

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 19-05-08

THE QUEEN

-v-

WILLIAM MURPHY

DECISION ON TARIFF

Ruling by Kerr LCJ and Higgins LJ

KERR LCJ

Introduction

[1] On 29 January 1999, following a trial before Higgins J and a jury at Belfast Crown Court, the prisoner was convicted of the murder of Andrew Spence, a 78 year old man, on a date between 3 and 7 January 1997. On 5 February 1999 he was sentenced to life imprisonment. The prisoner was 19 years old at the time of the murder. He has been detained since 22 January 1997 (apart from a short period from 18 December 1997 to 22 February 1998 when he was released on bail) and has therefore been in custody for some 11 years. The prisoner's application for leave to appeal against conviction was dismissed by the Court of Appeal in June 2000.

[2] An oral hearing before Higgins LJ and myself took place on 17 January 2008 in relation to the fixing of the minimum term to be served by the prisoner under article 11 of the Life Sentences (Northern Ireland) Order 2001. This minimum term or, as it is more commonly known, 'the tariff', represents the appropriate sentence for retribution and deterrence and is the length of time that the prisoner will be required to serve before his case is sent to the Life Sentence Review Commissioners whose responsibility it will then be to assess his suitability for release on the basis of risk.

Factual background

[3] Andrew Spence was 78 years old. He lived alone at 64 Battenburg Street, Belfast. He was last seen alive by a neighbour at around 5.30 pm on Saturday 4 January 1997, standing at the front door of his house. Over the following days, neighbours became concerned as the lights in his house seemed to be on throughout the weekend but there was no sign of him and on Monday 6 January two community workers, who knew the victim from his attending a pensioners' lunch club in a community centre, went to his house. They obtained a key from a neighbour and entered the house. The house was very dirty and untidy. In the front bedroom, a bed was heaped with clothing. They noticed that the latch on the top opening of the window in the downstairs bathroom was broken. The bathroom windowsill appeared to have been wiped clean. They did not discover the deceased

[4] The community workers reported Mr Spence missing to police at Tennent Street RUC station. At approximately 4.00pm a police officer went to the victim's house. On closer inspection of the front bedroom, he noticed a leg underneath the pile of clothes lying on the bed and uncovered the body of the victim lying on his back across the bed with his two legs hanging over the side. The victim's body was naked from the waist down. There was a lot of blood around the face and what appeared to be lacerations on both legs. A pillow had been covering the victim's face and was heavily blood stained. There was an iron bar lying on the bed.

[5] The trap door to the attic above the landing was partially open and there was a boot mark on the wall adjacent to the opening.

Autopsy report

[6] A post mortem examination of the body of the deceased was carried out by Professor Jack Crane, State Pathologist. He had also attended the scene of the murder. His account at the scene was that the terraced house was extremely dirty and untidy with rubbish and dirt strewn everywhere. It was sparsely furnished and very cold. The bedroom in which the body of the victim was found was piled with rubbish and junk. Most of the

room was occupied by a double bed which was piled high with dirty bedding, clothes and pillows. The body was lying across the bed facing towards the door. The victim was on his back with his legs slightly bent at the knees dangling over the side of the bed and his feet resting on the floor. Both arms were flexed at the elbows lying across the chest. The body was partially concealed by items of clothing and bedding. He was naked from the waist down with the upper part of his body clothed in a shirt and pullover. The body was cold to touch and *rigor mortis* appeared to be fully established. Initial examination revealed linear abrasions and a laceration to the right thigh and knee with dried blood trickling down the inner side of the lower leg suggesting that Mr Spence had been lying in the same position when these injuries were sustained. There were several further injuries to the left knee and lower leg. An abrasion was seen on the border of the left wrist. His head was blood stained with dry blood trickling down the left cheek towards the ear. The nose appeared to have been fractured and the left side of the face was depressed inwards. Bruises and lacerations to the face were consistent with blunt trauma.

[7] Professor Crane concluded that death had occurred as the result of injuries sustained in a serious assault. There were areas of bruising on the under surface of the scalp associated with bleeding over the surface of the brain and caused by blows to the head possibly by punches or kicks. There were numerous bruises and abrasions across the face including the nose, mouth and right ear and a laceration of the lower eye lid of the left eye and of the frenulum inside the mouth. The nasal bones had been fractured and the left half of the upper jaw was fractured and depressed inwards. These injuries would have been caused by blows to the face, probably punching and/or kicking and at least one blow must have been of a moderately severe force to fracture the upper jaw. There had been considerable bleeding into the back of the throat. The blood had been inhaled.

[8] Eight of the right ribs were fractured and there was internal bruising to the right side of the chest wall. These chest injuries could have been caused by blows but it was most likely they were the result of pressure having been applied to the chest cage, possibly by the assailant kneeling on the victim while he was lying across the bed. The combined effects of the injuries to the head and chest including inhalation of blood were responsible for the deceased's death.

[9] Some abrasions on the left wrist were noted which might have been sustained if the victim raised his arm in an attempt to defend himself. The

abrasions on the legs were superficial but were probably caused by a sharp instrument such as the blade of a knife being drawn across the skin. The distribution of blood indicated that these had been sustained while the deceased was lying on the bed with his legs dangling over the side. It was also highly likely that the head injuries had been sustained whilst the victim was in a reclined position.

[10] If, as the pathologist believed, the injuries had been sustained with the victim lying on his back on the bed, this indicated that the assailant must also have been on the bed, either standing on top of the mattress to kick the victim's face and/or kneeling on top of the victim as he lay on the bed which may have caused the chest injuries.

Forensic evidence

[11] Fingerprints and palm prints were recovered in the home of the victim which were compared to the fingerprint and palm prints of the prisoner. Five imprints in the front bedroom where the victim's body was found were made by the prisoner. Four of the prisoner's palm prints were on the bedroom walls and his right thumb print was found to the left of the window sill. He also left five imprints on the right hand wall leading up the stairs. Three of these were palm prints and two were right hand fingerprints. The direction of these indicated that they were made as the prisoner had ascended the stairs.

[12] Footprints were also discovered. There was a smeared footwear mark on a wall on the first floor just below the trap door access to the attic. This was consistent with a 'commando type' sole pattern. There were a number of partial footwear marks on the concrete outer sill of the bathroom window again consistent with a commando sole. The interior bathroom window sill was significantly cleaner than any other adjacent surfaces. It was also streaked which indicated that it had been deliberately wiped.

[13] The evidence suggested that the premises had been entered through the top opening of the bathroom window, the latch of which had been broken. There were also footwear marks on the lid of the wheelie bin which matched those on the external window sill and further footwear

marks on the roof of the bathroom which was single storey. Again the pattern was consistent with that of a commando type sole. Five pairs of footwear belonging to the prisoner had commando type sole patterns. The marks on some of the roof tiles were of the same pattern and pattern dimension as the right shoe of one of the five pairs of shoes belonging to the prisoner and also exhibited similar general wear characteristics supporting the proposition that these marks had been made by this shoe belonging to the prisoner.

[14] Other items including clothing of the prisoner were subjected to forensic testing and other fibres, blood and body fluids found in the victim's home were tested. None of these supported the case against the prisoner.

The defendant's police interviews

[15] The prisoner lived in the same street as the victim at No112 Battenburg Street. He stated that he knew the victim from walking up and down the street. He said the victim tended to stand at his front door for a period every evening. He stated that when he had been around 10 or 11 years of age he had got into trouble for throwing stones at the victim's windows and his mother had taken him to the victim's house to apologise. He denied ever having been in the victim's house.

[16] The prisoner's account of his movements on the relevant weekend were that he had been looking after his 2 year old son on the afternoon of Saturday 4 January. He had taken his son to his aunt's house at 46 Battenburg Street around 8.00 pm and had remained there babysitting for his aunt's 3 year old daughter. His younger brother Glen joined him there at around 11.30 pm and they remained at 46 Battenburg Street until 2.00 am when they both walked with the prisoner's son back to their home at 112 Battenburg Street. Their parents then arrived shortly afterwards and they all went to bed. The prisoner slept in the same bedroom as his brother. On Sunday he remained in his home all day. His girlfriend joined him and remained with him until 10.00 pm. His parents were also present. After his girlfriend left he went to his grandmother's in Brookmount Street at about 10.00 pm and whilst there he telephoned a workmate. He then walked to Carolina Street to pass on a message to another workmate and returned home at 10.30, watching television until he went to bed. He heard of the victim's death when he was informed of it by his mother at 5.30 pm on the Monday. He was asked whether he had been aware that the victim

was a man believed to have money. He replied that he had only heard about that after his death. He stated that he had been told that a girl who used to live next to the neighbour had taken money from him but not repaid it and that also on one occasion two men working at his house tried to over inflate the price of the job; when the victim had gone to the bank to draw out £600 to pay for it he was advised not to and had gone to the police. He said that his aunt had informed him of these rumours.

[17] In the second interview the prisoner again stated that he had never been in the victim's house. When he was informed that his palm prints and fingerprints had been found in the victim's house he asked to speak to his solicitor.

[18] In his third interview the prisoner informed the police that he had been in the victim's house three weeks prior to the victim's death when he attempted to burgle the house. He stated that he had observed the victim at 9.20 pm walking down the Springfield Road. He had climbed over the back wall of the victim's house on to the first storey roof of the bathroom, then stepped down on to the wheelie bin and pulled open the top opening of the bathroom window. He was able to climb through and stood inside on the window sill. He then went into the kitchen and put the light on. He described the kitchen as being "stinking". He then entered the living room and looked around; he saw some cash, around £11.00 sitting on the fireplace which he took before walking up the stairs. He used his lighter to see in the living room and going up the stairs into the bedrooms, using his hands to guide him up the wall of the stairwell. He looked around the bedrooms to see if there was any money there because he had heard that the victim did keep money in his house and that it was in a drawer or cupboard in one of the bedrooms. He described how there were black bags full of clothes lying in a big pile in the back bedroom. The front bedroom also contained black bags and clothes lying all over the place. He moved some of the bags and clothes looking for a cupboard. He was able to describe the layout of the rooms and positioning of items in the rooms in great detail. When he did not find anything he went back downstairs into the living room. He then thought he heard someone knocking the front door so he left climbing back out through the bathroom window and exiting the same way he had gained access to the premises.

[19] In his fourth interview the prisoner stated that he had searched through bundles of clothes at the bottom of the bed in the front bedroom which he assumed was the room where the victim slept. He said that he

had leaned across the bed and looked in one corner and therefore he would have placed his hand on the wall. He claimed that he had attempted the burglary in order to get money to buy his son something for Christmas. It was put to him that the victim had not reported any burglary having occurred at the beginning of December as the prisoner had claimed. Not only had he not reported it to the police but he had not mentioned it to any other people at the community centre with whom he came into daily contact. There was evidence that the victim had reported a previous burglary in 1994 to the police.

[20] In the next interview it was pointed out to the prisoner that the details which he had given of the inside of the victim's house in early December corresponded exactly to the scene which was discovered in early January when the victim was murdered. It was also pointed out to him that his previous explanation for his palm print appearing on the wall of the bedroom was inconsistent as it would have been his left palm whereas it was his right palm print that had been discovered.

The prisoner's evidence at trial

[21] The prisoner again claimed that he had burgled the victim's house around three weeks before Christmas. He said that he had not admitted this immediately to the police because he felt totally ashamed of it. He had heard that the victim had money and had only broken in because it was coming up to Christmas and he was short of money. He claimed that on the night of the burglary he had observed the victim walking along Lanark Way. He went back to his own house, put on a hat and coat and entered the back of the victim's property jumping onto the back wall and then getting down into the yard from the roof on to a wheelie bin. He climbed through the bathroom window. He went upstairs as that was where he believed the victim kept his money. He went into the back bedroom first and turned on the lights. Then he went into the front bedroom which was in darkness. He was looking for a cabinet to see if the money was in it and he went over to the bed which was piled with clothes. He searched through them. He was in the bedroom 10 minutes and the only way he could explain his finger and palm prints was that he left them there when searching around the room. He was never on top of the bed. He was using a lighter to see as he did not switch the front bedroom light on. He took £11.00 from the fireplace in the living room and then left the premises exactly the same way that he had entered them.

[22] The prisoner claimed in evidence that on the weekend that the victim died, he had been in bed till 2.00 pm on Saturday. He collected his little boy and brought him home and at 8.00 pm went to his uncle's house at 46 Battenburg Street. He stayed there until 2.00 am and other people had called during that time. He went back home at 2.00 am to bed. He stayed in his home on Sunday and his girlfriend was there. She left at 10.00 pm taking the child with her. He went to his grandmother's at 2 Brookmount Street and from there to the house of a workmate, then home again. His parents were there. He watched television and went to bed.

Judge's sentencing remarks

[23] The trial judge's sentencing remarks are reproduced here: -

"William Murphy you have been convicted of the murder of Alexander Spence. You are 21 years of age. I have been told that you have been employed recently on an ACE scheme. At the time of the commission of these offences you were 19 years of age and you lived at 112 Battenburg Street with your parents and younger brother.

I understand that you are not married but you have a girlfriend and a young son who live elsewhere. I have also been told by counsel that you have no previous criminal convictions.

Andrew Spence was a man of 78 years of age. He was living alone and living in humble circumstances at 64 Battenburg Street. He appears to have lived a lonely life walking the streets or visiting the city centre. As one witness described it it appeared that he bragged about his money although the circumstances found at his home would belie that. He was last seen alive by someone other than you at 5.15 or 5.30 on Saturday 4th January. He was standing at his front door at the time as he apparently he often did.

On Monday 6th January he was found lying across his bed with his body concealed. He died as the result of a serious assault. He had sustained a series of

fractures of the bone structure of the face, probably inflicted by a kick or kicks. He also sustained 8 fractures to his ribs. There were a series of fine linear injuries to his legs inflicted by a sharp instrument, probably a knife. These injuries were inflicted before the main injuries. One explanation is that they could have been inflicted to obtain information from him about the whereabouts of his money. They were inflicted for sadistic reasons to torment the victim.

These injuries provide this court with an insight into the mind of the person who inflicted them. When the victim was found he was probably dead for 24 hours or more. Death would not have been immediate. It would seem that he was left to die. It was not intended that he should survive. No-one reported that he had been injured.

The deceased knew you and you knew him. You were living only a few doors from 112 Battenburg Street. When interviewed by the police you told them that you had never been in Mr Spence's house. That was totally untrue. When you were told at the second interview that your fingerprints had been found you asked to speak to the police and when that interview was resumed you told the police a story about burgling this house three weeks earlier. The jury saw through your attempts to evade your responsibilities as to what happened to this frail and defenceless man of 78 years. It is difficult to imagine a more brutal and cold blooded incident for a young man of 19 years of age to commit. I sentence you to imprisonment for life".

Previous convictions

[24] The prisoner had no previous convictions.

Personal background

[25] There is little information contained in the papers regarding the prisoner's personal background. He still lived with his parents and his younger brother in Battenburg Street. He had been on an ACE scheme. He had a girlfriend with whom he had a young son aged 2 but they did not live together.

NIO papers

[26] No representations were received from the victim's family.

Representations from the prisoner

[27] The following written submissions on behalf of the prisoner were received:-

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"The defendant's case at trial was that he had burgled the house a number of weeks earlier and that was how the forensic evidence linked him to the house. The jury rejected this. While one does not know the basis on which the jury concluded that he was in the house when the murder was committed it has to be accepted that the inference is clearly made, to the relevant standard and supported by the Court of Appeal's view, that he defendant broke into Mr Spence's home in order to burgle it and ended up killing him for some reason. In these circumstances it falls to be considered that Mr Spence, being quite elderly and living alone, was a vulnerable victim and the murder was done for financial gain. There were multiple injuries to Mr Spence which are capable of coming within paragraph 12 (j).

The Defendant's case can therefore properly placed within the starting point of 15/16 years, There are a number of the features identified in paragraph 12 of the statement : the killing was done for gain (in the course of a burglary, robbery etc.) the victim was vulnerable; there were extensive and/or multiple injuries inflicted on the victim before death.

There are none of the aggravating features identified in the statement at paragraphs 14 or 15.

The very serious cases justifying a substantial upward adjustment are dealt with in paragraph 18 of the statement. It is acknowledged that there are possibly three of the features identified in paragraph 12 of the statement as set out in paragraph 16 and 17 above. It is submitted that any adjustment made to the tariff ought not to be substantial.

Next, consideration must be given to the aggravating and mitigating factors in relation to the offender. The aggravating factors include the previous record and failures to respond to previous sentences, to the extent that that is relevant to culpability. It is submitted that there is nothing in the defendant's record to suggest that it is relevant to his culpability for the index offence before the court."

[28] We also heard and have considered oral submissions made on the prisoner's behalf.

Practice Statement

[29] 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."

Conclusions

[30] This is clearly a higher starting point case. As has been correctly conceded, three of the features outlined in paragraph 12 of the *Practice Statement* are present here: the killing was done for gain in the course of a burglary, the victim was vulnerable as an elderly person living alone who was attacked in his own home and there were extensive and multiple injuries inflicted on the victim before death.

[31] The presence of these features prompts consideration of whether paragraph 18 should be invoked. We consider that some upward adjustment of the higher starting point is required to reflect the multiplicity of those features and the brutal nature of this attack on the elderly victim.

[32] There are no mitigating factors present other than the prisoner's relative youth at the time of the murder and the fact that he had previously been of good character. He was aged 19 years and had a clear record. With regard to aggravating factors, the fact that death was not immediate and that the victim was left to die with no attempt to summon medical help appear to us to make this a more grave case, calling for more condign punishment.

[33] Having taken all these factors into account, we have concluded that the appropriate minimum term is seventeen years. This will include the period spent on remand.