

IN THE CROWN COURT IN NORTHERN IRELAND

DOWNPATRICK CROWN COURT (SITTING AT BELFAST)

THE QUEEN

-v-

DARREN IVAN KERNOHAN
MARTIN THOMAS FLEMING
SIOBHAN CLYDE
MARGARET VERONICA DEERY
LAURENCE DESMOND KINCAID

HART I

[1] On the night of 27 April 2009 two men forced their way in to the home of Geoff Kerr, his wife Mrs Sally Kerr and their son Adam Kerr, and in the course of a struggle which took place between Geoff Kerr and Kernohan, Kernohan fired two shots, one of which killed Mr Kerr. Kernohan admitted discharging the two shots but said that he did not know the gun was loaded and fired it by accident, but the jury has rejected his account and convicted him of murder. Fleming pleaded guilty to the murder of Geoff Kerr on the morning of the third day of the trial, and both pleaded guilty to common assault of Mrs Kerr. Deery pleaded guilty to a single count of perverting the course of justice at the start of the trial, as did her daughter Siobhan Clyde. Kincaid also pleaded guilty to a single count of withholding information about the murder at the start of the trial. All of the accused are now before the court to be sentenced.

[2] So far as Kernohan and Fleming are concerned the court is required by virtue of the provisions of the Life Sentences (Northern Ireland) Order 2001 to fix the minimum term of life imprisonment to be served by the defendants which the court considers appropriate

“To satisfy the requirements of retribution and deterrence having regard to the seriousness of the

offence, or of the combination of the offence and one or more offences associated with it.”

[3] In The Queen v McCandless and Others [2004] NI 269 the Court of Appeal in Northern Ireland directed judges in this jurisdiction to apply the *Practice Statement* issued by Lord Woolf CJ in 2002 (reported at [2002] 3 All ER 417). It sets out the approach to be adopted in respect of adult offenders, and sets two starting points by which the minimum term is to be determined. The lower point is twelve years, and the higher point is fifteen to sixteen years. The *Practice Statement* provides guidance to judges who have to decide what the appropriate minimum term is in the circumstances of each case, and the court does not attempt to place a case in either of two rigidly defined categories. As Carswell LCJ observed in McCandless, 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”.

[4] The higher starting point applies to cases where the offender’s culpability was exceptionally high, and such cases are characterised by a feature which makes the crime especially serious. One of those features is that the killing was done for gain in the course of a robbery. Kernohan admitted in his evidence that the object of the incursion into the Kerr house that night was to steal firearms which it was known Mr Kerr kept as he was interested in guns and was a member of a number of gun clubs. This is therefore a case which falls within the higher starting point of 15-16 years.

[5] The facts of the case were extensively ventilated in the course of Kernohan’s trial and it is unnecessary for me to repeat them in detail. It is sufficient to say that when Mrs Kerr answered the door, Kernohan pushed in past her, and I am entirely satisfied that he held his gun to her head. When Mr Kerr came to his wife’s assistance he displayed an unexpected and vigorous determination to defend his wife, himself and their son who was upstairs, by lifting a heavy ornamental soup tureen from a shelf and repeatedly striking Kernohan on the head with it. Kernohan dropped the gun and picked it up again. By this time Mrs Kerr had gone into the living room in pursuit of Fleming who had passed through the hall into the living room and towards the back door, near to which was the utility room in which was the gun cabinet in which the weapons were kept. By its verdict the jury has found that despite his assertions that he was dazed by being struck blows to the head and that the gun therefore went off accidentally, Kernohan shot his way out of the dilemma in which he found himself, and one of the two shots he fired struck Mr Kerr in the chest and passed through his body, inflicting very serious injuries from which he died almost immediately. Kernohan later said this was a robbery which went wrong, but it went wrong because he went into the Kerr house carrying a loaded gun which Kernohan was

prepared to use, and did use, when he was met with more vigorous and determined resistance than he had bargained for.

[6] I have been provided with victim impact statements from Mrs Kerr and from her four sons. It is impossible to do justice to the eloquent and dignified descriptions each has given of the shattering effect of the events of that night upon each of their lives, and of the grief and sense of loss that afflicts each of them every day. It is clear that each has been deeply and permanently affected by what happened, and by the cruel loss of a much-loved and respected husband and father. Perhaps some of the words of Mrs Kerr convey most eloquently the horror of what she and Adam had to witness, and the effect upon all of her family. Mrs Kerr said:-

“The violence and venom that permeated our home that night was a palpable, terrifying thing, and it robbed us not just of Geoff, but also of any chance to let him know just how much he was loved and to give him the dignity he deserved. Seeing him lying in a pool of his own blood and being forced to leave him there was the most unimaginably cruel wrench, and is something from which Adam and I will never fully recover.

I can't begin to adequately convey just how devastating Geoff's murder has been. I cannot believe the audacity of these people who didn't know Geoff or anything about our life, and who clearly didn't care a single jot about us. How they could believe that they had the right to desecrate the sanctity of a man's home and take anything at all, even just material possessions is something that is totally beyond my comprehension.”

[7] No one who was in court when Mrs Kerr gave her evidence could fail to have been greatly impressed by the courage displayed by her, by her late husband, and their youngest son, when faced with this violent and brutal incursion into their home that night. Equally, no one could have failed to have been struck by the dignity, composure, strength of character and self-control displayed by Mrs Kerr when recounting the events of that night, although it was evident that on one or two occasions when recounting these dreadful events her self-control wavered for a moment as one might expect, particularly given the tragic coincidence of her having to give evidence on a day which coincided with her wedding anniversary.

[8] Adam echoes the sentiments of his brothers when he says

“The memory of the night of Monday 27th April will never leave me. And while the perpetrators of this act may forget

the images of how they left my father that night, I most certainly will not. My father and my family are the victims of this whole affair - one robbed of life, the others robbed of a man who meant more than the world to them - the cornerstone of our family. In honour of his memory, and so that he may finally rest in peace, Dad deserves justice for the sacrifice he made that night."

[9] I propose to deal with the accused in turn, taking Kernohan and Fleming first. I have already referred to Kernohan's role in these events and I am quite satisfied that he was the prime mover. His explanation that he had fired the gun by accident was rejected by the jury. I regard his criminal record as an aggravating feature of the case, particularly in view of his convictions for offences of violence, the most serious of which are for assault occasioning actual bodily harm, for grievous bodily harm, and for grievous bodily harm with intent. I also take into account his conviction for possession of a shotgun in suspicious circumstances as recently as 9 May 2008, and his conviction for dangerous driving causing the deaths of three people in August 1991. Another aggravating feature of the case is that when he committed this murder he was under the probation element of the custody probation order imposed on 9 May 2008. Further aggravating factors are that he used a firearm, that he armed himself in advance with that loaded gun, that he pointed the loaded gun at Mrs Kerr as she pursued him, that the getaway car was burnt out to destroy any evidence, and that the gun he used has not been recovered. Finally, the murder was committed in circumstances that exposed Mrs Kerr and her son to the horror of seeing their husband and father dying before their eyes.

[10] I have been provided with a pre-sentence report upon Kernohan. It states that he admits planning the robbery and that he was motivated by greed. I agree with the PBNI assessment that he presents a risk of serious harm to others. I have also been provided with a report on Kernohan prepared by Dr Ian Hanley, a consultant clinical psychologist. I do not consider that this adds anything to the contents of the pre-sentence report. I am satisfied that, contrary to his assertions during the trial, to the author of the pre-sentence report and to Dr Hanley, Kernohan has shown no remorse whatever throughout these events. He refused to answer questions during interview, and it was only when it was clear that the DNA evidence linked him to the scene that he constructed this lying account, as the jury has found it to be, to explain his actions. I consider that there are no mitigating factors, and that in view of the aggravating factors to which I have already referred the appropriate minimum term which he must serve before he can be considered for release is one of twenty two years imprisonment. On the count of assault of Mrs Kerr I sentence him to two years imprisonment. The sentences will be concurrent.

[11] In his defence statement Fleming claimed that he had no idea that a crime was planned when he went into the house that night, but by his plea he has accepted that he knew that Kernohan was carrying a loaded firearm and that the purpose of their going to the house was to rob Geoff Kerr, although he asserts he did not know that guns would be stolen. The prosecution accept that he should be regarded as a secondary party who knew that Kernohan had a gun, and who foresaw that the gun might be used. In his case also I am satisfied that the case is one that attracts the higher starting point because the murder was committed in the course of a robbery. There are a number of aggravating factors in his case. The first is that it was he who destroyed the car, and hence any evidence there might be, after the crime. A further aggravating factor is that he has an exceptionally bad record, in particular for crimes of dishonesty and violence. His record contains no fewer than eighteen burglaries, one robbery, six assaults on the police and one conviction for escaping from custody. Had he been convicted I consider that the minimum term in his case should have been one of eighteen years imprisonment.

[12] I have been provided with reports on Fleming from Dr Helen Harbinson, a consultant psychiatrist, and Dr Robert Rauch, a consultant clinical neuropsychologist. Dr Harbinson recounts the many hardships and problems from which he suffered as a child, and his dysfunctional and criminal lifestyle as an adult. Dr Rauch concludes that his general intellectual functioning is within the "Extremely low" range and that 99 out of 100 people in the general population have higher general intellectual ability than he does. The pre-sentence report suggests that whilst he has expressed some degree of remorse he has sought to minimize his role in the murder, and that there is a high likelihood of re-offending.

[13] However, as Mr Hopley QC pointed out on behalf of Fleming there are a number of mitigating factors. The first is that Fleming did not fire the shots. The second is that Adam Kerr's account to the police included his statement that "I got the impression [Fleming] may not have expected this to happen", and that it appeared to him that there had been a lack of preparation and that the robbery had been improvised. Whilst it is clear that the robbery had been planned, and that Fleming knew Kernohan had a loaded gun, I take into account in Fleming's favour that he may have been taken by surprise by Kernohan's willingness to fire the gun. A further mitigating factor is that he expressed remorse when he sent for the police and gave his account, although the credit to be allowed for his remorse is of less significance than otherwise might have been the case because even then Fleming did not tell the whole truth, or anything resembling the whole truth, about his involvement in the events of that night. He is entitled to a degree of credit for pleading guilty, although the amount of credit will be reduced because he did so at a very late stage. Statements from the prison authorities indicate that he has, except for one occasion, behaved well whilst in custody on remand. In his letter to the

court he expresses remorse for his part in the events of that night. Taking all of the aggravating and mitigating factors into account I consider that the minimum term which he should serve before he can be considered for release is one of sixteen years imprisonment. On the count of assault I sentence him to 18 months imprisonment. The sentences will be concurrent. So far as Fleming and Kernohan are concerned the minimum term in each case will include the time spent in custody on remand. I am obliged by virtue of the provisions of paragraph 25 of sch. 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform both Kernohan and Fleming that the Independent Barring Board will include them in the barred list concerned for adults by virtue of their convictions.

[14] The cases of Clyde, Deery and Kincaid fall into a quite different category of culpability because it is not suggested that any of them knew what Kernohan and Fleming were going to do, and their offences involved misleading the police afterwards by giving false information in the cases of Clyde and Deery, and not giving relevant information in the case of Kincaid. Those who mislead the police, or withhold information, about serious crimes are at risk of immediate prison sentences unless there are strong mitigating personal or other circumstances.

[15] Siobhan Clyde was 32 at the time and is now 34. She lived at 15 Ferndale Avenue, Glengormley, and was the owner of the car used by Kernohan and Fleming. When she was initially questioned by the police she said that her car had been stolen, that she knew nothing about the murder until she was awoken by the police the next morning, and that was why she made a statement to that effect at the time. However, when questioned she admitted that some weeks before these events she had made it known that she wished to have her car burnt out to make a false insurance claim for its value. She went on to say that she was rung by someone who asked her did she still want to do this. She agreed and brought her car to the Hilton Hotel at Templepatrick where she handed it over to the person who had contacted her. She then rang her mother who came out and collected her. She arranged with her mother that they would say that the car was stolen from her mother's home address and not from her home. She later heard on television that her car had been used in a murder, but by then the keys had been dropped back through her letter box. She steadfastly refused to name the man to whom she had given the car until the seventh interview when she named him as Kernohan. By then Kernohan was in custody.

[16] I have been provided with a pre-sentence report on Clyde. This states that although she has found a job with the DoE as a mechanic she faces disciplinary proceedings because she did not disclose that she faced the present charge. She has to all intents and purposes a clear record. In view of her good record, her having a 17 year old child for whom she is responsible, and her plea of guilty, albeit at the start of the trial, I consider that the

custodial sentence which she should otherwise receive should be suspended. I sentence her to twelve months imprisonment which will be suspended for two years.

[17] Veronica Deery was then 61 and is now 63. She was arrested on 2 May 2009. She immediately admitted to the police that her daughter Siobhan Clyde had told her in advance of her plan to have the car burnt out so that her daughter could claim the insurance money, but she claimed that she told her daughter not to be stupid. The next she heard was that on the day of the murder her daughter contacted her and asked her to pick her up at the Hilton Hotel, and when she did so she saw the car and her daughter told her that the car was going to be burnt. Her daughter told her that she was going to report the car as having been stolen from Veronica Deery's house. Veronica Deery said that she said nothing to this and drove her daughter home. The police came the next day and told her the car had been burnt and she later made a statement confirming that her daughter's car had been left at her house. By then she had heard about the murder but did not connect the car with it.

[18] I have received a pre-sentence report upon her, and a report from Dr Ian Bownes, a consultant psychiatrist. These show that she is a hard-working woman of hitherto good character who has not enjoyed good health over the years. She suffers from Cystic Fibrosis. She foolishly allowed herself to be a party to what she thought was a dishonest attempt by her daughter to obtain the insurance money for her car. She ought to have realised what the implications of this episode were and not given the police false information. In her case also I consider that whilst this offence requires her to be made subject to a custodial sentence, in view of her age, her hitherto good record, her health and her plea of guilty, even though it was not entered until the start of the trial, the sentence does not require to be put into effect immediately, and I therefore sentence her to twelve months imprisonment suspended for two years.

[19] I now turn to Laurence Desmond Kincaid. He was arrested on 13 January 2010, by which time the police had gathered a good deal of telephone traffic information which indicated that he had been involved in this matter, as well as other evidence which tended to implicate him. First of all he lived near Geoff Kerr, and he was a member of Kells Gun Club, as was Geoff Kerr. Finally, spent cases from Geoff Kerr's Glock pistol were found at 27 Flush Road where Kincaid's ex-wife lived. The telephone traffic strongly suggested that it was he who drove Fleming to Glengormley so that Fleming was able to put the keys of Siobhan Clyde's car back through her letter box after the car had been burnt.

[20] Kincaid admitted that Fleming did ring him and ask him to collect him, that he had done so and taken him to Larne. He claimed that he did not connect Fleming with the shooting because it wasn't Fleming's form.

Nevertheless, despite knowing Geoff Kerr had been murdered and that Fleming had been charged he did not tell the police what he knew about Fleming's movements that night.

[21] I have been provided with a pre-sentence report upon Kincaid. He has been unemployed since a serious accident at work in 1967 left him with permanent and significant pain from his injuries. He has a criminal record, although the last significant conviction was in 1982. I have also been provided with reports from Dr Helen Harbinson and from Dr Ian Hanley. Dr Harbinson considers him to be a person of limited intellect and poor educational attainments.

[22] Despite the suspicions put to him in interview that Kincaid was much more deeply implicated in this matter than he admits I must sentence him on the basis of what he has admitted and not what is suspected about him. It is quite clear that he deliberately suppressed relevant information which he knew would be of assistance to the police and that is a very serious matter. In his favour it has to be said that he pleaded guilty, but the amount of credit to be allowed to him must be reduced by his late plea. Taking both mitigating and aggravating factors into account I sentence him to twelve months imprisonment which I will suspend for two years in view of his poor health.