

THE QUEEN v HENRY DAVID BAIRD

DECISION ON TARIFF

Decision of Kerr LCJ

1. On 6 May 1992 Lord Justice Murray, sitting at Ballymena Crown Court, sentenced Henry David Baird to life imprisonment for the murder of girlfriend's 2-year-old son, Philip James Carton (DOB 2 December 1988) on 30 August 1991. The prisoner has been in custody since 31 August 1991. There was no appeal.

2. In his sentencing remarks the trial judge did not impose a minimum term to be served by the prisoner. He said, however: -

"The sentence which the law requires me to pass on you is one of life imprisonment which I now pass. I may also say this that the law also gives me a discretion if I think it right to indicate that there should be minimum term of sentence to be served before you are considered for release. If it had emerged that you had been doing anything like this on another occasion then in the interests of children and the protection of them I would have considered that course. However, it does not arise and I simply rest the matter as the law requires with a sentence of life imprisonment."

Factual background

3. The prisoner began a relationship with Alison Carton around November 1990. Miss Carton had recently moved from England to Coleraine with her mother and her young son, Philip. The couple had a stormy relationship. According to Miss Carton's statement, Baird had been violent to her and

she believed that he had also attacked Philip before the occasion on which he inflicted the blows that led to the child's death.

The couple had a violent argument on the evening of Thursday 29 September 1991. As a result, Miss Carton had to attend hospital for treatment to an injured wrist. On her return home the prisoner informed Miss Carton that Philip had been sick. She found him to have a temperature and put him to bed, but the child had a restless night. The next morning, Friday 30 September, the family GP was called. Dr Beck examined the child, found him to have an upper respiratory track infection and issued a prescription for antibiotics. That afternoon at around 5 o'clock Miss Carton went to the off-licence, leaving Philip in the care of the prisoner. She returned home at 5.30pm and the prisoner told her that Philip had fainted, hitting his head on a piece of wood in the hallway.

The child was taken to the Accident and Emergency Department of Coleraine Hospital and was examined by Dr C Clarke at 6.00 pm. Dr Clarke noted bruising to the face, thorax, abdomen and legs. When he questioned the prisoner about the bruising he sought to explain these by claiming that the child had fallen over some timber in the house at the bottom of the stairs. He had not told Miss Carton about this fall.

The child was referred to the intensive care unit. Upon arrival at approximately 6.20 pm he was making little respiratory effort. He suffered a seizure lasting a matter of seconds and ventilation was commenced. Fully cardio pulmonary resuscitation had been commenced as his output had deteriorated. Resuscitation continued until 7.20 pm when the child was pronounced dead. Miss Carton was told of her child's death at 7.30pm.

The prisoner repeated his version of events to police who called at Miss Carton's home later on the evening of the murder. Police formally interviewed him the next evening, Saturday 31 August 1991, when he voluntarily attended Coleraine police station. The police quickly put it to the prisoner that he had a role in the death. The prisoner denied the accusation, stating that Philip had only ever been hit on the bottom. Within about 3 questions, however, the prisoner broke down and started to make admissions. At first he said that he hit Philip once with his unclenched fist, causing him to fall and hit his head. He says: "I just had enough...He told me he was sick. I set my drink down and came out. I just had enough and I hit him...in the stomach. He fell back and hit the

back of his head.” He says that he had a sore head and hit the child to quieten him. When arrested at the end of the interview the prisoner said: “I never meant to hurt anybody. I definitely didn’t mean to kill him.”

In a second interview it was put to the prisoner that he had kicked the child. He denied this at first but shortly afterwards admitted to having kicked him twice. He claimed that he did not have shoes on at the time. The prisoner said: “I was fed up about him being sick. It just wasn’t that it had been building up over weeks.” He stated that the child complained about feeling sick while they were in the garden. He took him inside to the hall, closed the door and punched him on the stomach, then left his drink in another room, grabbed the child by the arms and kicked him on the stomach as he held him midair. He then let him go and kicked him again in the stomach, causing the child to fall back on the stairs where he banged his head.

The prisoner admitted having let the child go free after the first kick in order to get a better kick on the second attempt. In a further interview the prisoner said that the child put his hands out to be lifted after the first kick, but he proceeded to kick him again. At the end of the interview the prisoner stated: “I am disgusted with myself. I am sorry I done it. I didn’t mean to kill him.”

Professor Crane conducted a post-mortem examination of the child’s body on 31 August 1991. He concluded that the cause of death was intra-abdominal haemorrhage due to laceration of the liver and pancreas. He says that on admission medical staff noted that the child was “mildly dehydrated” and had bruising on the scalp, face, chest, abdomen, back and limbs. “Shortly after admission he became quite drowsy and his breathing deteriorated. Then he suffered a major convulsion. Attempts were made to resuscitate him but he failed to respond...”. As to the injuries sustained:

“...there was bruising visible on the scalp over the back of the head and further bruising on the undersurface of the scalp when it was reflected. On the face there was a small abrasion on the forehead and bruising on the right side of the forehead, on the right cheek and over the right side of the lower jaw. There were multiple bruises, mostly small and circular in shape, on the front of the chest and upper abdomen whilst on the lower

back there were a number of abrasions lying within an area of bruising. Some small bruises were located on the upper arms and forearms, there was an abrasion of the back of the left wrist and there were further bruises on the knees and another on the right thigh.

Internally there was slight bruising of the muscles overlying two of the left ribs and one of these ribs, the seventh, was fractured although in the process of healing. The most serious injuries were to the abdomen; the liver and pancreas gland were lacerated, the latter having been almost severed into two pieces. There was also lacerated holes in the fatty attachment of the stomach and small bowel and bruising of the walls of the small and large bowel in several places. As a result of these abdominal injuries, particularly that to the liver and pancreas gland, there had been bleeding into the abdominal cavity and into the tissues in its back wall and it was ultimately the effect of this haemorrhage which was responsible for his death.

The abdominal injuries would have required considerable force for their infliction and could have been caused by a low or blows such as by punching and kicking, possibly whilst the child's back was supported against a firm hard surface. The surface bruising to the chest and abdomen was fairly typical of that seen in cases of child abuse, due to finger pressure whilst the bruising to the upper arms and forearms was probably caused when the limbs were gripped by an adult hand. The bruising on the back of the scalp could have been caused by the back of his head striking a hard surface, those on the face might have been caused by the grip of a hand. Taken together there can be no doubt that these injuries were as the result of a serious deliberate assault....

In addition to the recent injuries described there was also a healing fracture, probably some days old, of the seventh left rib at its angle. Whilst this could have occurred accidentally, perhaps as a result of a fall, this would be unusual in a child of this age. Such an injury could however have been the result of compression of the chest, perhaps by squeezing in the grip of a hand or hands. Whatever the cause it preceded the fatal abdominal injury.

Microscopic examination of the injured pancreas also revealed evidence of early acute inflammation in the gland, possibly about 24 hours duration and which therefore must have occurred before the fatal injury was received. Inflammation of this type, known as acute pancreatitis, can occur in children as a result of a viral infection or, in about 20% of cases, as a result of abdominal trauma. Whilst in this case it was not possible to determine which of the two causes was the more likely, if it was due to trauma then it would suggest that one or two days prior to his death he had received an injury to his abdomen, possibly as a result of another blow. It was also this pancreatic inflammation which was probably responsible for the bouts of vomiting he had on the day before his death.

The autopsy also revealed a band of cellular scarring in the heart muscle, the cause of this is uncertain, but it appeared to be at least a week old. It is unlikely that it would have played any part in his death."

On his trial the prisoner did not deny that he had caused the child's death but claimed that he did not intend that the child suffer grievous bodily harm. In effect, therefore, he admitted manslaughter but denied murder.

Representations

Miss Carton is now married and she has provided a written representation in relation to the tariff. She stated that the effect of the murder on her life has been "total and devastating which time has not changed." She said that she decided to stay in Ireland rather than return home to England in order that she could visit her son's grave. She continued: -

"I was prescribed medication from my doctor, which has been ongoing for 10 years. I have lost a lot of weight. I use alcohol as a memory inhibitor, which is still exacerbated not only at times of anniversaries, birthdays and Christmas but also at times when I learn of other distressing situations involving children. Even completing this inquiry was distressing."

She eventually moved back to England which caused her immense distress as it meant leaving her son's grave. She now has a baby son but she described the continuing effect of the murder of her first child in a later passage of her submission as follows: -

"My whole personality has changed from being a very loving person to being very withdrawn. This has deteriorated over the years and affects everyone around me especially my husband ... I am unable to relax and found myself constantly under pressure and stress which affects my well-being in relations. Events immediately prior and after Philip's death continue to overshadow my memories of are short time together as I am unable to recall anything else."

She stated that she returns to Northern Ireland several times a year to visit relations and her son's grave. She continued:

"I am not sure that either myself or my family could be responsible for their actions if we ever saw Mr Baird, as he has caused all of us untold heartache and grief over the years, which time has not diminished. We are all fearful of his eventual release."

The prisoner made a personal representation in which he said: -

“The events that took place on that evening will remain with me for the rest of my life. I find it hard to believe that I acted in the way I did. There is not a moment that passes when I wish I had reacted differently [sic]. As soon as I realised that something was wrong with Philip I tried to comfort him but tragically he lost his life later in hospital. I am totally ashamed of myself for not being man enough to immediately admit to my role in his death. I could not immediately face up to taking responsibility for my actions, and it was only after I had counselling sessions, many years later, that I was able to fully understand, and face up to the full horror of my actions.”

The prisoner’s solicitors made a further representation in which several themes were taken up. These included that the prisoner had had a difficult upbringing during which he was physically abused; a claim that there was not a prolonged or systematic period of violence before the attack that caused the child’s death; the prisoner’s remorse; and the absence of any previous convictions. They suggested that the higher starting point (referred to in the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412) of 15/16 years should be reduced to 13/14 years to reflect the mitigating factors that they claimed were present in the prisoner’s case.

Consideration

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*. 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 apt. 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.”

A history of violence towards the child would be an aggravating feature but the evidence for this is not unequivocal. The prisoner admitted that he had caused the child's injuries but he can claim little credit for the manner in which the trial was conducted. His repeated kicking of the little boy was, unsurprisingly, considered by the jury to show that he at least intended to cause him grievous bodily harm.

I detect in the prisoner's submission a reluctance, even now, to fully accept his guilt. Statements such as “...tragically he lost his life later in hospital” and “my role in his death” cast doubt on the authenticity of his expression of remorse. Moreover, it is clear that this was not momentary loss of control immediately repented. On the contrary it is clear that the kicking of the child was considered and deliberate.

I consider that the appropriate tariff in his case should be sixteen years.