

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **15/11/04**

THE QUEEN

-v-

STEPHEN PETER SCOTT

DECISION ON TARIFF

Ruling by Kerr LCJ

[1] Having been found guilty of murder by unanimous verdict of the jury, on 5 April 2000, at Ballymena Crown Court, the prisoner was sentenced to life imprisonment for the murder of his 17-year-old pregnant girlfriend, Sylvia Fleming, on 3 April 1998. At the time of the murder the prisoner was aged 27. He is now 32. I was the trial judge. An application for leave to appeal against conviction was dismissed on 21 August 2000. The prisoner has been in custody since 1 June 1998.

[2] On 11 November 2004 I sat to hear oral submissions on the tariff to be set under Article 11 of the Life Sentences (NI) Order 2001. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will assess suitability for release on the basis of risk.

Factual background

[3] The following summary of the circumstances of the killing is taken from the judgment of the Court of Appeal, dismissing the offender's application for leave to appeal against conviction: -

“Sylvia Fleming, then 17 years of age, was seen alive by Katrina McMullan at about 11.15pm on Friday 3 April 1998. She left the house of Miss McMullan at 68 Meelmore Drive, Omagh, Co

Tyrone at that time. She was reported to the police as missing by her sister, Kathleen Fleming, on the afternoon of Sunday 5 April 1998. On Sunday 31 May 1998 the police carried out a search of a building site known as Glenside, Circular Road, Omagh as a result of information supplied by Paul John Rigby, a co-accused of the applicant. The dismembered body of Sylvia Fleming was found buried under the floorboards of a room or rooms in a house under construction on the site. The details of the dismemberment were described by the State Pathologist, Professor Crane.¹

He found that the most probable cause of death was some form of mechanical asphyxia causing interference with breathing. This could have been effected by obstruction of the mouth and nose, such as in suffocation or by compression of the neck, either manually or using a ligature, ie strangulation.

No signs of strangulation were seen but it could not be ruled out. The possibility of poisoning also needed to be considered and in particular, the administration of a drug or drugs by injection. He concluded that there seemed little doubt that death

¹ The cause of death was unascertained due to dismemberment and decomposition. Dr Crane examined 8 distinct remains: a) the head; b) right upper limb; c) left upper limb; d) right thigh; e) left thigh; f) right lower leg (disarticulated below the knee); g) left lower leg and h) torso. The torso was wrapped in fabric and secured with adhesive tape. Dental records established the deceased's identity. The post mortem report concluded: "This was the dismembered and badly decomposed body of a young woman of quite good build...At the time of her death she was about two to three months pregnant...The dismemberment of the body would appear to have occurred after death...From an examination of the separated body parts it was apparent that this had been done by using a sharp-bladed instrument, such as a knife, to incise the skin and sort tissues and the bones had then been sawn across near the joints. It had been executed in a precise and methodical manner...there were no serious or obvious ante mortem injuries detected which could have caused her death, with the skull and chest cage intact and the internal organs apparently normal. Detailed examination of the neck area however was precluded by the effects of the dismemberment and decomposition...in the absence of any obvious serious injuries other possible mechanisms of death, which was clearly unnatural, need to be considered. The most probably would seem to have been some form of mechanical asphyxia causing interference with breathing. This could have been effected by obstruction of the mouth and nose, such as in suffocation or by compression of the neck, either manually or using a ligature (strangulation)... The possibility of poisoning also needs to be considered and in particular the administration of a drug or drugs by injection. No needle marks could be identified on the remains...an analysis carried out by the Forensic Science Agency revealed some of the mild hypnotic temazepam in the liver but this is unlikely to have played a part in her death. Other drugs, such as insulin, could have been administered and as a result of their rapid breakdown in the body tissues would not be detectable at post mortem examination. Whilst this possibility cannot be excluded it seems an unlikely mechanism of death...the condition of the remains would be consistent with her death having occurred at about the time of her initial disappearance in early April."

was due to some unnatural event, most likely mechanical asphyxia. Then after death the body had been dismembered and the body parts secreted. The condition of the remains would have been consistent with death having occurred at about the time of her initial disappearance. She was pregnant at the time of her death.

On a number of occasions during the month of April 1998 persons spoke to the applicant about Sylvia Fleming. He denied any knowledge of where she was. He made a witness statement to D/C Coyle on 20 April 1998. In it he stated that he had gone out with her for about six weeks towards the end of January, then they split up. He last saw her in late March. She told him that she was pregnant. She telephoned him on the evening of Friday 3 April. It was arranged that she would call at his flat on Saturday but she did not. He was informed by Denise G, a co-accused, that she had called at his flat after 11pm on Friday but he was not at home. He had had no contact with her since the telephone call on the Friday. During the course of making the written statement he informed D/C Coyle that a man whom he named was the love of her life and had a sexual relationship with her.

On 30 May 1998, after her body had been found, the applicant was arrested for the alleged murder of Sylvia Fleming, was cautioned and taken to Omagh RUC Station where he was interviewed in the presence of his solicitor on a number of occasions. All the interviews were tape-recorded and transcripts were prepared.

In the course of the first interview he told the police that the last time he actually saw her was on the morning of her disappearance. She came round to his flat about 7am, stayed for about an hour and they ended up having sex. He did not see her after that but Denise (G) told him that she had called round after 11pm. Then he told the police that she had called round the next morning (Saturday) around 7am and they had sex. She then left and on the Sunday he learnt that she was

missing, he panicked and when the police came and asked him if he had seen her, he said "No".

In the course of the second interview he denied involvement in her murder. In the course of the third interview he said that Sylvia came to his flat on the Friday evening, and that they had sexual intercourse; for a joke he proceeded to tie her up. She was blindfolded. He had a bottle of insulin and injected it into her. He called Stephen (McGeown), a co-accused, and Denise (G) in from the room next door in his flat. The cord that he had tied round Sylvia's hands was looped from one of her hands round her throat to the other hand. It was looped round her neck. The hands were tied to the headboard [of the bed]. Her legs were also tied to the foot of the bed. Stephen proceeded to pull on one of the cords and it tightened and at first it was a bit of a joke but the joke got out of hand, Stephen pulled it and then said he didn't think she was breathing. She was dead. He and Stephen got her body up to the attic and rolled her in a blanket. Then they went swimming in the local swimming pool.

When he returned to the flat, he said that it was put to him [by the others] that they would have to dispose of the body. Stephen suggested that they cut her up and Denise went to a shop and bought some black bags. The applicant proceed to cut her up in the bath in the flat and put her into plastic bags and then put her in two boxes up in the attic. The body was cut up with a hacksaw. Stephen held her while he cut and sawed. Later they buried her. Paul Rigby, a co-accused, helped to bury her. He described where she was buried. This was where her body was found.

Later in the interview he described how he gave her sleeping pills. He repeated in detail how he tied her up, how she was blindfolded with tape and was taped over the eyes and over the mouth by him and how the tape actually went over her nose. He stated that he injected her in the leg with insulin using a syringe. He repeated the allegation that Stephen pulled the cord. He stated that he

didn't remember if he had said on the Friday evening to Stephen and to Denise before Sylvia came to the flat that he was going to kill her. He didn't remember if he had said it as a joke or said something in passing and they picked it up like that. He might have made a comment like that.

He said that he had originally thought that he was the father of Sylvia's child and then when the police put to him at interview that there was an element of doubt, he said that he was doubtful. He described how all her clothes and other things were subsequently burnt. He repeated in considerable detail how they had dismembered and disposed of the body.

He was questioned about why he had injected her with insulin. He said that it was just to see her reaction. When asked by the police how he explained her death to Rigby he said that he told him that he had injected her with insulin but added that Stephen (McGeown) caused her death.

During the course of the next interview he said that at the time of Sylvia's death Rigby was in England. He told Rigby on the telephone that she had gone missing. Rigby came over to Northern Ireland. They met. He told Rigby that she was dead, that they had cut her up but had not got rid of everything. Later he said that he told Rigby that Stephen (McGeown) had panicked because he had thought he had killed her so that he told Stephen it was maybe the insulin (which he had injected) that caused her death. They had hidden parts of the body before Rigby came over to Northern Ireland. Rigby helped to hide the remainder of the body.

He described again the events of the night of Friday 3 April and early morning of 4 April. He said that he had tied her up on two, three or four previous occasions. He said that she enjoyed it. On this occasion two ropes were used, one of which was nylon. She did not object to him tying the ropes round her neck. He used one dosage of insulin on her. She didn't agree or disagree to it. She was tied up for more than an hour before he

injected her. Then he said it was half an hour. Stephen and Denise joined them. He left to go to the toilet.

He said that he may have been away 15 minutes; when he came back Stephen said she was dead; he checked for her heartbeat, did a few chest compressions, then removed the tape. He was panicking. No one phoned for a doctor or an ambulance. Stephen was the one playing around with the cord around her neck. He never went near the cord. He described again taking her body to the attic and then going for a swim with Stephen, coming back to the flat, dismembering the body and concealing the corpse.

At one stage of the interviews when he alleged that Stephen pulled on the rope or cord he agreed that he did not untie her or remove the tape after Stephen did this. During the course of the third interview he stated that he was present when she died. In the fourth interview he said that he was in the toilet when she died.

The evidence established that he was a person who had first-aid training as a fire fighter. The attempts which he claimed that he made to resuscitate her were inconsistent with this training.

Dr Ian West, an expert in pathology, gave evidence that the application of bindings in the manner described by the applicant might accompany sado-sexual activity. Even excluding the ligature compression of the neck described by the applicant he considered that death would be the anticipated sequence of the actions described and undertaken by the applicant in his interviews - the obstruction of the mouth, the administration of insulin and, most importantly, leaving her unattended (as he claimed). He considered these actions to be, at the minimum, acts of extreme recklessness. Later he said that to bind somebody in this manner, to administer insulin and then to leave her meant that one could foresee that such conduct would lead to serious harm or to her death."

[4] Later, in refusing leave, the Court of Appeal made the following observations:

“Apart from his actions the applicant attempted to exculpate himself as to the death and to blame a co-accused, lied consistently to the police and others before the finding of the dismembered body of the deceased and, during the course of interviews, gave an account of tying up the deceased for a joke, was unable to explain satisfactorily why he did not untape the mouth of the deceased until she was dead, was unable to explain why he injected her with insulin which could have induced a coma and could have been undetected, said that he could not remember whether he had told his co-accused, Stephen McGeown and Denise G that he intended to kill her, and had a motive for killing her in that he was aware that she was pregnant and had found out before she came to the flat that someone other than he was or might well be the father of the child in her womb.

Moreover his story to the police changed significantly in interviews. At one time he stated that he was present in the room when she died; at another he said that he was in the toilet. It was open to the jury to find that he was callous and cruel in his treatment of the deceased before and after her death.

Therefore, we are in no doubt that the jury were entitled to infer that he intended to cause at least grievous bodily harm to the deceased.

We are also satisfied that the prosecution conducted the case on alternative bases, namely that he intended to kill or cause grievous bodily harm and that the learned trial judge was correct in leaving the case to the jury on these alternative bases.”

[5] The prisoner did not give evidence at trial.

[6] In the charge to the jury, the prosecution case was summarised in this way:

“What then are the circumstances that the prosecution rely on? Firstly, the deceased died in the accused’s bedroom. You may feel that there is no doubt whatever about that. Secondly, the accused (on his own admission) tied her up in that bedroom and left her tied up (again on his own admission) for something like an hour. Thirdly, and it’s a matter for you to decide whether this is established by the evidence, he encircled her neck with a rope without (the prosecution say and it’s a matter for you to decide whether they’re right) without any coherently expressed reason for doing it. Fourthly, he claimed to have interrupted his sexual session with the accused to go to the lavatory and then (as I’ve reminded you a moment ago) he didn’t release her, he didn’t remove the tapes from her face or allow her hands to be free of the rope, and then he says that he impliedly invited or, at least, permitted the other young people to go into the room. Fifthly, he left the deceased trussed up while (according to him) he was engaging in a conversation with Miss G in the bedroom, and while McGeown was at the head of the bed pulling on the rope. And you may consider whether that is a likely scenario, whether that’s a circumstance that you accept as being reasonably possible ... the Crown also say that it is relevant as an important piece of circumstantial evidence, that on the accused’s account he made but the most ineffectual attempt to resuscitate this girl and, of course, the riposte to that by the defence is that he was seized by an understandable and entirely natural panic, and that his reactions fall to be evaluated against the panic that must have seized all three people in the flat when they realised that she’d died.”

Antecedents

[7] The prisoner had no previous convictions.

[8] Written representations have been submitted by the deceased's father and two sisters. Mr Fleming states that his emotional trauma on learning of his daughter's death was indescribable. He refers to the pain of hoping that his daughter would be found and then discovering that she had been mutilated and murdered. Grieving was made more difficult because of the media interest in the murder. He does not think that he will ever come to terms with the awful suffering to which his daughter must have been subjected. He has experienced emotions including fear, anger and pain. Christmas and other special occasions are particularly difficult. He is fearful that the prisoner will be released and finds it difficult to cope with that thought.

[9] The deceased's sister, Josephine McGovern, refers both to the fact that her sister was pregnant when she was killed and to the mutilation of her body. She is of the view that the prisoner is unrepentant. She feels physically and mentally wrecked by the thought of her sister's suffering at the hands of someone she trusted. Mrs McGovern does not feel that she will ever be able to stop thinking of her sister's death and says that she misses her each day.

[10] Kathleen Fleming, another sister, also refers to the fact of the deceased's pregnancy and the prisoner's mutilation of her body, together with the fact that he buried her close to the family home. She says that the three sisters were particularly close, that she will always miss the deceased and thinks of her each day. Miss Fleming visits the deceased's grave almost daily. She has been deprived of a sister and her own children have been deprived of an aunt and a niece or nephew – the deceased's unborn child.

[11] The prisoner did not submit a written representation.

Practice Statement

[12] In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose of this case are as follows: -

"The normal starting point of 12 years

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.

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.

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.

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.

Very serious cases

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."

The submissions made on the offender's behalf

[13] Mr Harvey QC, who appeared on Scott's behalf, acknowledged that there were aspects of the case that were bound to attract public opprobrium but he submitted that this should not affect the choice of starting point in fixing the minimum term. He suggested that this case was clearly a lower starting point case and that it had none of the features outlined in paragraph 12 of the *Practice Statement*. He accepted that there were some aspects of the case that might be regarded as aggravating features but these could not effect the removal of the case from its proper categorisation as a lower starting point case to a higher starting point category.

[14] It was significant, Mr Harvey said, that the prosecution had presented this case on an alternative basis: either the offender intended to kill or that his intention was that the victim should sustain grievous bodily harm only. He submitted that the case should be treated on the basis that the intention was merely to cause grievous bodily harm.

[15] Mr Harvey accepted that the concealment of the body after death was an aggravating feature of the offence but he pointed out that the determinate sentence passed by the court for the offence of perverting the course of justice by dismembering and disposing of the body was five years. He suggested, therefore, that the increase in the normal starting point should not be greater than would be appropriate to reflect the court's disposal on that charge and, in this context, he drew attention to the circumstance that had he not been serving a concurrent life sentence, the offender would have been entitled to remission of half that term.

Conclusions

[16] I do not accept the submission that this is a lower starting point case. I am satisfied that Miss Fleming was very much under the influence of Scott. She submitted to his tying her to the bed and being blindfolded. She was injected by Scott with insulin and he obviously felt able to allow the other young people to enter the bedroom where she lay tied up and blindfolded. I consider that she was extremely vulnerable to his manipulative and dominating personality. This is not, perhaps, the type of vulnerability that was contemplated in paragraph 12 (f) of the *Practice Statement* but it is to be remembered that this was instanced merely as an example of particular vulnerability on the part of the victim. In *Attorney General's reference (No 6 of 2004)* [2004] NICA 33, the Court of Appeal held that a young woman living alone who was no match in physical strength to the offender and who was unable to defend herself against the ferocity of his attack on her was vulnerable for the purposes of paragraph 12. Likewise in the present case the nature of the relationship between Scott and Miss Fleming was such as to

render her extremely vulnerable in the sense that she submitted to the circumstances that led directly to her death, when a person of more robust disposition might have resisted them.

[17] Quite apart from this consideration I am satisfied that the offender subjected Miss Fleming to sexual maltreatment, humiliation and degradation before she was killed. Not only did he tie her to the bed, he injected her and then exposed her to the other young people in the flat. One cannot be sure when the last mentioned event occurred but, whatever account of this squalid affair is correct, one cannot escape the conclusion that this young woman was humiliated and degraded by Scott before and in the manner of her killing.

[18] I have given consideration to whether this should be treated as a case for the application of paragraph 18 of the *Practice Statement*. More than one of the features outlined in paragraph 12 are present but I do not consider that this is such a case.

[19] There must be a substantial increase in the starting point, however, to take account of the behaviour of the offender after the murder. I do not accept Mr Harvey's argument that such an enhancement must be directly related to the penalty imposed on the charge of perverting the course of justice. The sentencing exercise in each instance is for a different purpose. A sentence on a discrete charge may not precisely mirror the correct disposal on a minimum term hearing. I do accept, however, that the penalty actually imposed is relevant to the level of increase to be imposed and I have taken that into account in deciding the minimum term in the present case.

[20] Having given careful consideration to all these matters and to all that was urged upon me by counsel for the offender, I have concluded that the appropriate minimum period in the present case is 19 years. This will include the time spent by the offender in custody on remand.