

THE QUEEN v JAMES GERARD O'MALLEY

DECISION ON TARIFF

1. On 18 March 1992 Lord Justice Murray, sitting at Belfast Crown Court, sentenced James Gerard O'Malley to life imprisonment for the murder of a 37-year-old woman, Irene Clifford, on 7 June 1991. The prisoner was committed for trial on 5 December 1991. He pleaded guilty to murder on arraignment on 11 March 1992 and was sentenced a week later. The judge did not make a minimum term recommendation. There was no appeal. The prisoner has been in custody since 7 June 1991.

Factual background

2. At approximately 7.30am on 7 June 1991 the body of Irene Clifford (DOB 15 October 1953) was discovered lying face down on waste ground close to the gates of Hightown Quarry, Upper Hightown Road, Glengormley. The police were alerted and arrived shortly after 8am. Officers noted that the deceased had sustained massive wounds to the back of her head and that her jeans were partially pulled down to thigh level. Life was pronounced extinct at 9.15am. Officers who attended the scene knew the deceased, but her sister formally identified her later. It was established subsequently that on the evening of Thursday 6 June and early hours of Friday 7 June 1991 the deceased had been working as a prostitute in the Adelaide Street area of Belfast.

3. The scenes of crime officer gave the following description of what he found:

“The denim jeans worn by the deceased were partially pulled down, exposing the buttocks area and a sweatshirt worn had distinctive tyre marks on the back and inner right arm. This clothing was bloodstained. There were two distinct areas of bloodstaining, one directly below deceased's head and another approximately 4 feet from the body; large boulders bordering the landfill site had extensive blood spotting. [On] the ground in the vicinity of the deceased I observed a red plastic

wallet and a tyre impression leading to a blood trail made in the dust, also numerous fragments of skull.”

4. Dr Carson, the deputy state pathologist, performed a post mortem examination on 7 June 1991, estimating that death would have occurred between 12-4am the same day. He concluded that death was due to laceration of the brain associated with multiple skull fractures due to blows to the head:

“Death was the result of severe head injuries, apparently caused by multiple blows to the head from a heavy blunt object. The scalp had been extensively lacerated, there were gross skull fractures with pieces of skull missing, and there was extensive laceration of the brain. The extent and severity of the damage and the spattering of blood, brain in the vicinity of the body, indicate that considerable force must have been applied in delivering the blows, apparently as the woman lay on the ground.”

5. At the time of death the deceased had a moderate amount of alcohol in her body, but insufficient to cause incapacity and her alcohol intake is unlikely to have contributed to her death. There were several recent bruises and fractures on the upper five right ribs and two left ribs. The autopsy report dealt with these in the following passage:

“A tyre mark or marks was noted on the clothing on the back of the right chest and right arm and it seemed probable that the majority of the injuries elsewhere than on the head had been caused by a wheel or wheels passing over the chest, and pressing the prominent parts of the body...onto the rough gravel surface with an element of friction as the body was moved somewhat by the wheel or wheels. This could also account for many of the abrasions and shallow lacerations on the cheeks, nose and chin...”

6. At 11.15am on 7 June 1991 the prisoner arrived at Antrim Road police station claiming that his car had been hijacked in the early hours of that morning. He told the investigating officer a story that had similarities to his eventual admission: he had stopped his car when he saw a distressed girl walking up the middle of the road in Linenhall Street. She told him she had been raped. She got in to the front passenger seat of his car, but refused his

suggestion that she report the matter to the police. He said that the girl asked to go to his house and that in the course of the journey she offered him sex for money, which he refused. When they got to his house she is said to have offered him sex for free. She went to the bedroom to get tidied up. When he entered the room she was naked and again offered him sex. He said no, but she persuaded him and he joined her in bed. A short time later, the prisoner claimed, he changed his mind and declined intercourse. The pair then dressed. She wished to go back to town, but the prisoner said that he would take her to the police or home. She told him she lived in Silverstream and they set off. As they approached the junction of Deerpark Road and Alliance Avenue at around 1.30am, armed and masked men stopped and hijacked the car with the woman still in it. The men told him to wait on the kerb. About an hour later a car passed him, his keys were thrown from the window and he was told to collect his car further up the road and not to report the incident to police. He found the car in Alliance Avenue, returned home, washed his bedclothes and later drove to Stranmillis Taxis to seek work. That same morning he heard a radio report that a man's body had been dumped on the outskirts of Belfast.¹ He admitted washing and cleaning his car earlier that morning.

7. At 2.36pm the prisoner was arrested. He was interviewed at 7.40pm and insisted that his earlier account had been true. He was next interviewed at 11.05pm that same day, then at 9.23am, 3.22pm, 4.40pm and 7pm the following day, Saturday 8 June. In the 3.22pm interview the prisoner expanded on the sexual contact between he and the deceased. He claimed that he had taken a drive to look for the girl after he returned home following the hijacking. A further interview took place that night at 9.50pm but no further information was forthcoming. The next day, Sunday 9 June, the prisoner was interviewed at 9.13am, in the course of which he admitted that he had previously had sexual intercourse with a prostitute at the quarry on the Hightown Road. He was again interviewed at 1pm and 3.33pm when he asserted his innocence and repeated the earlier version of events. After a short break the interview resumed at 4.26pm. The prisoner asked for time to consider his position and was returned to his cell at 5.15pm. Another interview began at 8.58pm but no admissions were forthcoming and it was suspended at 9.10pm. At 10.14pm another interview commenced. The investigating officers probed the prisoner on the tools he carried in his car and this line of questioning prompted his first admissions. In the course of that interview he offered a history similar to his earlier account but there was a material difference when he described driving the deceased home. He accepted that there had not been a hijack. He said that he drove to the Hightown Road and stopped at the quarry. He accepted sex when offered it by the deceased and said that they both got into the back seat:

¹ Witnesses and police at the scene thought at first that the deceased was a man from her build and dress.

“We were both completely dressed then, this is the part I don’t know what happened then, the next thing we were both out of the car. I hit her and drove over her. I don’t know, I am not proud of it, I don’t know which order I did that in. I think then I drove away...”

8. He told police that after the murder he drove home, washed the wheel brace (which he had used to inflict the blows on the deceased) and placed it in a cupboard under the sink, washed his bedclothes, took a bath and burnt his clothes and shoes before driving to Stranmillis Taxis to seek work. Later in the morning he washed and vacuumed his car. He said, “...that woman did nothing to me, nothing to provoke me.” The prisoner made a statement on the morning of Monday 10 June 1991 and was charged that afternoon. In reply to the charge he said:

“I wish to say that at no time did I ever think, plan or wish to harm or murder this lady in any shape or form.”

The statement was in similar form to the prisoner’s initial version of events and admissions in interview. An important difference related to his description of driving the deceased from his house:

“I asked where she lived, she said Ballysillan and then Silverstream Road. I drove towards Ballysillan, I don’t know why but I drove to the quarry at the Hightown Road. I stopped and parked the car with the nose facing out onto the Hightown Road. I think we were both having a cigarette, she offered me business or sex I am not sure which. I answered yes or Okay she wanted to do it in the front of the car. I said no in the back, we both got in the back and were sitting for a minute fully dressed, I don’t remember touching her at this time and don’t think we had sex. The next thing I remember we were both outside the car at the back, she was on the ground. I am not sure if I pushed her, I had a wheel brace. I was hitting her I don’t know how many times, I don’t know how I got the wheel brace it had been in the boot of my car. I think a car drove past going to Glengormley, I think I got into the car and started up the engine. I put the car into reverse and drove over the body and then forward over it again and then I drove off... When I was in the house I think I brought the wheel brace into the house and

washed it with my hand. I put the wheel brace in the cupboard under the sink, then I think I went up stairs, took the bedclothes off, the sheet and the pillow cases and put them in the washing machine. I was in the living room, I took off my own clothes, my shirt, jeans, shoes and socks and burnt them in the fire which was already lit, then I think I went upstairs and had a bath ... I ... eventually went to a garage and washed the car. I do this regularly but it was possibly to wash the blood from it, I also hoovered the car. I had made a story up in my mind that I had been hijacked this was to cover myself ... Obviously I [am] sorry, I haven't shown any feelings outside but I am going through hell inside. I am very sorry."

Personal background

9. The prisoner was a widower (of 3 years) but had a new partner and child at the time of the offence. They had been living apart for a few weeks prior to the murder. He was unemployed following an accident at work and had turned to alcohol after his wife's death. He had no prior convictions.

The plea

10. The prosecution accepted the prisoner's account of the killing. Two medical reports were submitted. Dr Browne, consultant forensic psychiatrist, in his report of 27 February 1992 stated that the prisoner had no major psychiatric illness and was fit to stand trial. A neurologist's report by Mr Hawkins concluded that there was no substantial evidence of an underlying disorder. Counsel for the defence asked for credit for the early plea, referred to the prisoner's clear record and sound family life and described the prisoner's actions on the night in question as being those of a "good Samaritan". He suggested that the prisoner drove over the deceased in panic rather than on purpose. He expressed regret on behalf of the prisoner.

11. Murray LJ described the circumstances of the case as "quite extraordinary and ... quite horrifying." He concluded that "one is left with a mystery at the end of the day as to why you did this awful thing..." The judge accepted that the prisoner was acting as a Good Samaritan in picking up the deceased. He summarised the episode in this way:

"...and then without any explanation, and this I emphasise and I can see no explanation for it, you get the girl to come out of the back of the car, you seize a wheel brace and, it must have been an utter

frenzy, you strike her a series of blows smashing her skull and killing the unfortunate woman. One can speculate as to why you might have done it, whether she taunted you perhaps with a lack of sexual prowess, I do not know, whether in some sudden revulsion of what you had got involved in, but no explanation is given by you as to why, in fact, you did this unfortunate woman to death in such a horrible way.

and

“...there is no explanation that would have reduced the seriousness of your crime and I must take it that it was done deliberately and in some sort of frenzy.”

The judge referred to the prisoner’s difficulty with alcohol and the tragic loss of his first wife. He accepted counsel’s submission that the prisoner drove over the body in “excitement and terror”.

Representations

12. No victim representations were made.

13. The prisoner submitted a personal representation. He said that he took “full and total” responsibility for the murder and accepted that “there [was] no reason to justify the action...” The prisoner stated that he was “truly sorry for the hurt and pain I have caused to the family and friends of the victim, for the hurt and pain to my own family too, and to society in general.” He explained that he pleaded guilty to accept responsibility and to save further hardship to the victim’s family. The prisoner outlined how he had developed in the intervening years: working in the Braille Unit, embarking on personal development courses and earning NVQ’s through work in the prison kitchen, designed to help him gain employment after release. He stated that he had maintained a good record while in prison and has complied with any periods of temporary release.

Consideration

14. In a judgment recently handed down by the Court of Appeal in this jurisdiction, *R v McCandless & others* [2004] NICA 1, it was concluded that judges fixing tariffs under article 5 of the Life Sentences (Northern Ireland) Order 2001 should follow the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412). This dealt with the minimum terms for both adult and young offenders. It replaced the previous normal starting point of

14 years (recommended in an earlier *Practice Note* reported in [2000] 4 All ER 831) by substituting a higher and a normal starting point of respectively 16 and 12 years. These starting points then have to be varied upwards or downwards by taking account of aggravating or mitigating factors. The higher starting point is appropriate in cases where “the victim was a child or was otherwise vulnerable”. In this case the higher starting point is clearly appropriate. The victim was vulnerable. Not only was she a prostitute, but the prisoner contended (and the point was accepted by the sentencing judge) that when he picked her up she was in a state of distress, having just been raped.

15. In the following passage, the Court of Appeal in *McCandless* emphasised that the *Practice Statement* was not to be applied inflexibly: -

“We think it important to emphasise that the process is not to be regarded as one of fixing each case into one of two rigidly defined categories, in respect of which the length of term is firmly fixed. Rather the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in *R v McKeown* [2003] NICC 5, a multi-tier system. Not only is the *Practice Statement* intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case.”

16. The background to the murder remains unclear. The prisoner did not offer the sentencing court any explanation as to how it happened nor has he sought to explain it in his representations. While the judge accepted the defence assertion that the prisoner drove over the deceased in panic, one must have some reservations about this. The version given by the prisoner in his statement is to the following effect:

“I think I got into the car and started up the engine. I put the car into reverse and drove over the body and then forward over it again and then I drove off...”

Considerable violence was used to inflict the blows to the deceased’s head as is evidenced by the massive injuries to the skull. As against these considerations, however, are the prisoner’s good character and his early plea of guilty.

17. Taking all these factors into account, I consider that the appropriate tariff is one of fourteen years.