

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

Delivered: **24.05.04**

THE QUEEN

v

KAREN ELIZABETH CARSON

DECISION ON TARIFF

Before Kerr LCJ and Coghlin J

KERR LCJ

Introduction

1. On 10 March 2000 Coghlin J, sitting at Ballymena Crown Court, sentenced the prisoner, Karen Elizabeth Carson, to life imprisonment for the murder of her 40-year-old husband, Thomas Joseph McDonnell, on 8 June 1997. The conviction that led to that sentence was the result of a re-trial, the original conviction having been quashed by the Court of Appeal on 12 January 2000.

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. Shortly after 11.00 pm on Saturday 7 June 1997 police were called to 17 McNeill Park, Moorefields, Ballymena. After they arrived at that address the prisoner came running into the house, in an excited and drunken state, shouting "Joe's been stabbed, Joe's been stabbed." The police made their way to the house next door, 19 McNeill Park, entering via the rear yard and

doorway into the kitchen, where they observed the prisoner's husband, lying on the floor in the dinette area. He was lying partly on his back with his right side on the bottom rung of a clothes dryer. He was groaning with pain. There was a considerable amount of broken glass on the floor on the living room and this extended through into the dining room and the kitchen. One pane in a glass fronted display cabinet had been broken and there were pieces of a broken china ashtray on the floor. One empty and one partly full bottle of vodka were found in the kitchen. Police took possession of a black handled, bloodied, 4/5-inch bladed knife that was lying on a window ledge in the dinette.

4. The prisoner had called an ambulance but the police arrived on the scene before it and attempted first aid. They saw that Mr McDonnell was losing blood from an area in and around his upper left chest. The ambulance arrived at the scene at 11.24 pm and Mr McDonnell was conveyed to Antrim Area Hospital. He was admitted at 12.04am on 9 June 1997 but efforts to save his life were abandoned at 1.40 am. Mr McDonnell had been a Lance Corporal in the Royal Irish Regiment where he was an army physical training instructor.

5. While waiting for the ambulance the prisoner is said to have been "almost hysterical", shouting "I didn't stab him, I was upstairs in bed, he threw me down the stairs, somebody must have come in and stabbed him." She told an officer at the scene that her husband had been at home with an unnamed man while she had been out with her sister that evening. She said: "We have a row everyday and I am fed up with it, I have moved into the back bedroom to be on my own, I was up there sleeping when I heard Joe shouting and I ran down to find him there".

6. She said to a neighbour who was trying to comfort her words to the following effect, "Who would do this" and "This is where I was sleeping when I heard him screaming". The prisoner is also said to have remarked "I know who done it, it was Rusty, he said he was going to do it" and "Someone has come in stabbed Joe and he has gone to the hospital". She is also reported to have said, "Who the fuck knows my husband's a soldier in this park, someone's come in and stabbed him and who would do that". While still at the murder scene the prisoner is said to have made allegations of domestic violence against her husband. A number of police officers who were present noted that she appeared to be drunk. She was arrested after the ambulance left for the hospital.

7. The prisoner was medically examined on her arrival at Ballymena RUC station. She smelled strongly of alcohol and later admitted drinking a bottle of spirits on the day prior to her arrest. She told the doctor that she was an alcoholic. The prisoner was noted to have sustained a number of injuries, which she attributed to domestic violence. She told the examining doctor that

she had been having an affair and her husband had beaten her up. With regard to the incident itself she told the doctor that she had come downstairs to find her husband lying bleeding. She denied involvement and blamed her "boyfriend". The same doctor examined the prisoner again later that afternoon. He was specifically asked to re-examine an abrasion on her left forearm as the prisoner had alleged that her husband had caused this abrasion on the evening of the murder. She told the doctor that her husband had lifted a kitchen knife and "took a go" at her. She continued "We had a bit of a struggle and I got it off him. I was holding it and he came at me again and that's when he got stabbed". The doctor asked why the prisoner had previously given a different explanation for the wound to which she replied "Aye but he wasn't dead then". The doctor concluded that the injury was more likely to have been sustained by a screwdriver, in accordance with the prisoner's original explanation.

8. On the afternoon of the Sunday 8 June 1997 Dr Derek Carson, Deputy State Pathologist for Northern Ireland, conducted a post mortem examination of the deceased. He concluded that the cause of death was a left haemothorax due to a stab wound of the left chest involving the lung. Death was therefore the result of a single stab wound of the left upper chest. A knife with a single edged blade caused the wound. It was high up in the chest, below and to the right of the left shoulder. The post mortem report stated: -

"The direction of the wound track within the body indicates that the deceased was upright at the time; the wound was inflicted by a blow with a knife delivered downwards, backwards and slightly from left to right of the deceased. No bone had been struck and the tissues through which the knife had passed would have offered relatively little resistance to a sharpened pointed blade. Nevertheless the wound was 5 inches deep."

The level of alcohol in the deceased's blood was not clearly established, but it is likely that he was considerably intoxicated.

9. The prisoner was first interviewed at 2.23 pm on Sunday 8 June 1997. She immediately admitted having stabbed her husband, alleging that he had lifted the knife first and cut her on the arm. She said that she had been drinking since early afternoon on the day of the murder, firstly at Stephen Simpson's home, then at Jim Beech's home and finally at her own house where she was accompanied by her husband and Mr Beech. The prisoner maintained that when Mr Beech left she and the deceased had an argument about her ex-boyfriend. She said that she told her husband that she was not going to listen to him and went to bed in the spare room. Within minutes her husband got her out of bed and another argument began in the living room

and dining room area of the house. In the course of that argument the deceased is said to have been violent towards the prisoner. She said that the deceased took the knife out of a knife block and came at her with it, cutting her arm. They fought and she took the knife from him whereupon he went to attack her again. She continued, "The next thing I knew he got felled and I seen the blood and I phoned the ambulance straight away ... the knife just went into him and he fell back against the clothes horse ...". The prisoner stated that her husband had drink taken at the material time.

10. The prisoner said that the dispute started because her husband was angry that she had gone into town to drink. She said that he had called her a "slag and a whore". She maintained her position throughout interview, repeatedly saying that events took place so quickly that she could not recall exact detail.

11. The couple had married on 6 April 1996. Witnesses suggest that their marriage was not particularly happy and that they had separated at least once. A statement from the deceased's solicitor indicated that the deceased had instructed him to commence divorce proceedings against his wife one month prior to the murder. Evidence suggested that the deceased's estate was worth approximately £50,000.

12. A friend of the prisoner, James Beech, made a statement to the police on 9 June 1997 in which he claimed that she had asked him the day before the murder to kill her husband. She said that she would give him £1,000 for carrying out the murder. He stated that he was with the McDonnells at their home until around 9.45 pm on the evening of the murder.

13. There was evidence that the offender had an ungovernable temper. A number of witnesses had made statements about this and her violent behaviour.

14. It would appear that the defence contested the case on all available grounds judging from the following passage from Coghlin J's charge: -

"If you found that there was a reasonable possibility that this had been an accident then you would acquit the accused of any offence. If you found that there was a reasonable possibility that she had acted in self-defence then you would acquit her of any offence. If you consider that there was a reasonable possibility that she did not have the necessary intent to kill or cause grievous bodily harm because of her consumption of alcohol then you would find her not guilty of murder but guilty of manslaughter. If you

thought there was a reasonable possibility that she had acted under provocation...then you would find her not guilty of murder but guilty of manslaughter by reason of provocation and, finally, in the defence prove to you on a balance of probabilities that at the time of the killing she was suffering from diminished responsibility...Your verdict would be not guilty of murder but guilty of manslaughter by reason of diminished responsibility.”

15. The defence position as to diminished responsibility was that the prisoner was suffering from a depressive illness and post traumatic stress disorder as an aspect of battered woman syndrome. There was medical evidence both for and against the defence proposition. The following points can be deduced from the material available to us:

- The prisoner comes from a large Ballymena based family;
- Her behaviour deteriorated at secondary school and at 15 she was sent to Whiteabbey Training School;
- She alleged that she was raped by a member of staff while at Training School and this is said to have had a continuing impact upon her;
- She started drinking shortly after she began Training School, being introduced to it by an older sexual partner who was prosecuted as a result of their relationship. Alcohol has remained a problem in the prisoner’s life;
- She married at 19 and had two children – she did not get custody of the children when the marriage ended;
- She married the deceased on 6 April 1996. They had been together for 2 years before that;
- The prisoner claimed that she was the victim of domestic violence. She said that her husband first hit her shortly after they were married, and that a few weeks after that he punched her in the mouth causing her to lose a front tooth. Four days before the murder the deceased is said to have broken the prisoner’s clavicle. She maintained that over the 14-month marriage there were numerous incidents. A matter of days before the murder the couple had reconciled after a 5-week separation. During that period of separation the prisoner had a brief relationship with a former boyfriend, and the deceased discovered them in bed together. She described her life as chaotic during that 5-week period. She raised her alcohol consumption to dangerous levels. She claimed that in the week leading up to the murder the deceased resumed his violent behaviour as a result of which the prisoner was frightened of him. She maintained that she had been anticipating an attack.

Antecedents

16. The prisoner's prior record consists of a conviction for theft for which she was given a two-year conditional discharge by Ballymena Magistrate Court on 28 April 1983 and a number of minor road traffic offences for which she was fined and disqualified by Ballymena Magistrates Court on 20 November 1986.

The NIO papers

17. Representations were received from a representative of Victim Support on behalf of the deceased's mother. Mrs McDonnell suffers from depression, especially at particular anniversaries relating to her son. She also has trouble sleeping and says that she dreads the night because thoughts of the murder occupy her mind. Mrs McDonnell found the trials difficult as allegations were raised about her son, which she denies. Time has not made matters easier for Mrs McDonnell. She says that the murder also had an impact on the deceased's extended family and friends: one niece was so upset that she could not sit for school exams.

18. The deceased's sister, Patricia Hannaway, said that news of her brother's death was devastating. She finds Sundays to be bad days as that is when she was told the news. Mrs Hannaway says that one of the worst aspects of the murder is having to watch her mother "give up on life" and become reclusive. She is embittered as she considers that the prisoner has never shown any remorse for her crime. Another sister, Sarah Woods, says that she felt a great deal of pain on the loss of her brother, and that she cannot imagine how her mother must feel. Mrs Woods says that she felt guilty, thinking she could have done something to prevent the murder, but concludes that the deceased loved the prisoner and she could not have interfered with his choice.

19. Catherine McDonnell, another sister of the deceased, says that her brother was a kind and gentle man and that the prisoner planned and plotted his murder. The family was devastated by the murder. Miss McDonnell refers to her mother's suffering and the fact that the family had to listen to unfounded allegations against the deceased. Ann Mooney, another sister, states that the death caused her feelings of anger, sadness, heartbreak, pain, hatred and revenge. She refers to the suffering of her family, the fact that the prisoner has shown no remorse and the blackening of her brother's good name.

20. The prisoner has submitted a written representation in which she says that she thinks about the deceased every day. She maintains that she cannot recall how the fatal injury was inflicted, but she deeply regrets what happened. The prisoner says that she understands the feelings of the

deceased's family and that she wanted to write to them but felt that it would not be well received. She has taken steps while in prison to try to understand what happened and to ensure that she is never in the same situation again. The prisoner maintains that the deceased mentally and physically abused her. She says that her crime was not premeditated. She states: "What happened on 7 June 1997 was purely a drunken accident". The prisoner takes issue with a number of points raised by the deceased's family, contending that they were not close and suggesting that his mother is not living the life of a recluse but rather has been pictured in a local paper enjoying a darts tournament.

21. The prisoner's solicitors, John J Rice & Co have submitted a representation in which they contend that the case falls between the lower and middle (12 year) categories of the Woolf guidance. They contend that the prisoner was holding the knife without hostile intent, that the stabbing was a spontaneous act with no premeditation and that the prisoner was intoxicated at the time. They state that the prisoner is remorseful and contrite and note that she had an irrelevant criminal record prior to the murder.

The Practice Statement

22. 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 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

23. This is clearly a case that falls in the normal starting point category. It is essentially one where there was a dispute or quarrel between two people known to each other. None of the features outlined in paragraph 12 is present. The more difficult question is whether the 12 years should be lowered because the prisoner's culpability was *significantly* reduced as a result of the murder being on the borderline with manslaughter, the prisoner's mental state at the time, the level of provocation or self-defence.

24. It is clear that both juries concluded that the offender deliberately inflicted the fatal injury on the deceased and at the time intended at least that he should suffer grievous bodily harm. It is impossible to be certain whether either jury concluded that there was no merit or merely insufficient merit in any of the defences proffered by the prisoner. Expert evidence was given on behalf of the prisoner that she was suffering from a depressive illness and post-traumatic stress disorder stemming from battered woman syndrome. It must also be acknowledged that she alleged that the fatal wound was inflicted when the deceased came to attack her in the course of a fight and the fact that the deceased was killed by a single stabbing injury might be consistent with that claim. As against that, the way in which the prisoner met the crime - in particular, her initial attempts to divert attention from herself - casts considerable doubt on her veracity. The evidence of the prisoner's violent temperament and that she discussed how to rid herself of the deceased with a friend must also be taken into account in evaluating her claim that this was in reaction to an attack by her husband. We are not convinced that the prisoner's account can be accepted. We find it significant that she claims on

the one hand that this was “a drunken accident” and, on the other, that, despite thinking of it every day, is unable to remember how it happened. We have concluded that we must treat the killing of the deceased as a deliberate act by the offender.

25. As against these considerations there is nothing about the offence that appears particularly sophisticated or premeditated. Her efforts to distance herself were clumsy, amateurish and short lived. She was too drunk to be interviewed immediately after her arrest. Moreover, the prisoner’s criminal record is irrelevant.

26. Although the prisoner has taken advantage of her imprisonment to improve her education considerably and this is to her credit, we found little evidence of genuine remorse on her part. In her letter the prisoner says that she is sorry and Mr Farrell on her behalf emphasised her contrition but she has maintained her claim that the stabbing was an accident and has chosen to challenge aspects of the representations submitted by victims. Likewise the manner in which the prisoner met the charge does not speak well to her credit. While making due allowance for her inebriated condition immediately after the incident the fact that she was prepared to accuse another of having killed her husband cannot be left out of account and we must not lose sight of the fact that she contested her guilt over two trials.

27. Mr Farrell drew attention to the fact that the prisoner’s marriage to another prisoner had attracted adverse publicity and that she had been ‘demonised’ by some sections of the press as a result. As it happens neither member of this court was aware of this publicity. In any event it is clearly extraneous to the matters to which we must have regard and we have left it entirely out of account in reaching our decision.

28. Having regard to all the material that was placed before us, including that to which we have not made specific reference, we have concluded that the appropriate tariff is 12 years.