

**THE QUEEN v IGNATIUS PATRICK GRIBBEN**

**DECISION ON TARIFF**

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**Before Kerr LCJ and Coghlin J**

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**KERR LCJ**

*Introduction*

1. On 30 January 1998 Coghlin J, sitting at Downpatrick Crown Court, sentenced the offender, Ignatius Patrick Gribben, to life imprisonment for the murder of a 44-year-old man, Dominic Murphy on 13 November 1996. The offender appealed his conviction but the Court of Appeal dismissed his appeal on 29 January 1999. The prisoner has been in custody since 16 November 1996.

2. On 17 May 2004 Coghlin J and 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. Carswell LCJ delivering the judgment of the Court of Appeal summarised the relevant facts as follows:

“On the evening of Wednesday 13 November 1996 the appellant Ignatius Patrick Gribben shot dead Dominic Murphy, who had previously been having an affair with his wife, as he sat in the driving seat of his car outside a house at 77 Comber Road, Drumaness, near Ballynahinch, Co Down, in a townland known as Drumnaconagher.

He claimed that the shooting was an accident, but was charged with the murder of Mr Murphy.

The appellant aged 37 years at the time of his conviction, had lived since 1981 with Angela Cheevers by whom he had two children at the time of the incident in which Mr Murphy was killed. The partners come from different religious backgrounds and Angela's family strongly disapproved of her association with the appellant. Her brothers were particularly hostile to him and there was a history of acrimony between them and the appellant. The relationship between the appellant and Angela was reasonably harmonious until the appellant commenced in or about 1991 to suspect that she had been having an affair with Dominic Murphy, whom the appellant had known very well for many years. She constantly denied the existence of any relationship between Murphy and herself, but the appellant's suspicions were not dispelled and the atmosphere in the household deteriorated. Some weeks before the shooting incident, when the appellant returned to the subject with her. Angela admitted that she had had sexual intercourse with Murphy on one occasion, which affected the appellant badly and caused him to commence to drink heavily. When the appellant confronted her again about it a few days later she told him that it had occurred on some four or five occasions. On further questioning some ten days later she admitted that the relationship had gone on over the space of a year. Finally on Monday 11 November 1996, in response to further questioning, Angela told the appellant that the affair had lasted for two years, between May or June 1991 and early 1993. This caused the appellant to doubt the paternity of the child Hannah, born in February 1992, which preyed heavily on his mind.

The next day Tuesday 12 November the appellant drank heavily during the evening after finishing work. When he returned home his sister Miss Caroline Walsh was there. The appellant told her of his distress over finding out about the affair between Angela and Murphy, but told her that it had started in June 1992 and lasted for a year. The

Crown suggested that this was really what Angela had told him and that he subsequently backdated it in his account to June 1991 in order to give a better foundation for his attack on the deceased. Angela said in her evidence, however that the affair had commenced in May 1991 and gone on until June 1993, and that she had so admitted to the appellant on Monday 11 November 1996. In view of the appellant's intoxicated condition on the evening of Tuesday 12 November, it seems at least possible that he was confused about the dates and that the inference propounded by the Crown should not be drawn.

The next morning the appellant rose rather later than usual, filled his digger with diesel fuel, then drove it into Castlewellan. On the way he made a telephone call to Dominic Murphy, timed at 8.54 am, but Murphy was not at home. He said in evidence that he intended to see him about the affair with Angela, to ascertain how long it had lasted and whether it was still going on. When he reached Castlewellan, instead of proceeding to his work he parked the digger and commenced drinking. About lunchtime he took a taxi to Drumnaconagher, where his family had lived when he was a child, and where he still retained a shed in which he did work from time to time. It is a rather isolated place at the end of a laneway some three miles from Ballynahinch. There was a dwelling house there near to the appellant's shed, occupied by Thomas McVeigh, a man of 84 years who lived on his own. The appellant knew him well and said in evidence that he visited the property constantly and that Murphy was also there frequently. McVeigh was not at home, and the appellant according to his evidence wandered about for a while in the fields. It was suggested on behalf of the Crown that he made this visit in order to scout out the lie of the land for a later attack on Murphy, but the appellant knew Drumnaconagher very well indeed and it is difficult to draw such an inference from that visit. He fetched up at the house of a family called Brennan, where he had a cup of soup. Mr Brennan took him by car to another public house, McMullan's, where he had a good deal more to

drink. He then went to his sister Caroline Walsh's house in Ballynahinch, where he made another telephone call at 4.52 pm to Dominic Murphy's house, but again he was not at home. This time, however, Murphy rang back, the call being timed at 5.01 pm, and the appellant asked him to meet him at Drumnaconagher. He did so on the pretext that he wanted to discuss a job and that there would be a few pounds in it for Murphy. In fact he proposed to confront him over the affair with Angela. He said in evidence that he expected that matters would come to a fight involving some punches although he told the police in interview that his object was to find out what was going on and have it stopped since he and Angela were trying to "patch the thing up again". The appellant had something to eat in his sister's house, then took her car (somewhat against her will) and drove to Drumnaconagher. As he drove through Ballynahinch he was seen by James and Michael Savage, who were travelling in a car along Windmill Lane. The time at which they saw him became a contested issue in the trial.

The appellant stated in his evidence that he formed the impression that a car was following him out of Ballynahinch and he thought that it might be one of Angela's brothers out to get him. In interview he said at first only that he thought that someone was following him and did not put forward the suggestion that it might be one of Angela's brothers until later. The Crown suggested that this indicated that he invented this later. He turned into Comber Road and drew up in the yard at the front of Tom McVeigh's house at Drumnaconagher. He obtained admittance to the house and asked McVeigh to give him a gun for what the latter described as "a wheen of minutes", as somebody had followed him down the street. He knew that McVeigh kept two shotguns in the house. McVeigh said in evidence that he kept two loaded shotguns in his bedroom, because he had previously had an attempted robbery. He agreed that the double-barrelled gun at least could have been cocked. The appellant picked up one of the shotguns, a double-barrelled gun, from the bedroom and walked into the hall. While he was

there he saw the lights of a car approaching up the lane. According to McVeigh he said "Here is my man coming now" or "This is the car coming now" and walked out of the front door carrying the shotgun. The appellant's version of his remark was that he said "There is a car coming up", which would carry a less adverse implication. The appellant said in interview that he did not check the gun to see if it was loaded before taking it out with him. McVeigh said that a short time after this, no more than three minutes, he heard the sound of a shot, then the appellant came back into the house and left the shotgun down in the bedroom where he had got it. He was very distressed and crying and told McVeigh that he had shot a man. McVeigh expressed horror and the appellant said only, "What would you do if there was another man after your woman?" In cross-examination the appellant did not deny that he had said this, but only stated that he did not know why he had said it. He did not give any explanation of what had happened or refer in any way to the discharge of the gun having been an accident. McVeigh wanted to get the police, but the appellant said that he wanted to get away and asked him not to ring the police for a good while. McVeigh did in due course telephone the police after the appellant had left but did not do so until 5.57 pm. He said in evidence that he went out after the appellant's departure and found Murphy slumped in the driving seat of the car, apparently dead. After telephoning the police he broke the gun and removed the cartridges. He threw the spent cartridge into the fire and put the other in a drawer. The police arrived at the house at 6.15 pm.

McVeigh did not witness the shooting and the only direct testimony relating to it came from the appellant himself. He accepted that by then he realised that the driver of the car was Murphy and not anyone pursuing him, but said that he took the shotgun anyway, with the object of scaring him into telling the truth about his affair. He opened the driver's door, carrying the gun in his left hand, and spoke to Murphy, who was sitting in the driver's seat with the seat belt fastened. He asked

him, in his own words "What's this crack I heard that you were fucking about with my woman?" The reply, according to the appellant, was "I wasn't the only one". The appellant stated that he then commenced punching Murphy with his right hand pulling his hair and kicking at him. He said that the next thing that happened was that he just heard the gun bang. He denied that he had pointed it at Murphy or had any intention of discharging it. He was not aware of having his finger on the trigger. In his first account given at interview the appellant did not mention any struggle or physical assault by him on Murphy. The Crown suggested that this was a significant omission and again pointed to a later invention. As against that, his first account omitted matters which undoubtedly did occur, such as his call with the McAllisters, of which the police had to remind him, so that the omission of other matters may not show anything more than that the appellant is a poor historian.

The shotgun was examined at the Forensic Science Agency and evidence was given about it by Mr Brian Thompson. He stated that it was of Belgian manufacture, quite old and in very poor condition. It was of the external hammer type, which means that each hammer has to be pulled back by hand in order to cock it. It would be readily visible to anyone who picked up the gun that the hammers were cocked. Once the hammers were drawn back the gun would be discharged if the triggers were pulled there being no safety catch on it. The right-hand barrel is discharged by pulling the front of the two triggers and the left-hand barrel is operated by the rear trigger. He could tell from the fouling that the right-hand barrel was the one which had been recently discharged. When he examined it Mr Thompson found that the left-hand barrel could not be discharged, because of the weakness of the hammer spring and the insufficiency of the protrusion of the firing pin. The right-hand barrel functioned effectively, with a pressure of three and three-quarter pounds, which in his opinion was acceptable and round about normal for a shotgun, although he described the travel of the trigger as a "fairly small

movement", somewhere in the region of about less than one eighth of an inch. The gun was also examined by Mr John Logan, who found heavy smearing of Murphy's blood on the butt plate and stock. The Crown suggested that this indicated that the appellant reversed the weapon and struck the deceased with it after he had shot him, but Mr Logan accepted that the handling of the weapon after the shooting could redistribute the blood on it.

A post mortem examination was carried out the following day by Professor Jack Crane, the State Pathologist for Northern Ireland. He found that the cause of death was shotgun wounds of the chest. The entrance wound was on the outer side of the right arm and the shot had gone to the left and slightly downwards into the right side of the chest. He could not tell how the arm was positioned at the time of the shot but accepted that it could have been raised in a defensive posture. There was a strong possibility that the barrel had been in direct contact with the clothing of the deceased when the shot was discharged. The deceased had bruising on the scalp, which could have been caused by a blow before death or by his hair being pulled.

At some stage the appellant made a telephone call from McVeigh's house to a Patrick Brannigan in Drogheda in the Republic of Ireland, arranging to meet him at a hotel at the border. The call was timed at 5.30 pm and lasted for two minutes and 56 seconds. The evidence of the appellant and McVeigh was that he made it after the shooting. The Crown suggested that he in fact made the call before the shooting, with the object of arranging a refuge, and that this showed a degree of premeditation about the shooting incident. Because the Crown placed this emphasis on the timing of the movements of the appellant and Mr Murphy, we must examine the relevant evidence. The one fixed point is that Dominic Murphy returned the appellant's call from his house at 5.01 pm. He then had a quick meal and left to meet the appellant. His wife put the time of his departure

at 5.50 pm, but in the light of other evidence that must be an incorrect estimate.

Brian Patterson the owner of a filling station on the Dromore Road, deposed that Murphy came in to get petrol some ten or fifteen minutes after his (Patterson's) wife returned from work, which she regularly did between 5.15 and 5.30 pm. Miss Lynn Brown, who served in the filling station, said that the time of Murphy's arrival was 5.30 pm or that it could be later and that it was five or ten minutes after Mr Patterson left her in charge while he went to speak to his wife on her return from her work. These times if correct, would tend to support the Crown case on the point, but one has to be rather cautious about accepting timings of this nature as being at all precise.

James Savage an accountant, stated that he was travelling by car into Ballynahinch to take the franked mail into the post office in time for the collection, which was due to be made at 5.30 pm. On the way in Windmill Lane he met the appellant, driving his car in the opposite direction and they exchanged a brief word through the car windows. Mr Savage first put the time at about 5.25, would not agree that it was early as 5.15, and finally averred that it would have been between 5.20 and 5.25 pm. Michael Savage, his front seat passenger put the time about 5.20, then agreed with the timing given in his police statement as between 5.15 and 5.20 pm.

The point made on behalf of the Crown was that if the appellant was in Windmill Lane at 5.20 pm there would not have been enough time for him to get to McVeigh's house, obtain the shotgun, wait for the deceased, have a dispute with him, shoot him and return to the house in time to telephone to Brannigan at 5.30. Similarly if Murphy was in Patterson's garage at 5.25 or 5.30 pm the shooting would hardly have taken place before 5.30. Counsel argued from this that the telephone call to Brannigan was made before the shooting, with the object of arranging a getaway. Certainly the call was made before the shooting, it would tend quite strongly to indicate that the incident had been pre-planned, as the Crown suggest. It seems to us,



however, that there is a good deal of doubt about the accuracy of the times, apart from the two telephone calls and that the judge was right to warn the jury of the difficulty of relying upon estimates of time given by witnesses who had no particular reason to note the exact time of events.

After the shooting the appellant drove to the McAllisters' house 17 Comber Road, about a mile away from McVeigh's house. Mrs McAllister timed his arrival there at about 5.45 to 6 pm, then fixed her estimate more precisely at 5.50. He was not expected, because her husband was in bed at the time. She smelt a strong burning smell from the appellant's clothes. She thought that he was relaxed, as he sat down and made casual conversation with her. She did agree, however, that his behaviour appeared unusual for him and he had taken drink. Her husband got out of bed and drove the appellant off in his own car, leaving some five or ten minutes after the appellant's arrival. He returned to the house some time after 8 pm.

Mr McAllister drove the appellant to the border, which he crossed at 6.35 pm. The appellant met Patrick Brannigan at the Carrickdale Hotel, a rendezvous which he had arranged with Brannigan. Brannigan took the appellant to his house outside Drogheda, where he stayed overnight. Next day the appellant telephoned his solicitor and arranged to present himself to the police in Northern Ireland to be interviewed. He had changed his clothes, however, before returning to Northern Ireland and although he promised to arrange for the clothes which he had worn at the time of the shooting to be made available for forensic testing they were never produced."

4. A report from Dr RJ Davidson (consultant clinical psychologist) concluded that the prisoner was of average IQ. He was said to have a history of heavy drinking and to be moderately alcohol dependent. The prisoner told Dr Davidson that he drank copiously in the three weeks prior to the incident and drank the equivalent of almost one ten glass bottle of spirits on the day of

the offence. Such alcohol consumption would have rendered him intoxicated and effected his behaviour and judgment.

5. A report from Dr Alec Lyons (consultant psychiatrist) indicated that the prisoner did not suffer from mental illness but concluded:

“I consider that what one could say with some conviction is that this man was under very considerable provocation, in that he discovered that his friend, the deceased, had been having a longstanding affair with his partner, Angela. Angela was really the only woman that the accused ever had a relationship with. They met as teenagers and had come through many difficulties. One can immediately see the extreme provocation, and this, together with his jealousy and being highly intoxicated, would explain the loss of control in this situation.”

6. The defence was based on lack of intent - effectively that the discharge had been accidental, and provocation, chiefly arising out of Mr Murphy's alleged response to the prisoner after he had approached the car.

#### *Antecedents*

7. The prisoner has a lengthy record largely made up of minor road traffic and dishonesty offences. It is entirely based in the petty sessions, except for one conviction for handling which was dealt with by Ards Crown Court in March 1987 and for which he received a 3-month sentence suspended for 2 years. Two previous convictions are for violent offences: the prisoner was fined £15 for common assault by Downpatrick Magistrates' Court in September 1981 and fined £100 for the same offence by Down Magistrates' Court in July 1986.

#### *Judge's sentencing remarks*

8. The judge simply sentenced the prisoner to life imprisonment but did not make any further observations or recommend a minimum term.

#### *The NIO papers*

9. The victim's two sons submitted written representations in which they say that when their father was killed they felt that their lives had been ruined. They have had trouble getting over the death. Mr Murphy's widow, Margaret Murphy, says that her life has been a "nightmare" since the murder. Her children have not coped well and are filled with anger and hatred. Her

daughter suffered from a stress disorder which resulted in her hair falling out. One of her sons refused to attend school and had to be tutored at home. Mrs Murphy had financial difficulties and had to go to work at night and in turn an older child took on extra childcare responsibilities. She says that she has had to be both mother and father to her children. Mrs Murphy expressed doubts as to whether matters will ease as she and the children continue to miss the deceased's support. She concludes: "The only way I can explain how me and my five children feel is we are lost and just running into corners all the time".

*Representations for the offender*

10. The prisoner's solicitors, McCann & McCann, have submitted a written representation in which they raise the following points:

- The prisoner was an employed family man of previous good character. He and Ms Cheevers had been together for 18 years. They had two daughters, Dawn (10/2/82) and Hannah (23/2/92). The relationship had caused a falling out between Ms Cheevers and her family as they disapproved of her being with a Catholic;
- The deceased and the prisoner were best friends. He pursued a sexual relationship with Ms Cheevers in the couple's family home while the prisoner was a work;
- Information regarding the affair had gradually come to the prisoner's attention over the week, leading to a realisation that his second daughter might not have been his natural child. He had taken to drinking alone at home;
- The prisoner maintains the same factual chain of events as set out above: he borrowed Mr McVeigh's gun without checking whether it was loaded as he thought he had been followed by someone with hostile intent, he took the gun to Mr Murphy's car to scare him, a struggle ensued and the gun went off, the prisoner made a call to a friend in the Republic and got a lift across the border;
- Expert psychiatric evidence supported the proposition that the prisoner had been provoked. He and the deceased had been like brothers, his only romantic history was with Ms Cheevers and the affair had taken place in their home;
- The solicitors submit that the prisoner should be set a low tariff on the basis that the offence was close to

manslaughter, his good record and lack of danger to the public.

11. The prisoner submitted a letter in which he expressed deep remorse for what he had done. He pointed out that since his own father had been killed he was able to relate to the plight of Mrs Murphy and her family.

12. On behalf of the prisoner Ms MacDermott QC made the following submissions: -

1. The case falls within the normal starting point as outlined in the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412;
2. There was a justification for varying the starting point downwards because it was a case which came close to the borderline between murder and manslaughter – see paragraph 11 (a) of the *Practice Statement*;
3. The offender was considerably intoxicated at the time of the offence;
4. He was suffering considerable stress having received a ‘drip-feed’ of information about the affair that the deceased had conducted with his partner, Ms Cheevers;
5. The betrayal of the offender’s friendship by the deceased, a friend since childhood, had exacerbated the stress that he had experienced;
6. He had not checked to see whether the weapon was loaded before he went to the car;
7. Very little pressure was required to fire the weapon which had none of the safety features of modern shotguns;
8. The offender had not previously displayed any propensity for violence;
9. The offence was not pre-planned;
10. The remorse expressed by the offender was genuine.

*The Practice Statement*

13. In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* 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 unupportable 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."

## *Conclusions*

**14.** We consider that this is a case that should be dealt with in the normal starting point category. It is not one where any of the features outlined in paragraph 12 of the *Practice Statement* is conspicuously present. We do not consider, however, that this is a case that can confidently be said to be on or to come close to the borderline between murder and manslaughter. The jury clearly rejected the suggestion that the firearm was discharged other than deliberately and although there was provocation in the sense that the offender was clearly angry and distressed about the affair between the deceased and Ms Cheevers, this must be set against a measure of deliberation on his part in luring the victim to Mr McVeigh's remote home where, as he well knew, he could obtain access to a weapon.

**15.** A number of aggravating features must be acknowledged. We consider that there was at least an element of planning in enticing the victim to Mr McVeigh's house, where, we are satisfied, some attack on him was intended. The offender used a firearm and he armed himself with the shotgun before going out to the victim's car. We do not believe that the story about the offender believing that he had been followed by another car is worthy of belief. We are satisfied that he went to the victim's car knowingly and that he was deliberately armed with the shotgun either intending to use it or, at least, alive to the possibility that it would be used.

**16.** Taking all these factors into account we consider that the appropriate tariff in this case is 13 years. This will include the time spent by the offender in custody on remand.