

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 10-02-05

THE QUEEN v GERARD PATRICK STEWART

DECISION ON TARIFF

Ruling by Kerr LCJ and Nicholson LJ

KERR LCJ

Introduction

1. On 11 March 1999 Gerard Patrick Stewart was found guilty by unanimous verdict of the jury of the murder of Eliza Jo Ward, a young woman of 18 years and the attempted murder of Renee Scott Lea on 17 July 1997. The trial judge, Nicholson LJ sentenced the prisoner to two life sentences: a mandatory life sentence on the murder count, and a discretionary life sentence on the attempted murder count. The prisoner had pleaded guilty to a third count of causing grievous bodily harm to Renee Scott Lea. This was ordered to be left on the books of the court, not to be proceeded with without the leave of the court or the Court of Appeal. The prisoner has been in custody since the date of the offences. He is now aged 27, his date of birth being 12 January 1977. He was 20 ½ years old at the time of the offences.

2. On 15 November 2004 Nicholson LJ and I sat to hear oral submissions on the tariff to be set under Article 11 of the Life Sentences (NI) 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 assess suitability for release on the basis of risk.

Factual background

3. In early July 1997 the prisoner started work as a kitchen porter in 'Café Society', a restaurant and café in Donegall Square East in Belfast city centre.

The owner of the restaurant was Mrs Renee Lea, and the deceased, Eliza Jo Ward, was the manageress. At the time of her death the deceased had worked at the café for around 12 months and was considered to be an excellent worker. The prisoner was referred to the café by the Department of Employment, and had been recommended to Mrs Lea by the deceased. At interview he appeared to be a quiet, reserved young man, keen to gain employment. His application stated that he had been working in Bonn. His working hours were from 12pm to 3pm but on occasion he would be required to continue until 8pm.

4. On 17 July 1997, the restaurant was closed for holidays but the café was open. It was said to be busy, with the staff under some pressure. The prisoner started work at around 11.30am. His duties included washing dishes. Evidence was given that the dishwashing machine downstairs was broken and that at one point in the afternoon he and Mrs Lea washed and dried the dishes by hand. Mrs Lea said that she had patted the prisoner on the back and told him: "We make a good team". There appears to have been no bad feeling between the prisoner and the injured parties.

5. Mrs Lea returned to the premises shortly after 9pm and went upstairs to inspect a flood that had been caused by a washing machine door having been left open by a waitress. She turned on the lights and found that the prisoner had been sitting in the dark. She made a light-hearted comment about him having sat down for the first time that day, at which, according to Mrs Lea, both of them laughed. The prisoner moved to the kitchen and Mrs Lea asked him to help her. They went to the washing room and Mrs Lea said something like "What a mess" to which the prisoner replied, "I didn't do it". Mrs Lea then said, "I know you didn't do it. I know it was Brenda". Stewart may not have heard this but, in any event, Mrs Lea then placed her hand in the machine and just then she thought she must have sustained an electric shock because a pain shot through her legs. In fact the prisoner had stabbed her in the back. Shaking, she grabbed him and asked him to hold her. She could not stand and recalled sliding down the prisoner's body to the floor where she crawled some distance. At some point she saw blood and realised that she had been stabbed. Mrs Lea heard screaming (which, it transpired, had come from the deceased), the stamping of feet, and then screams of a different character.

6. The deceased had followed Mrs Lea upstairs a short time after she had gone to inspect the flooding. About 30 seconds later a waiter heard her call for help and raced upstairs to investigate. The prisoner had stabbed the deceased through the heart and twice in the back. The deceased was still alive at this stage and she told the waiter to get help. He immediately ran downstairs and rang for an ambulance and the police. The deceased also came downstairs at that point, asked for help and collapsed. Customers attempted to give first aid. Police arrived at the scene at approximately

9.15pm and the murder weapon was retrieved from beside where Mrs Lea was found.

7. The prisoner had made his escape through the first floor fire exit leading to Patterson Place where a trail of blood led to Gloucester Street. He later hid in town before returning home. He was arrested in Cavendish Street at 10.30pm while walking to the police station with his father. On arrest the prisoner was said to have referred to lacerations on his hand and said, "I got that injury when I stabbed the wee girls. Are they all right?" Later, at Springfield Road police station, he said to the arresting officer, "You know, I don't even know why I did it ... I stabbed the manager and then somebody came in the door and I stabbed the wee girl. It was very quick, it was all too quick." He is said to have asked which person had died. However, in police interview, the prisoner denied that he was aware that he had stabbed the deceased, maintaining that he had pushed her.

8. The prisoner was medically examined at 12.25am and was found to be conscious and orientated. There was a smell of alcohol from his breath and an extensive, clean edged wound was found on the palm of his right hand. A sample of blood was taken from the prisoner at around 4am which was later found to contain 69 milligrams of alcohol per 100 millilitres of blood. There was also evidence of cannabis use shortly before the blood sample was taken.

9. The State Pathologist, Dr Jack Crane, conducted a post mortem examination of the deceased's body at 2.15pm on 18 July 1997. He concluded that death was due to a stab wound to the heart. The report concluded: -

"Death was due to a stab wound of the heart. She had been stabbed three times but the fatal wound was located on the upper part of the left breast, 127 centimetres above the soles of the feet. The blade of the weapon had passed between the cartilages of the front ends of the third and fourth left ribs, almost dividing the third costal cartilage. It had gone backwards, slightly upwards and from left to right through the upper lobe of the left lung and into the heart. It had gone through the front wall of the left ventricle, the heart's main pumping chamber and had emerged from a small wound on the back surface of the heart, the track through the heart being approximately 7 centimetres in length. There had been considerable bleeding into the heart sac and left chest cavity, principally from the injury to the heart, and it was the effects of this haemorrhage which were responsible [for] her death in hospital shortly after admission.

The two other wounds were located on the back of the chest. The smaller of the two, overlying the left shoulder blade, was quite superficial and indicating that only the tip of the blade had penetrated the skin. It would not have posed any risk to life. The other wound was located lower down on the left side of the back of the chest close to the bony spine. The blade in this case had penetrated the ribcage going partially through the back end of the eighth left rib and superficially penetrating the lower surface of the left lung. There would have been some haemorrhage both internally and externally from this stab wound but it seems unlikely that it would have been significant enough to have contributed to or accelerated her death."

10. Dr Crane was of the opinion that the wounds were consistent with having been caused by the single edged kitchen knife that Stewart had used. He remarked that the blade was sharp and that not much force would have been required for the infliction of the two penetrating stab wounds. There was also a possible defensive wound on the deceased's left wrist. The deceased had no alcohol in her body at the time of death. In cross-examination Dr Crane said that the wounds could not have been caused when the prisoner pushed past the deceased. They were deliberately inflicted, not accidental. The back wound would not, in itself, have been fatal but the evidence was that it could not have been sustained in the course of a struggle.

11. Mrs Lea was also taken to the Royal Victoria Hospital where she was found to have sustained a single stab wound of 3 centimetres in length to the right of the midline in the lower thoracic region. It was considered that a very considerable degree of force would have been required for the blade to penetrate not only through soft tissue but also to penetrate the vertebrae almost to reach the retro-peritoneal space. Neurological damage was suspected. Mrs Lea displayed a marked degree of weakness in the left leg, with no power at the hip flexors and moderate weakness at the knee and ankle. An MRI scan confirmed the presence of an area of abnormal signal corresponding to the stab wound. A diagnosis was made of concussive injury to the spinal cord. Over 10 days Mrs Lea began to mobilise and she was discharged on 31 July 1997. A medical report of October 1997 from Mr T Fannin stated that she had made a good physical recovery, although at that time she still had buttock pain and her gait was slightly unsteady. The report also suggests that she may have suffered post traumatic stress syndrome.

The interviews of the prisoner

12. The prisoner's interviews by police officers produced a garbled mixture of admissions, denials and explanations, some of which differ from the evidence he gave at trial. In the first interview he said that he had been alone upstairs in the restaurant and had taken some drink before cleaning knives in the kitchen. He admitted stabbing Mrs Lea as she bent down at the washing machine. The deceased appeared and he pushed her but did not intend to stab her. He hid in town but met his father, went home with him to wash and then left for the police station.

13. In his second interview he told police that at around 8.15pm, shortly before the incident, he had taken 5 double vodkas and 2 glasses of Pernod over a 20 minute period. Mrs Lea had come upstairs and he heard her "slabbering". He went out holding one of the knives that he was cleaning. He went to the washing machine room and she asked him who had flooded it. She bent down to the machine and he realised that she had been stabbed. The deceased came to the door, he pushed her and thought that it was at that point that he stabbed her. His focus was on escape. He said that he blacked out.

14. In his third interview the prisoner said that Mrs Lea "flipped" when she saw the water on the floor. She asked him whether he had caused the flooding but did not accuse him. He admitted to stabbing her, but did not offer an explanation. He then appeared to retreat from the admission and said that he did not know how Mrs Lea sustained her injury.

15. In his fourth interview the prisoner referred to stabbing Mrs Lea and said he had a blackout. He turned after the stabbing and the deceased was standing behind him so he pushed her and ran. Asked about the stab wounds to the deceased's back the prisoner said that he may have swung the knife about. He said that he did not know he had stabbed the deceased. He said that he must have had the knife in his hand when he pushed her. He said that he may have stabbed her in the back while she held him. The police put to the prisoner that he may have stabbed her at the washing room door to get her out of the way, and when she ran toward the outer door that he stabbed her in the back, to which he replied "maybe". He claimed that he would not have stabbed her again if she had not held him.

16. In his fifth interview the prisoner said that he stabbed the deceased in the back because he panicked. He said he blanked out and did not know what he was doing. When charged the prisoner said: "I didn't mean to kill. I'm sorry."

The prisoner's evidence

17. The prisoner gave evidence at trial. He said that he used alcohol to relieve

his shyness. On the morning of the murder he had drunk half a bottle of vodka before going to work. At around 8.30pm he was left alone in the restaurant and he drank 5 glasses of vodka and 2 of Pernod. He remembered Mrs Lea coming upstairs. She said something to him but he could not make out what it was. Mrs Lea went to the toilets and the prisoner went to the kitchen. When Mrs Lea went to the room where the washing machine was he walked out of the kitchen. He heard her shouting about the mess. The prisoner had a knife in his hand that he had been cleaning. He stood behind her as she bent down to the machine and that was when he stabbed her. He said: -

"I did it because I thought she was shouting at me. I was shocked when I'd done it. I was not trying to kill her. I did not want her to die. I struck her on the right side of the waist."

18. The prisoner said that not even two seconds passed before the deceased was at the door behind. He looked around and saw her standing close to him. He remembered pushing her away as he wanted to get out of the building. He could not remember if he had hurt his hand at that stage. The prisoner said that he heard the deceased scream. He surmised:

"She probably saw Renee lying on the floor and saw me holding a knife in my hand."

19. Later the prisoner gave evidence that after he had stabbed Mrs Lea he turned around to escape but found the deceased behind him. He said, "I just don't remember what happened next." He recalled hearing her scream. The prisoner said that he went to push her away with the knife in his hand. He stabbed the deceased and withdrew the knife from her body. She appears to have got hold of the prisoner with her right arm after the initial stab. The prisoner's evidence was that he did not have a clear recollection of events, but in the course of the incident the deceased sustained another stab wound to her back. He dropped the knife and made his escape. Only when outside the premises did he become aware of his own injury. He hid in bushes, thinking that helicopters were looking for him. After about half an hour he began to walk home but he met his father on the way, telling him, "I stabbed someone but I don't know why."

20. His father wanted to take him to the police station immediately but the prisoner wished to return home first. He said that he had no intention of harming the deceased and had no reason to do so. He could not remember stabbing her.

21. In cross examination the prisoner accepted that it was possible that he used the knife 6 times: once to stab Mrs Lea, three stabbings of the deceased,

and two stabs to the outer door. He accepted that he had asked police which of the two was dead, but explained this by saying that he had heard them talk of two people being stabbed. The prisoner reiterated that he had not meant to kill anyone and that he had not done it deliberately. He said that he must have been angry when he stabbed Mrs Lea but could not recall whether he was still angry when he stabbed the deceased. He had been carrying the knife by chance. Mrs Lea had complained about the mess and he thought that he might be blamed. His main objective after the stabbing was to get away. He could not recall whether he had struggled with the deceased.

The diminished responsibility issue

22. The murder charge was contested on the basis of diminished responsibility. In the opinion of Dr Philip Pollock, consultant forensic psychologist, the prisoner had a significant personality dysfunction particularly in terms of social withdrawal and impulsive aggression. His report stated that the prisoner's pattern of offending would suggest that the attack on Mrs Lea was an impulsive, disinhibited act of aggression, while the second attack might be construed as a reactive extension of the first attack. In evidence Dr Pollock said that he had concluded that the prisoner was a "secondary psychopath": an individual who shows aggressivity, hostility, impulsivity and is very socially withdrawn. Dr Pollock was of the view that the prisoner would act very swiftly once an idea had been formed, analogous to acting on a quick temper. Such a personality disorder would make it 100 times more likely that he would react in the way he did as compared to a "normal" person.

23. Dr Bownes, consultant forensic psychiatrist, concluded in his written report that the prisoner showed symptoms of clinical depression, but that there was no evidence of any underlying mental illness process such as a delusional disorder or psychotic illness. It appeared to be reactive depression – a response to his legal situation. Neither was there evidence to say that the offences occurred in the context of a mental illness process. It was conceivable that his mental functioning would have been impaired by alcohol and cannabis. At trial Dr Bownes commented that the prisoner had features of personality disorder. Some features were consistent with being a secondary psychopath. His personality disorder would prevent him reasoning out the full consequences of engaging in certain actions. He would have acted impulsively. Such an outcome would be more likely with alcohol taken.

24. A psychiatric report from Dr B Flemming and obtained by the Crown is on file, but it was not referred to in the charge to the jury. In any event, the report supports the conclusion that the prisoner had a personality disorder, leading to impairment in social and occupational functioning. Dr Flemming

considered the offences to have been impulsive. The Crown did not call evidence to contradict the prisoner's medical evidence.

Antecedents

25. Although a very young man, the prisoner had a poor previous record for violence and had already been sentenced to a number of YOC detentions. The most notable convictions are as follows:

7 March 1997 Dangerous bodily harm: 14months.
Siegburg MC

7 March 1997 Attempted extortionate assault:
14months. Siegburg MC

12 June 1997 Grievous bodily harm: 6months.
Siegburg Cty Ct.

26 October 1993 AOABH: Community Service.
Siegburg MC

Sentencing remarks

26. Nicholson LJ said of the murder that the circumstances were "...so grave that they are very difficult for anyone to express adequately the atrocity that was committed." He referred to the kindness that had been shown to the prisoner by both the deceased and Mrs Lea.

The NIO papers

27. In a written submission to the Court the deceased's mother, Alanna Ward, said that it was impossible for her to put into words the pain and emptiness in her heart since the murder. Her family had been torn apart with grief and her physical and mental health had suffered. The deceased's sister, Angeline, wrote of how close she was to the deceased and how she had lost her best friend. She described the impact on her family as "horrific". Since the murder she has found it difficult to mix with people, life has lost its meaning and she feels "destroyed" as a person. The heartache remains for her and her family. Another sister, Emma, who was just 6 at the time of the murder, also submitted a written representation in which she said that she cries when she thinks of what her sister suffered and is afraid to close her eyes at night thinking of what happened to her.

28. A work colleague, and the brother of Renee Lea, James McCausland, wrote that the family and friends of the deceased are themselves serving a life sentence. He said that the murder devastated many lives. Mr McCausland

stated that his sister has striven in her attempt to recover from her physical and psychological injuries.

29. Renee Lea, the victim of the attempted murder, made a written representation in which she described being nursed by her sister away from the family home in the months following the attack. She said that during this period her husband became ill with terminal cancer and she feels that she could have detected his condition sooner had she been at home. She harbours anger towards the employment agency from which she recruited the prisoner. It failed to alert her to the prisoner's record. Mrs Lea said that she invested in her business in Belfast city centre before the peace process at a time when there was little else there. She was proud of having injected vitality into the city and the business had been growing successfully. After the attack the premises became a place of pain and despair and the business went bankrupt as Mrs Lea attempted to recuperate and nurse her husband. She stated that she is still weaning herself off medication for the physical and psychological pain while addressing issues arising from the attack including survivor guilt and bankruptcy.

30. The prisoner did not make a written representation.

Practice Statement

31. 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

32. There are two tariffs to be set in this case, one for a mandatory life sentence and the other for a discretionary life sentence. The *Practice Statement* applies only to the former of these.

33. We have concluded that this is a higher starting point case. The prisoner killed Ms Ward for no reason other than to make good his escape. She was a potential witness against him and, although this may not have been the type of situation that Lord Woolf had in mind when composing paragraph 12 (d) of the *Statement*, as has been repeatedly said, the examples given in the

Statement are merely illustrative of the type of case that will be regarded as deserving of particularly condign punishment. This bright young life was brought to an end in the most horrific circumstances, made the more outrageous by the circumstance that the victim had shown kindness and assistance to her killer while they worked together. Moreover, although the offender has been punished for the separate crime of attempted murder, we consider that we are bound to take the attack on Mrs Lea into account in deciding the minimum term for the murder of Ms Ward. This is not a case of multiple murders such as is described in the *Statement* but the attack on Mrs Lea (which the jury decided was intended by the offender to kill her), was intimately connected to the murder of Ms Ward. That circumstance alone would warrant the conclusion that this was a higher starting point case.

34. Since there are two factors present in the case, each of which would singly justify the selection of the higher starting point category, we must consider whether paragraph 18 of the *Practice Statement* should be applied. We have given careful consideration to this but we have concluded that this is not the type of case that one could say that there were “several factors identified as attracting the higher starting point present”. We believe, however, that the fact that more than one such factor is present calls for a variation of the higher starting point, albeit not to the extent suggested in paragraph 18.

35. The prisoner’s previous convictions are also aggravating features of this case. There has been an undeniable failure on his part to respond to previous sentences. This is perhaps not as serious an aggravating feature as in many other cases because of the prisoner’s particular personality disorder but it is nevertheless a factor to be taken into account.

36. The relevant mitigating features are the offender’s youth at the time of the commission of the offences and the personality difficulties from which he suffers. Plainly he is unable to apply the restraints to deter this type of behaviour as effectively as most normal people. That is not to say, however, that he is unable to recognise that what he did was monstrously wrong. It is merely that he finds it less easy than others to refrain from such heinous acts. The mitigating effect of this cannot be substantial, therefore.

37. Taking all these factors into account and all that has been said on his behalf, we consider that the appropriate minimum term on the charge of murder is seventeen years. This will include the period spent on remand.

38. The courts in this jurisdiction have adopted the English procedure for tariff fixing in cases of determinate life sentences. In summary, the court should first look at what would have been the appropriate determinate sentence had an indeterminate sentence not been necessary, and then it specifies a proportion of the sentence between one half and two-thirds, although in the case of young offenders sentenced to an indeterminate period

of detention, the general rule should be to fix the period at one-half.¹ Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 obliges sentencers to consider release of parole when fixing the tariff. In *Marklew* [1999] 1 WLR 485 the English Court of Appeal stated that the normal tariff would be half the determinate sentence.

39. At the time that the life sentence on the attempted murder charge was passed, it would have been open to the sentencer, had he chosen a determinate sentence, to reflect his view as to the risk that the offender might pose on release in his choice of penalty. Since the evaluation of risk now falls squarely within the province of the life sentence commissioners under the 2001 Order, we do not consider that this should be an element of the tariff fixed for the attempted murder charge.

40. Following the approach outlined in the preceding paragraph we have concluded that the appropriate tariff for the attempted murder should be 12 ½ years. This will, of course, be concurrent with the tariff on the murder charge.

¹ *R. v. Secretary of State for the Home Department, ex p. Furber* [1998] 1 All E.R. 23, DC