

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 27-02-08

THE QUEEN

v

TREVOR JAMES LESLIE McKEOWN

DECISION ON TARIFF

Ruling by Kerr LCJ

KERR LCJ

Introduction

[1] On 9 June 1999 the prisoner was sentenced to life imprisonment by McCollum LJ, sitting at Belfast Crown Court without a jury, for the murder on 15 July 1997 of Bernadette Mary Martin, an 18 year old Catholic girl from Lurgan. The prisoner was 36 years old at the time of the murder. He has been in custody since 18th July 1997 and has, therefore, served 10 years and nearly two months in prison to date. The prisoner's appeal against conviction for murder and possession of a firearm and ammunition with intent was dismissed on 20 September 2001. The prisoner's application for early release under the Northern Ireland (Sentences) Act 1998 was refused.

[2] On 19 November 2007 I heard oral submissions on behalf of the prisoner in relation to the tariff to be set under Article 11 of the Life Sentences (Northern Ireland) Order 2001. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will then assess his suitability for release on the basis of risk.

Factual background

[3] The background facts were set out in detail in the judgment of the learned trial judge and they were summarised by the Court of Appeal as follows:-

“Bernadette Mary Martin (“the deceased”) was an eighteen year old Catholic girl from Lurgan who formed a close relationship with Gordon Greene, a Protestant workmate, who resided at 6 Soldierstown Road, Aghalee. This relationship had lasted for some seven months prior to 14 July 1997 during which time each was made welcome by the other’s family, they frequently visited each other’s houses and occasionally stayed overnight. The deceased usually stayed in Gordon Greene’s home at weekends.

In the early hours of 15 July 1997, while she was sleeping in a bedroom at Gordon Greene’s home, the deceased was shot several times by an intruder as a result of which she sustained fatal injuries. The Crown case was that the intruder was the appellant, Trevor James Leslie McKeown, who was both a neighbour and friend of the Greene family.

As the learned trial judge recorded in his judgment, there was no eyewitness or forensic evidence to link the appellant directly to the crime and the Crown case was based upon circumstantial evidence. The main strands of evidence relied upon by the Crown were as follows:

(i) On Monday 14 July 1997 the appellant, together with Gordon Greene’s parents and their daughter Lynn travelled to Bangor in order to watch a

procession subsequently returning to Lurgan to see a parade at that location. Gordon Greene's father, Samuel Greene, then went to the "Institute", a working man's club at the corner of Market Street and Union Street. Some time later that evening, probably around 11.00 pm, Gordon Greene's sister, Lynn Greene, went to the Institute in order to speak to her father. While she was looking for her father she met the appellant who was standing in the top bar. The appellant told Lynn Greene that he did not know the whereabouts of her father and he offered her a lift home sharing his taxi. In the course of a general conversation which then ensued the appellant remarked that he was going to "... get the gun that shot McGoldrick" and shoot himself." When asked about this remark, Lynn Greene said she had formed the impression that the appellant was drunk and, in fact, she told the appellant to "stop talking crap". Lynn Greene agreed, in cross-examination, that she had not told the police about this remark when she was making a statement on the following day but she said that this was because she had not thought anything more about what the appellant had said until she had time "to sit down and think about it". She denied that she had made up this account of her conversation with the appellant either because she was seeking to attract attention to herself or because he had rejected her suggestion that they should become romantically involved. The learned trial judge accepted that these remarks had been made by the appellant.

(ii) During the course of the trial forensic evidence was given by Mr Leo Rossi of the Forensic Science Agency of Northern Ireland. Mr Rossi carried out a forensic examination of a Spanish made Star Lancer pistol which had been recovered during the search of a field adjacent to Soldierstown Road, Aghalee on 20 July 1997 and, having done so, concluded that this was the weapon which had

been used in the murder of the deceased and also in the murder of Mr J McGoldrick on 8 July 1996. It appears that the killing of Mr McGoldrick was a sectarian murder.

(iii) The point at which the weapon was found was comparatively close to the appellant's house.

(iv) The appellant was a person who had regularly visited the Greenes' home and would have been familiar with the layout of their house as well as knowing of the relationship between the deceased and Gordon Greene.

(v) A Mr Paul Camlin, who was a friend of the appellant, told the court how he had been drinking during 14 July 1997 with another friend named Noel Best. After visiting a public house, Mr Camlin and Mr Best, together with some other friends, consumed more alcohol at the appellant's home in the absence of the appellant. At about 11.00 pm it appears that Mr Camlin and Mr Best left the appellant's house in order to take another of their friend's home and, when doing so, they brought with them a Union Jack and an Ulster flag. After leaving their friend, they were returning to the appellant's house when they encountered Gordon Greene and the deceased, who were walking on the other side of the road making their way to Gordon Greene's home. According to Mr Camlin, as they passed by, Gordon Greene shouted "up the Provos", at which point Paul Camlin and Noel Best pulled their coats over their heads and ran off to the appellant's house. Gordon Greene gave a somewhat different account of this encounter to the court alleging that Paul Camlin and Noel Best appeared to be drunk and that they were "roaring and shouting" as they waved the flags. Gordon Greene conceded in cross-examination that he could have said something to Paul Camlin and Noel Best although

he could not recollect saying anything like “up the Provos”.

Paul Camlin told the court that he and Noel Best then returned to the appellant’s home, that they were both drunk and that he fell asleep on a couch. He said that he was later woken by the return of the appellant and, while he did not personally see him, he heard the appellant being told by Noel Best about the encounter with Gordon Greene and the deceased and how Gordon Greene had shouted “up the Provos”. When the appellant was given this information, according to Paul Camlin, he said “I’m going to get him”. Paul Camlin said that the appellant and Noel Best then went upstairs and, after a period of apparently searching about, Noel Best said “I have got it” or “I have found it”. Paul Camlin said he saw Noel Best and the appellant then leave the house and that, at that time, the appellant was wearing a black denim coat and trousers. After some time, Paul Camlin heard a bang which he attributed to “a barley banger” which is a form of bird scaring device. Paul Camlin said that he then left the appellant’s house and “jogged” round to his sister’s house from where he subsequently observed the appellant walking back up Coronation Gardens wearing a green coat and a woolly hat.

(vi) When the police arrived at the appellant’s house at 11.00 am on Tuesday 15 July someone inside the dwelling shouted “wait a minute, wait a minute” and when the police entered they found the appellant, completely naked, kneeling in a bath containing a few inches of water washing shampoo out of his hair under a tap. There was a red mop bucket in the bathroom containing some clothes which were steeping and, in a washing machine, which was in operation, the police found a blue cotton shirt, a khaki green parka jacket, a black knitted ski mask and a black knitted pullover. The

appellant told the police that he wore the jacket and the mask when out "hunting with dogs" but he agreed that he had not pursued this activity for some time.

(vii) The appellant gave an account of his movements to the police in the course of which he said that, after arriving home by taxi, some time after midnight, he had decided to go down to John Greene's for "a drink and a bit of crack". He described how he had entered the house through the back door, which was open, that he had then switched on a light and, having seen a number of people sleeping, he then left the house. Throughout his questioning by the police he denied any involvement in the murder."

Post mortem examination

[4] Dr Carson, the Deputy State Pathologist for Northern Ireland, conducted a post mortem examination on the body of the deceased and made the following findings:-

"Death was the result of a small calibre bullet wound of the head. The bullet had entered the left side of the lower lip and it had passed backwards, upwards and to the right, breaking several teeth in the lower jaw, passing through the tongue and palate, entering the base of the skull and passing up through the pituitary fossa, then lacerating a venous channel in the skull and passing through the right side of the brain posteriorly, before lodging in the skull. From here the spent, distorted bullet was recovered. Following the initial injury some blood had been inhaled into the lungs, the brain swelled, and bruising extended into the brain tissue around the bullet track. In particular the bruising extended into the mid-brain and pons, and the initial brain damage and the added after effects on the brain caused her death in hospital some hours later.

There were also some clearly defined bullet entrance wounds, of similar size, on the back of the left hand...

There were no signs around any of the entrance wounds to indicate a very close discharge."

Personal background of the prisoner

[5] The prisoner was 36 years old at the time of the offences. He is now 47. He has a significant criminal record; he has had nineteen previous appearances before the courts, eight of which involved violence against the person. When he was 15 years old he was convicted of common assault by Lisburn Juvenile Court and given a conditional discharge for 1 year. On 14 March 1983, he was convicted of assault on 27 July 1982 and imprisoned for 3 months. On 31 August 1988 he was again convicted by Lisburn Magistrates' Court of assault, on this occasion on police, and was imprisoned for 6 months. On 6 December 1988 he was convicted by Lisburn Magistrates' Court of common assault on an adult and imprisoned for 3 months. On 28 September 1992 Craigavon Crown Court convicted him of assault occasioning actual bodily harm on 21 September 1991 and he received an 18 months' sentence suspended for three years. On 24 November 1992 he was convicted on two counts of assault occasioning actual bodily harm arising out of an incident on 25 May 1991 and received a custodial sentence of 6 months' imprisonment suspended for two years. On 10 February 1995 Lisburn Magistrates' Court convicted him of assault on police arising of an incident on 4 July 1994 for which he received a sentence of 3 months' imprisonment suspended for twelve months. On 8 April 1997 Craigavon Magistrates Court imposed a sentence of 12 months' imprisonment (which was varied on appeal to 6 months) for threats to kill arising out of an incident on 28 September 1996. Apart from these convictions for violent offences he has three convictions for burglary, four for criminal damage, two for theft, two for breach of lighting regulations, four for breach of construction and use regulations, seven for road traffic offences, three for contempt of court, four for riotous/disorderly behaviour and five for robbery.

Judge's sentencing remarks

[6] The judge imposed a mandatory sentence of life imprisonment saying:

“You have been convicted of what can only be described as a despicable crime and you used knowledge gained through the friendship of the Greene family to commit this murder of a young girl lying asleep in her bed. Your record and conduct in court show that you are a violent and unstable man and the proper authorities will have to remember that when considering any future question of your release.

However, I am not going to recommend a minimum period for your sentence to be served. There is only one sentence which I can impose on a murder charge, which is life imprisonment, and I sentence you also to 20 years concurrently on the second count”

Practice Statement

[7] In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose 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.

19. Among the categories of case referred to in paragraph 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."

Conclusions

[8] This is clearly a higher starting point case. The victim was particularly vulnerable to the attack that the prisoner carried out on her. Indeed she was entirely defenceless. On that account alone, a higher starting point is appropriate but that choice is also warranted by the circumstance that, plainly, the killing was politically motivated. Finally, the unfortunate victim was targeted because of her religion.

[9] Several aggravating factors in relation to the offence are present. The killing was planned. A firearm was used and the prisoner armed himself in advance. An aggravating factor in relation to the prisoner is his appalling record which includes several convictions for violence. Having carefully considered all that has been said or submitted on his behalf I can discern no mitigating factor.

[10] The presence of a number of factors outlined in paragraph 12 of the *Practice Statement* prompts the conclusion that this qualifies for the description 'very serious case' within the terms of paragraph 18. It is also a terrorist crime, in my judgment and paragraph 19 also applies. Taking all these factors into account, I have decided that the minimum term in his case should be twenty-two years. This will include the time spent on remand.