

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

ROBERT GEORGE HARVEY

HART J

[1] The defendant has pleaded guilty to the murder of Matilda (Tilly) McClean Campbell between 7 and 10 October 2006. He has been sentenced to life imprisonment and it remains for the court to fix the minimum term which he must serve before the Parole Commissioners can consider him as suitable for release.

[2] Tilly Campbell was 77 and lived in a pensioner's bungalow at 46 Barnagh Park, Donaghadee. She died as the result of a head injury which she sustained in an assault in which she also received injuries to her neck, arms and legs. In the early hours of the morning of Monday 8 September 2006 Derek Lismore, who lived at No 41 Barnagh Park, heard the sounds of two separate panes of glass breaking, followed by the sound of a metal post hitting the ground. He thought that the first sounds were heard at about 1.45 am and the second some 10 to 15 minutes later. Later that morning Mr Michael McConkey was walking past Tilly Campbell's bungalow when he smelt smoke, realised there was a fire and rang the Fire and Rescue Service, the call being recorded at 5.52 am.

[3] Firemen were immediately sent to the scene and Glen Sharratt found thick black smoke in the bungalow. When he was checking the bedrooms he found Tilly Campbell's body in one of the bedrooms. Her posture was such that she was sitting with her back against the wall with her knees drawn up towards her chest and her arms over the knees. Her head was slumped to the right and her hair appeared to be matted with blood. She was carried outside.

[4] Shortly afterwards firemen went into the adjoining bungalow at No 48 to check whether the smoke had travelled through the roof space and they

smelt washing powder. A red light was noted to be blinking on the washing machine, and a man who transpired to be the defendant was seen inside. Craig Allen, one of the firemen, had also seen a male in the defendant's bungalow and considered that he was behaving suspiciously. The defendant was apparently trying to keep out of sight of the firemen by hunkering down, although he was smoking a cigarette. He did not respond when the firemen repeatedly knocked the back door and window to gain his attention. He did however admit them, and said that he was drunk but Mr Allen did not consider that he was nor could he smell alcohol from him.

[5] Another fireman, Andrew Henderson, on two occasions rapped the front door of No 48 several times without gaining a response. When he made his way to the back he saw the hands and legs of a man through a gap in the venetian blinds, but again there was no response from that person when he knocked on the window. He was also present when the defendant admitted his colleagues and heard him say that he was drunk, but he noted that there was no smell of alcohol from the defendant.

[6] The police had been summoned to the scene and on arrival turned off the washing machine and retrieved the wet clothes and trainers that they found inside. Constable McTier noticed a red spot of blood on the light switch in a bedroom. A hatchet was retrieved from the bedroom floor and he observed fresh cuts on the defendant's knuckles.

[7] Constable McCormack formed the opinion that the washing machine had been through its full cycle.

[8] Assistant Group Commander Stanley Bentley checked the interior of the house to see whether any other bodies were to be found and he ascertained:

- (1) that the living room window had been forced, and
- (2) items had been thrown on the floor and drawers had been opened, and
- (3) a window on the outer door of the conservatory had been smashed.

[9] A thorough forensic examination of the house was carried out and the clothing and shoes recovered from the washing machine were also subjected to a meticulous forensic examination. I do not propose to set out every aspect of the forensic examination save to say that it established the following.

- (1) There was DNA evidence that Tilly Campbell's blood was found on each of the trainers removed from the washing machine.
- (2) Swabs taken from the defendant's fingernails contained elements that "could have originated from Matilda Campbell".
- (3) Full DNA profiles matching her blood were taken from the outside of the left hip, and the inside of the upper and lower right side, of a pair of navy boxer shorts attributed to the defendant.
- (4) A single fibre matching a sweatshirt taken from the defendant was found on the window frame of the rear lounge window of 46.
- (5) Fragments of glass found on the sweatshirts, trousers and jacket in the washing machine in the defendant's home matched glass from the broken windows in No 46, as did glass found on the trainers.
- (6) There was evidence that the left trainer also made marks found in the lean to and the flower bed of 46.

[10] There was therefore very strong circumstantial evidence of a forensic nature, coupled with the bizarre behaviour of the defendant in seeking to avoid the attention of the firemen and the police, which indicated that the defendant had been in Tilly Campbell's home that night and had contact with her blood. Despite the defendant's denials, the evidence that the defendant had broken into her home and murdered her, probably when she disturbed him, was very strong and by his plea the defendant has admitted doing so. It appears that he attacked her and then set fire to the premises in an attempt to cover his traces. I wish to commend the firemen, and the police officers who were first at the scene, for their alertness which undoubtedly led to the rapid entry into the defendant's house and the successful preservation of the incriminating items in the washing machine. Had it not been for this, and the painstaking and thorough forensic examination of the scene, it might have been much more difficult to convict the defendant of this heinous crime.

[11] A post mortem examination on the body of Tilly Campbell was carried out by Professor Crane, the State Pathologist for Northern Ireland. In the commentary to his report he records that she was of light build, weighing 57 kilograms (just under 9 stone) and 162 centimetres (5 feet 4 inches) in height. The cause of death was due to a head injury which she sustained in an assault and in which she also sustained injuries to her neck, arms and legs.

[12] In his commentary he described the injuries which she sustained in the following passages:

“There were multiple ragged lacerations on the right side of the scalp and forehead and which were associated with a fairly large depressed comminuted fracture of the underlying skull and surface bruising of the brain subjacent to this. There was a further area of bruising and laceration around the right eye and on the prominence of the right cheek. Just at the right corner of the mouth there was a penetrating laceration, another just below the left side of the lower lip penetrating into the mouth, and another laceration overlying the left side of the lower jaw. These injuries were also due to blunt force. Those to the scalp and forehead were caused by multiple blows from a heavy weapon, possibly an axe or similar object. Some could have been caused by blows from a hammer. The injury to the brain caused by the blows to the head was responsible for her death.

There was an area of irregular abrasion on the right side of the back of the scalp, below and behind the left ear, and contained within it was a rather ragged penetrating laceration. It is not clear how this injury was sustained but the presence of a penetrating laceration within it would suggest a fairly sharp elongated weapon.

On the left side of the neck below the lower jaw was another laceration which could have been caused by an implement with a fairly sharp edge, possibly an axe or hatchet. Also on the front of the neck were two roughly circular bruises and associated, internally, with fractures of the two bony projections on the top of the voicebox. These injuries could have been caused if the front of the neck had been forcibly grasped by a hand or hands.

There was extensive bruising of the left forearm and hand and the delicate skin on the back of the hand had been raggedly torn and two of the finger bones fractured. Similar confluent bruising was seen on the right upper arm, elbow and forearm and within these areas of bruising much of the delicate skin had been

torn. The extent of the bruising to the arms would suggest multiple blows from a blunt object, possibly sustained when the arms were raised in a defensive gesture to protect the head.

Some bruising was also seen on both legs and the superficial epithelium of the skin overlying the bruising on the right leg had torn in places. Also on the right calf was a further laceration. These injuries were also due to blunt force possibly by blows from a weapon.”

[13] It is evident from this description that the defendant subjected Tilly Campbell to an exceptionally violent and prolonged assault. Using a heavy weapon he struck repeated blows to her scalp and forehead, as well as on her neck. It may also be the case that he attempted to strangle her because of the injuries found to the top of the voicebox. In addition there were multiple blows from a blunt object to her arms which in Professor Crane’s view were “possibly sustained when they were raised in a defensive gesture to protect the head”. The results of the post-mortem, and the other findings, suggest that Tilly Campbell made her way to where she was found after she was attacked, and therefore she survived for some time, but the absence of signs of smoke inhalation in her lungs indicates that she died before the house was set on fire.

[14] I have the benefit of victim impact statements from Don Campbell, one of her sons, and from Julie Wright, her surviving daughter, as well as a psychiatric report on Julie Wright from Dr Loughrey, a consultant psychiatrist; and a victim impact report on Mr Campbell by DC Patterson, a PSNI family liaison officer, which articulates Mr Campbell’s feelings about his mother’s death. These statements and the report provide a vivid account of the shattering impact of the violent death of a loved one in heartfelt terms that are sadly all too familiar to the courts. I do not wish to add to the distress felt by Mr Campbell and Mrs Wright by recounting all of the effects upon them, and I only say that it is abundantly clear that the violent death of their mother has had a deep and significant effect upon them both in different ways. Hopefully, the conclusion of this protracted case will provide each of them with some respite from their grief.

[15] In R v. McCandless & Others [2004] NI 269 the Court of Appeal in Northern Ireland stated that henceforth judges in this jurisdiction should follow the Practice Statement of Lord Wolff CJ setting out the approach to be adopted when imposing minimum terms of imprisonment to be served before an accused can be considered for release by the Parole Commissioners under the provisions of the Life Sentences (Northern Ireland) Order 2001. The criteria prescribed by Lord Wolff set a normal starting point of 12 years, with a higher starting point of 15 to 16 years where “the offender’s culpability was

exceptionally high or the victim was in a particularly vulnerable position". Mr Mateer QC (who appears for the prosecution with Miss McColgan) submitted that this case clearly requires the higher starting point, and Mr Berry QC (who appears for the defendant with Miss Gallagher) accepted that is the case.

[16] I am satisfied the deceased was in a particularly vulnerable position at the time she was murdered. She was 77 and living on her own. In addition the killing was done for gain in the course of a burglary, and the defendant attempted to destroy the crime scene by setting fire to the bungalow. He has a substantial record for criminal offences going back for many years, and in particular has 32 convictions for burglary, and so was prepared to violate the privacy of his neighbour's home in order to carry out a burglary. The ferocity with which he attacked Tilly Campbell indicates that he showed her absolutely no mercy. His record includes a number of offences of a violent nature, two assaults on the police, one common assault, one charge of making threats to kill and one of possession of an offensive weapon. It is also significant that at the time he committed this murder in October 2006 he had a number of charges hanging over his head which have been dealt with since he was remanded in custody for this offence. Whether or not he was technically on bail at the time he committed the murder, he undoubtedly must have realised that he had further charges that were likely to be brought against him. The pre-sentence report describes his extensive criminal record, and indicates that at the time of this offence he was subject to a community service order. These are further aggravating factors.

[17] So far as the aggravating factors in this case are concerned I consider that this is a case where a minimum term substantially above the appropriate starting point of 15 to 16 years is appropriate and, before considering any mitigating factors that there may be, I consider that the minimum term should otherwise be one of 25 years' imprisonment.

[18] I have been provided with a pre-sentence report upon the defendant. It concludes that the defendant poses a risk of serious harm to the public, an inevitable conclusion in view of the defendant's record, his long history of the abuse of drugs and alcohol, and the exceptional brutality of this crime. It recounts the defendant's explanation that he thinks he went next door to ask her for painkillers and that he must have lost his temper when she shouted at him and then hit her with a metal ashtray. That explanation does not explain the broken window and the evidence which suggests he entered through that window.

[19] I have not been provided with any medical or other reports upon the defendant, and Mr Berry stated that the only report he wished to rely upon is the pre-sentence report. Realistically Mr Berry accepted that the only point he could advance in the defendant's favour is that he pleaded guilty and is entitled to credit for that.

[20] I consider that the only mitigating factor in this case is the defendant's plea of guilty. However this was not a plea entered at the first opportunity. On 23 January 2009 the court was informed that the defendant wished to speak to his family before being re-arraigned, and that there would therefore be no requirement for the Crown witnesses to attend for the trial which was scheduled at that time for 2 February 2009. The trial was accordingly taken out of the list and the matter put back to 30 January. The defendant's re-arraignment was again postponed at the request of the defence and the matter was relisted for mention on a number of occasions at the defence request. In the event the defendant did not ask to be re-arraigned and the trial was rescheduled for 2 March 2009. On that day the first stage of the jury selection process was held at Downpatrick Crown Court, and the matter was then adjourned to Newtownards Court for the trial to commence the next day with the final selection of the jury that morning. That process was completed, but in the course of the morning Miss McDermott QC (who then appeared for the defendant with Mr Kieran Mallon) informed the court that the defendant had dismissed his solicitor and counsel. The trial had therefore to be adjourned to enable the defendant to seek new counsel and solicitor.

[21] The jury for the resumed trial was selected on Thursday 18 June to enable the trial to commence with the final selection of the jury on Monday 22 June, and it was only on the morning of 22 June that the defendant asked to be re-arraigned and pleaded guilty.

[22] He is therefore entitled to credit for his plea of guilty. First of all because he has by his plea admitted his guilt, and secondly by doing so has avoided the necessity for a substantial criminal trial, involving as a trial does the need for many witnesses to attend and court time. It is well established in this jurisdiction that a defendant, whilst entitled to some credit for a plea of guilty, will have that credit reduced if the plea is not entered at the earliest appropriate stage. That includes making a full and clean breast of the offence when questioned by the police. The victim impact reports and statements in this case illustrate the strain placed upon the relatives of victims by long-drawn out proceedings, and the need to avoid such effects is one of the principal reasons why the maximum credit for a plea of guilty is reserved for those who admit their guilt at the earliest possible stage and enter pleas of guilty upon arraignment. An early plea of guilty has the important benefit that the victims of the crime are thereby relieved to some degree at least of the inevitable stresses and burdens created by waiting, often for a long time, for the trial to take place, and I have already referred to the protracted length of these proceedings.

[23] The defendant in this case denied his guilt when questioned and entered his plea at a late stage, and so is not entitled to the maximum credit that he would otherwise receive for his plea of guilty. In all the circumstances I

consider that I should reduce the minimum term of 25 years to one of 23 years in order to reflect his plea of guilty.

[24] I therefore fix the minimum term which the defendant must serve before being eligible for consideration for release by the Parole Commissioners at 23 years' imprisonment, and this will include the time spent on remand on this charge. Whether he will be released after that time will be for the Parole Commissioners to decide.