consistent with multiple blunt impacts during an assault.

[9] The black plastic bag attached to the head and shoulder caused the doctor to consider the issue of asphyxiation. Ultimately, he was unable to be sure about that possibility – it cannot be ruled out but cannot be confirmed either.

[10] Other injuries found included five areas of bruising on the back, the abrasions which spelt 'PIG' and various minor injuries.

[11] The concentration of alcohol in the deceased's blood stream was 279mg per 100ml (3½ times the driving limit) indicating very heavy intoxication. Dr Lyness suggests acute alcohol intoxication as a potential contributory factor in the overall sequence.

[12] Dr Lyness's slightly hesitant conclusion in all the circumstances, caused by the decomposition of the body, was that death resulted from blunt force trauma of the head and possible plastic bag suffocation with acute alcohol intoxication as a potential contributory factor.

Police Interviews

[13] During interviews the defendant said that he and the deceased had been friendly from about February 2020, conversing in Russian. When the Covid lockdown came and the deceased was sleeping on the streets the defendant invited him to stay in his home which he did occasionally.

[14] At some point in May 2020, on a date unknown, the deceased arrived at the defendant's home once again. He was drunk. Matters spiralled out of control to the extent that the murder occurred only a few hours later.

[15] After the deceased arrived he and the defendant consumed a lot of alcohol. The deceased then took off almost all of his clothes and put them in the washing machine to be cleaned. On the defendant's version of events he then angered the defendant by urinating in different parts of the house, by boasting about people he had allegedly killed as a sniper in Bosnia, by laughing at and mocking others and by not having paid a debt of £10.

[16] On this account the deceased then tried to get out of the back door into the garden. The defendant stopped him and closed the door. At that point the deceased started to urinate through his underwear. The defendant reacted by kicking him from behind, many times, perhaps 20 to 30 times. The defendant described the deceased's head ricocheting off the radiator and how the defendant "finished him off" with his heel. When there were no more sounds or noises from Mr Ludborzs the defendant put the plastic bag over his head to be sure he was dead and could breathe no more.

[17] The defendant told the police that he really wanted Mr Ludborzs to die and that the kicks were intended to kill him. Having achieved that he used a knife to carve the letters 'PIG' on his chest. The toy rat was placed on him to symbolise that he was a thief.

[18] The defendant attended the Mater Hospital at 2:47am on 17 May 2020 for a Covid test. This was after the murder. He also admitted desecrating the body even further by pouring bleach on the face to make it harder to identify Mr Ludborzs.

[19] It was after the murder that the defendant stole the deceased's bank card and used it up to three times in different shops to buy such items as beer, wine and tobacco. This is the foundation for counts 2 and 3 on the indictment.

[20] He also destroyed the SIM card from the deceased's phone and disposed of that phone, his wallet and some personal documents.

[21] With the police there was a somewhat bizarre discussion about the defendant's interest in Satanism. This led to him being asked if the killing was a ritual one. The defendant said that it was not and that it would have been completely different if it had been.

Sentencing

[22] In this jurisdiction the principles to observe in setting the minimum term before release from prison can be considered are found in *R v McCandless* [2004] NI 269. In that judgment the Practice Statement issued by Lord Woolf CJ, reported at [2002] 3 All ER 412 were approved.

[23] As Lord Carswell, then the Lord Chief Justice, said at paragraph 8 of his judgment in *McCandless* the sentencing 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. That is because the Practice Statement is only intended to be guidance, to indicate points at which the sentencing judge starts the journey towards deciding the correct and appropriate sentence. In an area in which no sentence is ever indisputably the correct one the Practice Statement helps to promote consistency and comparative fairness.

[24] The relevant paragraphs of the Practice Statement 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 defendant'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."

[25] For the prosecution Mr Murphy suggested that the higher starting point of 15/16 years is appropriate in this case because the defendant's culpability is exceptionally high. He highlighted the following features:

- (i) The defendant confessed that he really wanted Mr Ludborzs to die.
- (ii) The attack was sustained and relentless on a vulnerable person.
- (iii) The body was allowed to decompose.
- (iv) Bleach was poured over the face.
- (v) 'PIG' was carved on his chest.
- (vi) This was a satanic killing.
- (vii) The symbolic toy rat was placed on him.
- (viii) The killing was wholly unprovoked.
- (ix) There is a shuddering lack of remorse.
- (x) The defendant coldly used the deceased's bank card after the death.

[26] Mr Murphy accepted that the assessment of aggravating features is not a matter of numerical calculation but requires an assessment in the round of the seriousness of the offence and the culpability of the offender.

[27] He suggested that the only mitigating feature is the plea of guilty for which, following *R v Turner and Turner* [2020] NI 159, the discount is likely to be limited to no more than one sixth.

[28] While the deceased has no family in Northern Ireland a statement has been received from his nephew. This shows that the deceased's mother is still alive and that he has a daughter but that the broader family has agreed not to tell them all of the distressing details about the circumstances and aftermath of his death. The nephew acknowledges that his uncle was not a perfect father or son but asserts that that does not justify him being killed in such an "ugly" way when he was not physically strong enough to defend himself. Understandably, the nephew worries about how terrible the last moments of his uncle's life were to the extent that his family does not want to talk or think about it.

[29] For the defendant, Mr McDowell was obviously limited in what he could advance. His submissions can be summarised as follows:

- (i) Dr East's report shows that the defendant has no mental disorder but he has an alcohol dependency.
- (ii) It was incumbent on the defendant's lawyers to explore any mental health issues but on receipt of Dr East's report the defendant pleaded guilty at the first opportunity. It was only confirmation of the mental health issue which caused a delay to that plea.
- (iii) He challenged the suggestion of the higher starting point of 15/16 years. In particular, he contended that while this was an un-premeditated murder of one alcoholic by another the deceased was not "vulnerable" in the sense envisaged by Lord Woolf at paragraph 12(f).
- (iv) He further challenged the higher starting point by questioning whether there was sadism or gratuitous violence before death (12(i)) and whether extensive and/or multiple injuries were inflicted before death (12(j)). On this submission the extensive injuries were the murder - in the absence of a weapon, death could only result from sustained kicking.
- (v) Having made that submission Mr McDowell did, however, concede that 12 years would not be an appropriate starting point. He accepted that this could not be so because even if 12 years might possibly have been the starting point, the case got worse by reason of many of the issues referred to by Mr Murphy.

- (vi) While accepting, inevitably, that multiple injuries were inflicted, Mr McDowell contended that this alone does not automatically trigger the higher starting point.
- (vii) On the issue of whether this was a satanic killing, Mr McDowell contended that that had not been established but conceded that the three most aggravating features were carving the letters 'PIG', placing the toy rat skeleton and disfiguring the face with bleach.
- (viii) By reference to the Sentencing Council Guidelines he suggested that while there was no significant provocation of the attack it could not be said to be wholly unprovoked in light of the deceased's repeated act of urinating in the defendant's home.
- (ix) On the lack of remorse, it was submitted that while remorse is a mitigating feature lack of remorse is not an aggravating one.
- (x) Highlighting paragraph 16 of the Practice Statement, Mr McDowell submitted that lack of premeditation is a mitigating factor in this case.

Consideration

[30] In setting the minimum term, or tariff, every judge has to avoid double counting of the same factor, whether as an aggravating or mitigating feature. That can be a difficult exercise because inevitably there is a degree of overlap between features.

[31] In my judgment the appropriate starting point in this case is the higher one of 15 years. I do not take that view because I consider the deceased to have been particularly vulnerable. Sadly, both men were alcoholics who had been drinking excessively in the hours before the murder. It seems to me to be difficult to use the description of "vulnerable" in that context.

[32] I also have difficulty with the idea that there is evidence of sadism or gratuitous violence before the killing. This does not come across to me as a satanic ritual killing which in all probability has features which are missing here.

[33] The reason that I believe that the higher starting point is appropriate is that extensive and multiple injuries were inflicted before death. It cannot be right to suggest, as Mr McDowell did, that in the absence of a weapon death can only be caused by inflicting extensive or multiple injuries. This death was caused by 20-30 kicks with the deceased's head ricocheting off a radiator, with extensive blood spatter and with the use of the heel to finish him off. In case that was not enough the plastic bag was tied over his head.

[34] In many cases that might be the end of the story but not in this one. What followed was disgusting and grotesque. Carving 'PIG', placing the toy rat, throwing bleach on the face almost defies description and have caused entirely understandable distress to the victim's family with those closest to him, his mother and daughter, having to be protected from the whole miserable story.

[35] There is further aggravation by reason of the body lying decomposing for somewhere around a week. I reject the contention that this is not an aggravating feature - it is.

[36] During that week the defendant used his victim's bank card. Dr East described that as opportunistic. That is probably correct but it is also an aggravating feature.

[37] So far as mitigation is concerned, as already indicated, I accept that full credit is to be given for the guilty plea but only within the bounds of *Turner and Turner*. In truth that plea was inevitable, subject to the exploration of the defendant's mental health, from the time the defendant eventually presented himself to confess at the police station.

[38] Mr McDowell also suggested some degree of mitigation is found in the spontaneity and lack of premeditation of the killing. I accept that the deceased behaved badly, at least on the defendant's account. There is no evidence that there was any plan or intention to kill before the kicking started in the kitchen but what reduces the significance of this aspect of potential mitigation is the defendant's utter commitment to murdering Mr Ludborzs once he started kicking.

Conclusion

[39] Having indicated above that I consider that the appropriate starting point is 15 years, I must assess the figure which the many and substantial aggravating features add to that before mitigation. In this case the combination of the number of such features and their gravity causes me to raise the figure by 7 years giving a total of 22 years.

[40] In light of the plea of guilty which is the only real mitigation which I accept, I reduce that figure by 4 years, giving a total minimum period of imprisonment of 18 years.

[41] On each of counts 2 and 3 I impose sentences of six months' imprisonment which are to run concurrently with the minimum period which I have set since they have already been factored into the overall sentence as aggravating features.

[42] The defendant will be given credit for all time spent in custody since his arrest on 23 May 2020. The remainder of his tariff will commence on the date in which the life sentencing was imposed, namely 7 September 2021.