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Judgment: approved by the Court for handing down | *Delivered:* **21/12/2004**
(subject to editorial corrections)

THE QUEEN

-v-

HUGH ALEXANDER LINDSAY

DECISION ON TARIFF

Ruling by Kerr LCJ and Sheil LJ

KERR LCJ

Introduction

[1] On 19 March 1998, the prisoner, Hugh Alexander Lindsay, was convicted at Craigavon Crown Court of the murder of Eileen Moore on a date unknown between 25 April and 4 May 1996. Ms Moore was 42 years old when she was killed. At the time of his conviction the prisoner was aged 54. He is now 60 years old. Sheil J sentenced him to life imprisonment. The conviction was not appealed and the prisoner has been in custody since 10 May 1996.

[2] On 11 November 2004 Sheil 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] At 9.45pm on Saturday 27 April 1996 Ann McCartan, the deceased's sister, telephoned the police to report the deceased's disappearance. The prisoner was the last person known to have been with the deceased, and this prompted police to make inquiries of him. The prisoner told police that he

had dropped the deceased off in Belfast city centre on Friday at 11.30am having given her £1,800 to pay off her Credit Union debt and for shopping. He voluntarily attended Newtownabbey police station on the afternoon of Monday 29 April 1996 and made a written statement. The prisoner's home was searched the same day but nothing of significance was found.

[4] On Friday 3 May 1996 a member of the public discovered the deceased's body, wrapped in plastic bags tied with string, and dumped beside Narrow Water Castle. Evidence was given at trial that the body had been there since at least the afternoon of Sunday 28 April.

[5] Professor Crane, State Pathologist, carried out a post mortem examination on Saturday 4 May 1996. He gave evidence that the cause of death was mechanical asphyxia due to suffocation and strangulation. Professor Crane's report concluded:

> "She had sustained a number of injuries, principally to the head and neck. There was bruising on the undersurface of the scalp caused by blows to the head but the underlying skull was intact and the brain was uninjured. The face was considerably congested and there was bruising and abrasion to the forehead, the eyelids of both eyes, the bridge of the nose, the left ear and on the left cheek overlying the lower jaw. There was further bruising in the inner lining of the lower lip. Some of these injuries were probably caused by blows to the face whilst others taken in conjunction with the congestion of the skin of the face and lining of the eyelids could have been caused by pressure from a hand in an attempt to obstruct the mouth and nose and effect suffocation.
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> The skin of the neck was superficially excoriated at the front and although there was a narrow linear band of pale skin encircling the neck it is not possible to state with certainty if this mark was caused by the application of a ligature. Nevertheless, the muscles beneath the skin of the neck were bruised in places, as were the soft tissues at the back of the throat and around the hyoid bone and the voice box. These internal injuries had been caused by pressure to the neck consistent with the application of a ligature or by the grip of a hand or hands as in strangulation.

> Pressure of this type can undoubtedly prove fatal due to interference with breathing and the flow of blood to and from the head.
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> Other injuries included a large area of bruising at the front of the right shoulder, possibly caused by a blow or by someone kneeling on her chest and some areas of bruising on the upper arms, on the left wrist, on the right thigh, on the left lower leg and on both feet. None of these other injuries were serious however.
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> Thus, taking everything into account, it would appear that her death was due to mechanical asphyxia probably effected by a combination of suffocation and strangulation.
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> There was no evidence of sexual assault."

[6] Professor Crane confirmed that there was no alcohol present in the deceased's body and that its condition was consistent with the deceased having been dead for a number of days. In cross-examination as to the amount and likely presence of blood Professor Crane stated that a blow in the nose could cause a lot of blood

[7] On Sunday 5 May 1996 police returned to the prisoner's flat in Portadown and took possession of items of clothing, a bin bag and string. The prisoner's wheelie bin was examined but not considered significant at that time. On Wednesday 8 May 1996 police called again with the prisoner who was arrested and cautioned. He was taken to Lurgan police station where he was interviewed over the next two days. The prisoner was remanded in custody at Banbridge Magistrates' Court on 10 May.

[8] During interview the prisoner said that he had collected the deceased by prior arrangement and was in her home from 9.45 to 10.45 am on Friday 26 April 1996. He said that he drove the deceased to Belfast and dropped her at the rear of the City Hall. He told police that he had given her £1800 to pay for a holiday, a party and a debt. The prisoner said that the deceased was to telephone him at 6pm but that he did not hear from her. After dropping the deceased in Belfast the prisoner said that he drove to Portadown and returned Mr Quinn's car. He said that he hired the motor car on the afternoon of 26 April in order to take books from his mother's house to his own flat. He did two runs, reversing the car up to his back gate. He said that he returned from his mother's at 7pm and then went for a drive at 7.10pm, visiting bookshops in Portadown, Craigavon, Lisburn and Antrim. [At least one of these bookshops was closed at the time the prisoner said he visited it. He later said

that he must have been confused about an earlier visit.] The prisoner then continued his drive, arriving back in Portadown at 10pm. He said that he was in bed by 10.15pm.

[9] The prisoner claimed that he telephoned the deceased at 9am on Saturday 27 April 1996. He returned the hire car at 9.45am. That afternoon he telephoned the deceased's sons who said that she had not returned home. He denied throughout his interviews that he had harmed the deceased and professed his love for her.

[10] It was put to the prisoner that he could not have finished his drive at 10 pm as he had claimed because he had been logged driving past Lurgan police station between 11.26 and 11.57pm. Initially he denied this but eventually he accepted that he had gone out again in the early hours of Saturday morning. He had also denied loading a wheelie bin into the car, but later admitted that he had done so. He at first said that the deceased was in his flat on only one prior occasion, but later changed that to say that she had made other fleeting visits. The prisoner denied that the deceased was in the hired Corsa on 26 April but later stated that she had been in it when he had hired the vehicle on previous occasions. He said that he did not know which clothes the deceased had worn on the day she had been in the flat, but later said that they were the same clothes that she was wearing on 26 April. The prisoner gave no reply when asked to account for matching fibres on the settee, carpet and wheelie bin that matched the fibres found on the body of the deceased.

[11] At trial an upstairs neighbour of the prisoner gave evidence that on Friday 26 April 1996 at some time around 5.15-5.30pm she saw a dark grey car with its boot open reversing up to the prisoner's back gate. She observed the prisoner drag what she said was a carpet, approximately 6 feet in length, down the steps and into the open boot. The back seats of the car were down. She said in evidence that it crossed her mind that the carpet might have a body in it due to its dead weight appearance. She then saw the prisoner put a large blue wheelie bin into the boot.

[12] The caretaker of the prisoner's flats gave evidence that at 9.40pm on Friday 26 April 1996 he observed seeing the prisoner with the Corsa, a blue wheelie bin halfway into the boot. Another two neighbours, both uncertain of the relevant date, gave evidence of having observed the prisoner load the Corsa with a blue wheelie bin in the early evening.

[13] The rental manager of Roadside Motors, Kenneth Jack, gave evidence that he knew the prisoner who had hired cars from the firm on a number of occasions. The prisoner hired a Vauxhall Corsa at 3pm on Friday 26 April 1996 and it was returned at 9.30am the next day. During that time it had travelled 191 miles. After Lindsay had returned the car, it was not hired again

before the police took possession of it. When the car came to be cleaned on Monday 29 April it was noticed that the back seat was not properly in position. This was because hinges had been pressed down indicating that weight had been placed upon them while they were in the folded down position. According to Mr Jack the prisoner had told him that he needed the car to collect relatives from the airport as his father had died. The prisoner disputed this at trial. His father was alive at the relevant time.

[14] John Quinn gave evidence that he lent his Astra car to prisoner at 8.45am and that it was returned by arrangement at 12.00 noon. The prisoner did not, however, return to make payment at 8pm as arranged. Mr Quinn had driven the prisoner to the deceased's sister's house on the evening of 27 April and later to visit the deceased's son. The prisoner was said to be agitated due to the deceased's disappearance.

[15] Stephen Doak gave evidence that he had started a relationship with the deceased a week before her death.

[16] At trial the prisoner said that he had met the deceased at the Chimney Corner, Newtownabbey, in March 1996. Shortly after Easter he had bought bin bags for her as she wished to clear her yard. The deceased had only been in his flat for a lengthy period on one occasion, but had been there fleetingly at other times. She had been with him on each previous occasion that he had rented the Corsa. He maintained that he had last seen the deceased when he dropped her at Belfast City Hall in Mr Quinn's car at 11.20 to 11.30am on 26 April. She had not been at his flat that day. Earlier that morning he had taken bags of grass and some slabs from his mother's house to the dump, before collecting the deceased from her home in Newtownabbey at 9.50am. They set off from her house anything from 30 to 60 minutes later and drove to Belfast. He had given the deceased £1800 to pay off a debt and make other purchases. She told him that she had arranged to meet another friend at 12 noon. He returned to Portadown, returned the borrowed car, walked to his mother's home and hired the Corsa at 3pm to move books from there to his flat. He said that he did two runs with the books, loading them from the car which was parked to the rear gate. He had placed spare boxes and waste paper in his wheelie bin and placed the bin in the rear of the car at around 5 – 5.30pm and twice took it to the skip. He denied any connection to a blue carpet. The prisoner said that he returned to his mother's house at sometime between 5.30 and 7pm, then returned to his flat before driving to a number of bookshops and then onwards for a drive in the country. He said that he returned home after 10 but before 11pm. He lay down for 10 or 15 minutes and decided to go for another drive, saying that he initially forgot to mention the second trip to police. The next morning he rang the deceased and later went to visit her relatives. The prisoner said that he was "shell shocked" during police interview.

[17] The prosecution drew particular attention to the prisoner's statement to police where he referred to driving back to Lisburn, then Banbridge, then and finally Newcastle before returning to his flat at 9.30pm where he stayed for the rest of the night. The prisoner's hire car was noted by army personnel to pass Lurgan police station at 11.26pm and 11.57pm on Friday 26 April 1996.

[18] Bin bags found with the deceased's body matched that found in the prisoner's home. The bag found at the flat and a bag found at Narrow Water Castle were found, on forensic examination, to have been manufactured one after the other. The prisoner's fingerprints were found on a number of bin bags found with the body. The prisoner contended that he had given bin bags to the deceased some considerable time before her death. The deceased's fingerprints were not, however, on the bags.

[19] Indistinguishable blue fibres from an unknown source (likely to be a carpet) were found on the deceased's body, in the Corsa, on the bin bags, on the twine on the body, on the settee and carpet in the prisoner's flat and in the prisoner's blue wheelie bin. Fibres from the clothing in which the deceased was found were on the prisoner's settee. Plastic from the prisoner's wheelie bin was indistinguishable from plastic found at Narrow Water Castle. The forensic evidence strongly supported the contention that the deceased was in the boot of the Corsa and that she had been in the prisoner's flat shortly before the discovery of her body.

Antecedents

[20] The prisoner had no previous convictions.

Representations

[21] Neither the victim's family nor the prisoner has submitted written representations.

Practice Statement

[22] 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*
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> 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

[23] The difficulty in selecting a starting point in this case lies in the absence of any reliable evidence as to how the killing of Ms Moore occurred. The prisoner continues to deny his guilt, despite the strong circumstantial evidence against him and his failure to appeal his conviction.

[24] We consider, however, that this is more likely to have been a murder that occurred because of a sudden loss of control on the part of the offender. There is nothing in the material that we have considered that points to the killing having been planned. None of the circumstances outlined in paragraph 12 of the *Practice Statement* is present in this case and there are no other factors that would warrant the selection of the higher starting point.

[25] Mr Macdonald QC, who appeared on behalf of the offender, accepted that the concealment of the body and the destruction of the murder scene must be seen as aggravating factors. There are no mitigating factors. The offender contested the charge and has evinced no evidence of remorse. His clear record is not a mitigating factor. This is properly to be regarded as the absence of an aggravating factor.

[26] Taking all these factors into account and having due regard to all that was said on the offender's behalf, we have concluded that the appropriate minimum term in his case is fourteen years. This will include the period spent on remand.