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(subject to editorial corrections)

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

THE QUEEN

-v-

DAVID MALCOLM RYAN

McLAUGHLIN J

[1] The accused David Malcolm Ryan has pleaded guilty to the murder of Gerald Thompson on 1 November 2002. The deceased was found dead lying on a settee in the living room of his home at approximately 12.30 pm. The accused was arrested shortly afterwards when he appeared at a police cordon which had been erected to preserve the crime scene. This occurred at about 1.50 pm. He appeared to be under the influence of drink and was wearing bloodstained clothing.

[2] Police enquiries had been initiated earlier in the morning after a number of phone calls had been made by the defendant giving rise to concern about the deceased. At 8.58 am the prosecution state that he telephoned a Ms Willis, his girlfriend, and left a message to the effect that he had done something bad and that he needed to meet her. He spoke to a receptionist at Lisburn Health Centre at about 9.00 am concerning a prescription which he was due to collect and in the course of it allegedly stated that he had done something really bad. It was further alleged that at 9.06 he called his mother, a lady who is both elderly and suffers from Alzheimer's Disease, and told her that he had killed his friend. At about 10.00 am he was seen at the branch of a local bank and cashed a cheque for £60.00 made out to him by the deceased. The subsequent enquiries established that he had travelled to Belfast in a taxi and had been found lying on the ground in Shaftesbury Square. When a paramedic arrived to assist him he was informed by the accused that he did not want to talk to him and stated that he had killed someone last night in the kitchen and that an axe had been used.

[3] The last time the deceased was seen alive was at about 10.35 pm on Thursday 31 October when a Chinese carry out was delivered to his address

at Chapel Hill, Lisburn. Forensic investigations coupled with the findings at post mortem established that Mr Thompson had died as a result of a series of injuries to his head. I quote the commentary of Professor J Crane, who carried out the post mortem:

> "This was the body of a middle-aged man of average to good build. He was fairly healthy for his age; the heart was of good size in keeping with a history of raised blood pressure, there was a little scarring in the left lung and there was mild fatty change in the liver consistent with alcohol abuse. None of these conditions played any part in his death.
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> Death was due to head injuries which he had sustained. There were multiple fairly clean-cut lacerations on the scalp, the right side of the face and extending onto the neck and right shoulder. Those to the head were associated with extensive fractures of the vault and base of the skull as well as to the facial bones whilst one of the on the neck had extended deeply to the bony spine which was fractured. The underlying brain was badly lacerated and there is no doubt that this brain injury would have caused his very rapid death.
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> The injuries were consistent with having been made by a fairly sharp implement such as an axe or hatchet. They could have been caused by the bloodstained axe found in a cupboard in the kitchen. It would appear that most of the injuries were inflicted whilst he was lying on the left side on the settee.
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> In addition to the main injuries there were a few fine linear abrasions or scratches, on the left forearm which might have been sustained if he had raised his arm in a protective gesture. A few other bruises and abrasions on the right forearm and right knee were quite trivial.
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> The report of Forensic Science Northern Ireland shows that at the time of his death there was no alcohol in the bloodstream although a little was detected in the urine. An analysis for the presence of drugs revealed only therapeutic levels of antihistamine cyclizine and the antidepressant citalopram in the blood."

[4] I should note at this stage that the only weapon that has been recovered that can be associated with the crime was the hatchet found in the cupboard in the kitchen referred to by Professor Crane. There has been some consideration given to whether a knife was used also. No knife has been recovered and it is not clear whether any of the injuries were caused by a knife. I am therefore left in a position where I must proceed on the basis that one weapon only was used, namely, the hatchet. The question of the possible use of the knife arose as a result of an examination at the scene which is referred to in the post mortem report. At that time the body was still in situ and examination would clearly have been carried out in less favourable circumstances than during the post mortem. At that stage it was recorded:

> "Closer examination of the head wounds suggested that there were probably fairly clean cut lacerations whilst some further wounds on the right shoulder area and neck area were possibly consistent with having been caused by a bladed weapon such as a knife."

I do not propose to analyse further the nature and extent of the wounds and I simply rely upon my own observations of the photographs taken at the post mortem particularly those in exhibit 23 (reference number H3613/02) from No. 6 onwards. Whether one or two weapons were utilised it is clear that the deceased was subject to an appalling attack which involved cruelty and callousness of a high order. On the assumption that the injuries were caused by the hatchet then it is clear that repeated blows were rained upon the deceased.

[5] At the hearing before me at Craigavon on 6 October 2004, after a jury had been sworn, I received an application to have the accused re-arraigned and it was at that stage that he pleaded guilty. The case had not been opened and the matter had not proceeded beyond the swearing of the jury. This arrangement had been arrived at as a result of a request by Mr Cinnamond QC, who appeared with Mr Blackburn for the applicant, as he wished to ensure that his instructions were clear from his client and that the accused was fully aware of the consequences of the step which he proposed to take by pleading guilty. I was happy to facilitate that and I draw no conclusion from the fact that the jury had been sworn. I shall deal with this issue later.

[6] The matter came before me again on 14 October 2004 when the case was opened to me by Mr J A Creaney QC, who appeared for the prosecution with Ms Smith. I then heard from Mr Cinnamond in mitigation. At the end of that hearing I sentenced the accused to life imprisonment and indicated that I would reserve my opinion about the period of time to be served before he might apply for release pursuant to Article 5 of the Life Sentences (NI)

Order 2001. I should say in passing that I proceeded in that manner in order to emphasis once more that what I am now doing is not imposing a sentence as such. A sentence of life imprisonment has already been imposed. This case is probably as good an illustration as any as to how the fixing of a "tariff" is a complementary, but different, process from that of imposing the actual sentence. In view of the personal circumstances and background of this accused it will be understood that many issues will have to be resolved before he is in fact released and the exercise today is simply to set a period of time before which that process cannot even be considered.

[7] Since the passing of the 2001 Order the process of fixing the tariff has been the subject of substantial judicial consideration. In *R v McCandless, and Others*, the Court of Appeal in Northern Ireland set out guidelines for judges involved in the sentencing process. Following legislative changes in England and Wales, and the consideration of the position there, the Court of Appeal in Northern Ireland had occasion to revisit the subject in *Attorney General's Reference No. 6 of 2004* (*Conor Gerard Doyle)* [2004] NICA 33.

[8] In *McCandless* the Court of Appeal adopted as a general guideline the *Practice Statement* which had been issued by Lord Woolf CJ on 31 May 2002 [2002] 3 All ER 412. This set out the approach to be adopted in respect of adult offenders in the following terms:

> *"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.
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> 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.
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> 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.
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> 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.
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> *Very serious cases*
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> 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.
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> 19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

[9] In the later case of *Doyle* the Court of Appeal stated that the *Practice Statement* should continue "to be the touchstone in this jurisdiction for the fixing of minimum terms in life sentence cases." I shall therefore deal with Mr Ryan by attempting to apply the principles and guidelines set out in that *Practice Statement*. I shall simply repeat what has been said often in the past, that the *Practice Statement* contains general guidance, not fixed principles. There is a considerable degree of discretion to be exercised within the "broad structure" contained in the statement.

[10] The first step is to attempt to select the appropriate starting point for the case. Mr Cinnamond has urged upon me that I should consider that it falls within the normal starting point of twelve years as it involves the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. The first observation to make is that there is no evidence that there was a quarrel between these two people other than the self-reporting of the accused. No one else was present or able to give testament to the surrounding circumstances. Indeed the accused himself states that he has very little memory of the surrounding events. I note that there is also hardly any injury to the body of the deceased which would indicate that he had any opportunity to defend or protect himself.

[11] I consider that on the evidence the higher starting point is more appropriate in present circumstances. I consider that it falls into that category by virtue of the extensive injuries inflicted on the victim. Whilst the practice statement appears to limit this category to injuries inflicted before death I am satisfied that it is appropriate to interpret that apparent limitation more widely. It is impossible in a case of this kind to establish the moment of death and many of these injuries may have been inflicted after death ensued. It seems to me to be abundantly clear that they were all inflicted in or about the same time. It is not possible to isolate one blow, or even part of the series of blows as having been inflicted at a particular time, or in a particular sequence. Whether the deceased was killed by a very early blow and the defendant continued to rain blows down on him, or he kept hitting him until he was sure he had killed him, appears to make little difference. The net result is that he suffered extensive and multiple injuries at the time of death. That I think distinguishes it from the kind of case where friends fall out, matters become heated to the point where one intends to kill or cause grievous bodily harm to the other, succeeds in doing so and the outcome is death. Someone thrusting a knife, bottle, stick or similar implement on one, or perhaps two occasions, in the midst of a heated row is not to be considered in the same category as someone inflicting injuries of the scale and nature suffered by the deceased in this case.

[12] The next stage for me to consider is whether there are any aggravating or mitigating circumstances relating either to the offence or the offender. I am satisfied that it would be inappropriate to deal with this case on the basis that it was other than a death which arose out of events occurring within a short timescale of the actual attack. There is nothing to suggest that there was any premeditation, pre-planning, pre-arming with a weapon (in the sense of the accused coming to the house to attack the deceased) and I am satisfied that I should proceed, as stated earlier, on the basis that only one weapon was used. The multiple nature of the blows and their extent does not constitute an aggravating feature because I have taken these into account in establishing the relevant starting point.

[13] I note that the accused has a significant criminal record. This extends from 1980 through until January 2000, just under three years before the death of Mr Thompson. I am satisfied however that I should not regard his record as an aggravating circumstance. He has been convicted of a number of offences of theft and dishonesty of various kinds, some public order offences and road traffic offences. He has also breached the liquor laws and been convicted of one drugs offence. There were also some instances of assault but these appear to be at the lower end of the scale and more in the nature of disorderly or anti-social behaviour rather than manifestations of a violent pre-disposition. Whilst I do not propose to regard it as a aggravating feature it goes without saying that he is unable to present himself as someone with a clear record by way of mitigation.

[14] Mr Cinnamond has also urged upon me the very difficult and indeed tragic personal circumstances of the accused. He is 44 years old and was said by Mr Cinnamond to have led a "stormy and difficult life plagued by mental illness, drug addiction, alcohol addiction and substance abuse". He grew up in a highly respectable home where he was adopted by his parents and grew up with his adopted sister. His late adoptive father was a distinguished professor of electronics and his mother was a social worker with expertise in mental problems. She is still alive but elderly and infirm. He attended Belmont Primary School and Campbell College. It was clear that by his early mid-teenage years that he was a troubled young man. He left school with minimal academic attainments and moved to Rupert Stanley College to study art. It would appear from materials before me that he is a talented artist and a noted portrait painter. I accept without reservation that from his mid-teens until his arrest, his life has been wholly abnormal by virtue of the health problems to which I have just referred.

[15] I have had the benefit of very detailed and rigorous reports from Dr Graeme McDonald dated 10 May 2004 and 8 October 2004. I have read these in their entirety. There were obtained in the course of preparation of the case on behalf of the defendant in order to determine whether or not he had any mental illness which might have enabled him to rely upon a defence to the charge of murder which might otherwise have reduced it to manslaughter. Dr McDonald's opinion is that there is clear evidence he suffered from a number of mental disorders recognised within the International Classification of Mental and Behavioural Disorders, ICD-10. These are:

> "1. An Emotionally Unstable Personality Disorder: Borderline Type (F60.31). The ICD-10 defines *Personality disorder as follows-:*
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> *A disorder characterised by a definite tendency to act impulsive and without consideration of the consequences;*

> *the mood is unpredictable and capricious. There is a tendency towards outbursts of emotion and an inability to control the behavioural explosion. There is a tendency to quarrelsome behaviour and conflicts with others, especially when impulsive acts are thwarted or censored. Two types may be distinguished the impulsive type; characterised by predominately emotional instability and lack of impulsive control, and the borderline type; characterised in addition by disturbances in self-image, aims and internal preferences, by chronic feelings and emptiness, by intense and unstable interpersonal relationships and by a tendency to self-destructive behaviour, including suicide gestures and attempts."*

He added:

> "2. In addition to the Emotionally Unstable Personality Disorder, Mr Ryan has met the diagnostic criteria necessary to dependence on a range of intoxicating substances including alcohol, opiates, halluginogens and cannaboids. These dependences have been chronic. There is, however, little evidence to suggest that the drug or alcohol abuse was a particular factor at play at the time of the killing. It is likely that at the time of the killing, he was intoxicated with alcohol, but that that intoxication was not out of keeping with his normal experience.
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> He has suffered from episodes of depression and anxiety from time to time, but there is no evidence to suggest that he was suffering from any such illness at the time of the killing."

He then concluded that "I would not regard his difficulties as being sufficient to warrant an argument that he had diminished responsibility for the killing. I do however believe that he suffered, and suffers from, the mental disorder as described above, which lowers the degree of criminal responsibility for the killing." He went on to state that he thought that the personality disorder and intoxication, together with the consequent deterioration in his social and physical well-being, led to the circumstances in which the killing took place. I accept the opinion of Dr McDonald. A further report from Dr Ian Hyndmarsh concluded that there was "little evidence from the witness statements I have seen to suggest that David Ryan's behaviour from circa 0830 to 1345 hours on 1 November 2002 shows any evidence of the cognitive failures which would characterise individuals intoxicated by drugs and/or alcohol to the extent that reasoned thought is not possible."

I propose to approach the fixing of the tariff on the basis that the accused was neither provoked nor suffering from any mental illness capable of diminishing his responsibility as understood in law. Obviously if any of those circumstances had prevailed we would be dealing, at least potentially, with a case of manslaughter rather than murder. I consider therefore that it is not appropriate to regard this as a case "close to manslaughter" as such. I do accept that his very severe personality problems coupled with the surrounding circumstances referred to by Dr McDonald, act as mitigating circumstances in terms of the *Practice Statement.*

[16] The other important mitigating factor here is the plea of guilty which he entered before me at Craigavon. The prosecution have indicated that they are prepared to accept that it was perhaps inappropriate to expect the accused to have pleaded guilty at any earlier stage. It is clear from the dates on the medical reports, particularly the second report from Dr McDonald and the report of Professor Hyndmarsh, that the entire medical picture could not have been clear to the defence before 8 October 2004. I consider therefore that the accused has indicate his willingness to plead guilty at the earliest reasonable moment having regard to the need to have detailed legal advice about such a critical matter. It can only have been at that stage that the defendant's solicitor and counsel could rule out any realistic prospect of a manslaughter conviction based on diminished responsibility. I note that the Court of Appeal indicated that these could be appropriate circumstances in which to deal with an apparently late plea on the basis that it was proffered at the earliest reasonable time. Although the plea was entered after the jury was sworn this was done with my authority as Mr Cinnamond wished to have some time to speak to his client as he had difficulties visiting him in prison on the weekend before the hearing and the jury panel as a whole would have been kept waiting unnecessarily. The accused is entitled to a substantial discount in those circumstances but it must be limited to some degree having regard to the powerful nature of the evidence against him and the lack of any potential defence.

[17] I shall take the starting point in this case as being one of fifteen years. Having regard to the mitigating and aggravating features relating to the offence and the offender I propose to set the tariff at twelve years.