

THE QUEEN v KENNETH ROY DOUGLAS

DECISION ON TARIFF

Before Kerr LCJ and Sheil J

KERR LCJ

Introduction

[1] On 25 September 1995, the prisoner was convicted at Belfast Crown Court by majority verdict of the murder of John Campbell on 23 June 1994. Sheil J sentenced the prisoner to life imprisonment. The conviction was not appealed. The prisoner has been in custody since 23 June 1994. He is now aged 28. His victim was 72 years old.

[2] On 29 June 2004 Sheil J 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] At the time of the murder the prisoner lived at 64 Parker Street, Belfast. Mr Campbell lived next door at 66 Parker Street. The murder took place at the home of the deceased's son, 59 Parker Street. The prosecution case is conveniently summarised in the charge of the trial judge as follows: -

“The Crown case briefly is that the accused, who had a grudge against Mr Campbell junior, went across to Mr Campbell junior's house thinking he was there,

armed with this baton, and apparently in darkness hit him over the head and then subsequently realised that in fact it was Mr Campbell senior he had killed. And the Crown case in a nutshell is basically that. They are saying that he had a grudge against him, he armed himself with a weapon, he went across and he struck him."

[4] Shortly after 1am on 23 June 1994 the prisoner called with his mother at 175 Madrid Street, wanting to talk to her husband. She recalled him being very emotional, hysterical, tearful and with "strange eyes". His speech was garbled. The prisoner told his mother "I have murdered somebody" but continued that he did not know whom it was he had killed. He paced outside the house, saying, "I'm a nut" but was later heard to say, "I didn't do anything, I didn't do anything". Mr Buchanan, the prisoner's stepfather, gave similar evidence to that given by his wife. Mrs Buchanan sent for John Thompson, who was thought to be close to the prisoner, but was later convicted for having sexually abused him.¹

[5] Mr Thompson gave evidence that Mrs Buchanan had called and asked him to come to her house to talk with the prisoner. The prisoner, who, in Mr Thompson's estimation, "wasn't himself", told Mr Thompson that he had killed John Campbell junior. Mr Thompson, the prisoner and Mr and Mrs Buchanan walked to 59 Parker Street and, on looking through the window, saw the deceased on the sofa. Mrs Buchanan telephoned for an ambulance which arrived at the scene at 1.21am. The deceased was found to be dead, and life was formally pronounced extinct at 2.05am. Dr Derek Carson, Deputy State Pathologist, performed a post mortem examination later that day. He concluded that the cause of death had been laceration, bruising and oedema of the brain associated with comminuted fractures of the skull due to blows on the head. Dr Carson's report records that:

"Death was a result of gross head injuries caused by multiple blows on the head from a blunt object. The main damage was on the left side of the head where two or more heavy blows had caused extensive laceration of the scalp and multiple fractures of the underlying skull. The skull had been broken into many pieces and some had been driven inwards into the brain. There were two further lacerations near the

¹ At trial Thompson denied that he had had an inappropriate relationship with the prisoner but claimed that they had been friends. He accepted that he often stayed overnight with the prisoner although he lived in nearby Madrid Street. He had been drinking with the prisoner earlier on the night of the murder. He recounted a number of past violent incidents by the prisoner.

front of the scalp and another on the forehead above the right eyebrow. The injuries indicated at least six blows to the head and the damage to the underlying skull and brain was of a severity to cause rapid death. There was also bruising on the right upper arm and on the back of the hand and fingers. Further bruising was seen on the backs of the fingers on the left hand, one of which was broken. These injuries indicate that his hands were probably raised in an attitude of self-defence and in an attempt to ward off incoming blows."

[6] Police arrived at Parker Street at around 1.30am and officers observed that the prisoner was hysterical, shouting "I killed him, I killed him". One officer gave evidence that the prisoner said: "I done him, but I got the wrong man. I murdered him, Jackie Campbell, but I wanted the son. I done him, I'm going down for murder". When asked by the office what he had hit the deceased with he replied that he had not hit him, but in a police car he again said that he had got the wrong man. At around 1.20am the prisoner showed an officer to the rear of his home at 64 Parker Street and pointed to a baton. It later emerged that John Thompson had given the prisoner the baton a few months before the murder.

[7] On arrival at Musgrave Street police station at around 2am the prisoner repeated on 20 or 30 occasions words to the effect that he had got the wrong man and that he had been after the son. The custody sergeant detected that the prisoner had taken drink. He was medically examined at 4.20am and certified fit to be interviewed.

[8] The prisoner was interviewed on three occasions between 10.20am and 4.12pm on 23 June 1994. He told police that he had been drinking at home at 64 Parker Street when there had been a fire at number 66, the deceased's house. The deceased's son had, in the prisoner's opinion, hinted that he thought the prisoner was responsible for the fire. Later the prisoner had gone to the deceased's son's house, number 59 Parker Street, armed with a baseball bat, to "see him about it". He had intended to have it out with Mr Campbell junior. He insisted that there was no intention to murder. The door was open. He said that he had a hazy recollection of events due to the amount of drink he had taken. He entered the living room. No lights were on and it was dark. The prisoner said he did not know what he did next, but he knew that he had hit someone. He said: "I thought it was his son". He said that he had brought the baton because Mr Campbell junior was "a bit of a header" and he anticipated an argument. He said that he would have used the baton in self-defence.

[9] He had a number of complaints against Mr Campbell junior, including the noise he made which kept the prisoner awake. He also claimed that he kept the baton in the house because he had been attacked by paramilitaries in the past. The prisoner said that he had been drinking from the afternoon but he accepted that, at the time of the killing, he was not "falling down" drunk. As to the attack itself, the prisoner said that his mind went blank and that it was as if someone else was doing it. Afterwards he had gone home and thrown the baton into the yard. He had then told his mother that he thought he had killed Mr Campbell junior.

[10] In a later interview the prisoner told the investigating officers that when he entered the house he had the bat in the back of his trousers. He said he went "berserk" when he entered the house. He continued:

"I'm not going down for murder; it is as if somebody else took over my head."

[11] Later the prisoner accepted that he to get his blow in first. He said he had struck because he thought the person was Mr Campbell junior. The prisoner alleged that during the attack the deceased said, "stop it Jackie", thus intimating that he thought the assailant was his son. He described himself as "wound up" and said that he had gone "psycho". On being charged the prisoner said, "I'm sorry I ever done it."

[12] In his evidence at trial the prisoner claimed that he had little memory of the relevant events. He said that something had happened inside him, and stated (in contravention of expert evidence called for him) that his actions had nothing to do with John Thompson. The prisoner recounted how he had been beaten by paramilitaries and described the impact that this continued to have on him. He told of his brief marriage which had ended due to his temper. He said that he had started to drink at 13. Reference was made to possible sexual exploitation of the prisoner as a young teenager. He had become friendly with John Thompson at age 14, and at 15 had started to drink and watch adult orientated films at his home. The prisoner said that at 15 John Thompson had started to sexually harass him. He married at 16 but when the marriage quickly failed he took up again with Thompson. He moved to Parker Street shortly before Christmas 1994 and Thompson, who lived nearby, would visit him there. The visits became regular and eventually occurred each day, with Thompson often staying over. Thompson would supply the prisoner with alcohol. The prisoner stated that he was not homosexual.

[13] The prisoner told the jury that he had started drinking alone on the morning of 22 June 1994 and continued drinking throughout the day. At 7pm Thompson

called, leaving at 10.45pm. The prisoner continued drinking and then climbed into the deceased's house at number 66 Parker Street through the roof space and set fire to it in 5 different places. Later in the street Mr Campbell junior accused the prisoner of starting the fire.² He told a police officer at the scene that he had a baseball bat and would not be responsible for his actions if Mr Campbell junior returned. Men later called at the house, asking about the fire and making threats as to what they would do to the person responsible. At that point the deceased, who may have been somewhat senile, left number 59 Parker Street and started walking down the road. The prisoner led him back to the house. He told the jury that his next memory was of being interviewed by police about the murder.

[14] Psychiatric evidence was given by Dr McEwan for the defence and Dr Daly for the Crown. Dr McEwan told the jury that at the time of the killing the defendant may not have been in a state of mind which was normal, and that abnormality of mind may have been related to or induced by experiences prior to the date of the killing which could have substantially affected his judgment. He felt that the prisoner had been injured by his relationship with John Thompson. He identified a number of negative and traumatic influences in the prisoner's past, including his use of alcohol from the age of 12. He also related a number of early sexual encounters with adults. His "relationship" with John Thompson had started at age 14 or 15. Prior to the offence Thompson would have drunk with the prisoner in the prisoner's home and would stay the night. The prisoner would occasionally wake to find Thompson in bed with him. There is a suggestion that he would have traded sexual favours with Thompson in exchange for cigarettes and alcohol. Thompson had a key to the prisoner's home.

[15] Dr McEwan's impression of the prisoner's version of events was that he had entered the deceased's house, seen the deceased, returned to his own house, retrieved the baton, returned to the deceased and killed him. Dr McEwan said that the prisoner had asked himself whether there was a connection between the deceased and Thompson: Thompson would lie on the prisoner's settee in the same position that the deceased was in when killed. The psychiatrist accepted, after a direct question from the judge, that he thought that he had first suggested to the prisoner a possible link between the death and the sexual relationship with Thompson. He did not find any evidence of a formal psychiatric illness and concluded that the prisoner was of reasonable intelligence. Dr McEwan told the jury:

"The principal abnormality that I can perceive and that came out of his history is to do with the sexual

² A deposition from a police officer at the scene of the fire records that Mr Campbell junior made a lunge at the prisoner and shouted that he had started the fire.

abuse which it seems to me has been going on since at least 13 and has been intermittent but has been important and went right up until minutes or a couple of hours maybe before the actual killing and ... that that is a very powerful, in a sense dramatic influence on a person's mind...What I am suggesting here that is one reflects upon the realities of what was happening that the emotional tension that builds up from that becomes so great that it becomes unmanageable at a point in time over a short period of time and at that point the person stops coping and behaves in a way which is not normal. They stop coping, they cannot cope, they become overwhelmed with the frustration, anger, fury, bitterness, hatred and those sort of feelings and cannot contain them...If someone accepted that he was in that state of mind then one would not be able to hold him responsible in the manner that one would normally hold a person responsible. He would not be able to have the same kind of degree of responsibility for what he was doing right then."

[16] Under cross-examination on the possible link between the death and Thompson, Dr McEwan said:

"What I can say is that the defendant definitely offered himself and described Campbell's house as being very similar to his own in layout and he talked about the placement of the doors and the furniture, he definitely offered that John Thompson would have been on the settee in his own house, sleeping sometimes in the morning covered with a blanket. He definitely reported that he had been thinking about Thompson leaving him. He came back to that repeatedly in the interview...And it seems to me yes, the suggestion has been put that he would be lying or trying to fit in with the hypothesis about when he said that old Mr Campbell lay on the settee, covered with a blanket but it also occurred to me that's the one matter which I have some confusion about. That is what he could have believed to be the case, what he believed he saw."

[17] In the final part of Dr McEwan's cross-examination he said that he "would not weigh" the possibility that the prisoner was suffering from an abnormality of mind against the other possible explanations - he left them as even.

[18] Dr Daly agreed with Dr McEwan that the prisoner was not suffering from mental illness. However, he told the court:

"From the evidence to which I have had access and from my interview with Mr Douglas it does not appear that Mr Douglas was unaware of what he was doing on the night in question. I conclude that this 20-year-old man who is charged with murder is not suffering from mental illness. He was certainly intoxicated on the night in question but I can find no evidence to suggest that he was not aware of what he was doing on that night....I consider it unlikely that the events of that night would now have entirely slipped his memory."

[19] The defence was based exclusively on diminished responsibility. The judge put to the jury the possibility that the prisoner may not have had the requisite intent. Forensic evidence in the depositions as to the disturbance of the crime scene, including attempts to clean blood from the living room and blood stains in the bathroom, do not appear to have been raised at trial.

Antecedents

[20] The prisoner's past criminal record is minimal and irrelevant, consisting of three appearances in the Magistrates' Courts for criminal damage, theft and no insurance, resulting in conditional discharges and a fine.

Sentencing remarks

[21] The trial judge did not fix a minimum term. In sentencing the prisoner to life imprisonment he said:

"This was a savage and brutal killing of an elderly man who lived next door to you. The fact that you thought it was his son against whom you had some grievance is irrelevant. Those grievances could not possibly have justified your going over to his son's

house, armed with a baton, as appears from the evidence.”

The NIO papers

[22] The deceased’s family has not submitted a written representation.

[23] The prisoner’s solicitors, McCann & McCann, in a written representation have submitted that the case ought to be “considered as a lower tariff category” on the basis that the prisoner suffered from “considerable mental disturbance and personality disorder”. They accepted that there were a number of aggravating factors present: the victim was vulnerable on account of his age, a weapon was used and extensive injuries were inflicted. It was argued that there was mitigation by reason of the mental disorder suffered by the prisoner; that the killing was not carefully planned; that it had not been committed for gain; and there was no attempt to destroy the crime scene. It was suggested that the tariff should be reduced to take account of the prisoner’s age. He was 18 at the time of the offence and had no prior convictions for violence. He had a serious problem with alcohol and his drunkenness at the time of the killing indicated a lack of premeditation and reduced his culpability. It was also said that the prisoner had demonstrated remorse: he voluntarily surrendered himself to the police, did not attempt to challenge his responsibility for the death and did not appeal the conviction. The defence of diminished responsibility, based on prior sexual abuse by an older man causing him to misinterpret his surroundings, have, it was said, been substantiated by the subsequent conviction of the perpetrator of the abuse.

[24] The prisoner’s solicitors have also submitted the sentencing remarks of His Honour Judge Burgess in relation to John Thompson, on 20 February 2004 upon his conviction, on a late plea, for sexual offences against the prisoner and another. Thompson was considerably older than the prisoner when the sexual abuse took place. He is now aged fifty-one. He was convicted of 5 counts of indecent assault over a period of 4 years from July 1988 to July 1992 and was sentenced to a total of 8 years’ imprisonment. Of this total five years were imposed in respect of offences against the prisoner. The judge made reference to the impact of the abuse on the prisoner and commended his efforts to put it behind him. As to the offences against the prisoner he said:

“The evidence discloses a period of grooming, of gaining his confidence and friendship before embarking again on a systematic course of indecency which again took the form of touching, masturbation and oral sex. There was a break at sometime but the

behaviour restarted continuing, as I said, certainly until Mr Douglas was 17, possibly after that. At times of crisis, in what was clearly a turbulent period in his victim's life, the defendant was prepared to give advice and support, creating a dependency on Mr Douglas' part that allowed him, the defendant, to continue to demand sexual favours. The relationship he fostered, while not based on family, nevertheless had its roots as far as his victim was concerned in trust and confidence, someone who would help him with his problems and through that help and attention command his loyalty. That relationship was cruelly betrayed by the defendant's use of this young adolescent for his own personal gratification."

[25] For the prisoner Mr Charles Adair QC submitted that if the jury had been aware that Thompson had in fact sexually abused him there was at least a distinct possibility that they would have found that he was suffering from diminished responsibility. We find this proposition difficult to accept in light of Dr McEwan's equivocal position on the question and Dr Daly's forthright rejection of the suggestion that the prisoner suffered from any form of mental illness. The sexual abuse does seem, however, to have played some part in the mental condition of the prisoner at the time of the killing and we believe that this must be reflected in the fixing of the tariff.

Practice Statement

[26] 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."

Conclusions

[27] This case does not fit neatly into either the normal or the higher starting point categories. On the one hand the victim was an elderly man who was not in good health who was possibly asleep at the time of the attack on him. This points towards a finding of exceptional vulnerability and a starting point of 15/16 years. The extent of the injuries inflicted might also support this conclusion. It is clear, however, that there is at least a high probability that the prisoner did not intend to target this particular victim, but intended instead to attack the victim's son.

[28] Aggravating features include the planning of the attack and arming himself with a weapon in advance. A number of mitigating features can also be identified. Although he did not plead guilty, the way in which the prisoner met the charge goes some way in mitigation. He reported the killing to his mother, and made himself available to police at the scene. He made numerous admissions to causing the death and led police to the murder weapon. The

prisoner's criminal record is of no significance. His age at the time of the offence must be taken into account, as must the fact that he has expressed remorse and we have no reason to doubt the sincerity of that claim. It is possible that he intended to cause grievous bodily harm only.

[29] Taking all these factors into account, as well as the submissions made on his behalf, we have concluded that the appropriate tariff is 13 years. This will include the time spent by the offender in custody on remand.