

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 31-01-05

THE QUEEN v KENNETH HENRY CALLAGHAN

DECISION ON TARIFF

Ruling by Kerr LCJ

KERR LCJ

Introduction

1. On 23 June 1988 McCollum J sentenced Kenneth Henry Callaghan to life imprisonment at Belfast Crown Court for the murder on 2 October 1987 of Carol Jane Gouldie, aged 22. The prisoner had pleaded guilty to the murder. He was then aged 21, his date of birth being 8 April 1967. He has been in custody since 9 October 1987.

2. The offender was offered the opportunity to make oral submissions on the tariff to be set under article 11 of the Life Sentences (NI) Order 2001 but indicated that he would prefer that the matter be dealt with on the papers. (I shall deal further with reasons for this below.) I have considered the matter on that basis and the following is my ruling on the minimum term to be served by the prisoner. This 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. At around 8.45pm on Sunday 4 October 1987 the deceased's body was discovered in the sitting room of her house at 39 Colvil Street, Belfast, by her lodger who was returning after spending the weekend with her

parents. The deceased was found kneeling over an armchair, fully clothed, her head covered by a cushion cover secured by stocking material, her hands tied behind her back with a pair of tights. Her blouse was open, the buttons either undone or ripped off, and her bra was pulled down at the front. She had been dead for two days, and was later found to have been sexually assaulted.

4. The deceased had been employed as a secretary with BNW Business Systems in Hollywood. She worked in the Priory Inn in Hollywood in the evenings, and was due to work there on the night of her murder. The prisoner and the deceased were vaguely acquainted from the Priory Inn and their connection as neighbours.

5. The sitting room of 39 Colvil Street was forensically examined on 4 October 1987 and the following findings were made:

“The body of a young woman was found kneeling on the floor and slumped over the arm of a chair, her head hooded and hands tied. Blood staining under the nails and on her hands indicated that they had been free at some stage, and in contact with a heavily bloodstained surface.

Pools of blood were located on the chair where the body lay, on the floor by the hearth and on the floor beside another armchair. This indicated that bleeding had been allowed to occur for some time, at each location.

Splashes of blood, indicating forceful blows, were found, associated with the pool of blood by the hearth, but there was no evidence of direct contact with the hearth.

Splashes of blood, due either to blows or a ‘whiplash’ effect of the head, were found. These were associated with the staining on and beside one armchair. The location of some of these splashes showed that the door to the hall stood open at the time of the occurrence.

No splashing was found associated with the position in which the body was found, indicating that no blows had been struck to the head there.

The clothing of the deceased had suffered interference, the blouse being open and the bra displaced through undamaged. Buttons matching those of the blouse were found at two locations in the room.

The hood was in fact a cushion cover similar to several others in the room. A cushion, bearing some blood staining and without its cover, was found on the settee. The hood was saturated in blood and had 14 holes of various sizes in it.

The blouse bore splashes and 'runs' of blood which had originated from the head of the wearer. Some of this staining occurred when the wearer was in an upright position.

The skirt bore some blood staining, but no semen staining. The pants bore some slight semen staining.

The soles of the shoes were free of blood staining, indicating that the wearer is unlikely to have walked around the living-room to any degree, after the incident started.

Large quantities of semen were found on the vaginal swabs indicating that intercourse had occurred shortly before, or after death. This semen came from an ABO group A secretor man.

The results of the tests performed on the fluid blood and saliva samples from Mr Callaghan show that he is an ABO group A secretor...

A pair of 'Puma' boots attributed to Mr Callaghan bore human blood staining which, as far as it was

possible to test it, was of the same groups as the deceased....”

6. Various forensic findings made at the scene connected the prisoner irrefutably to the murder. It was discovered that the ground floor bathroom window, the prisoner’s point of entry in to the house, could have been easily opened by a sharp blow to its exterior, thus allowing access to the larger window catch. A footprint found on the side of the bath matched the prisoner’s boot. Marks in the yard of the house were consistent with someone having climbed over the wall. Forensic examination of semen found at the scene confirmed that it originated from the prisoner.

7. Dr Derek Carson, Deputy State Pathologist, performed a post mortem examination on Miss Gouldie’s body on 5 October 1987. He found that the cause of death was brain injury associated with multiple comminuted and depressed skull fractures due to multiple blows to the head. Dr Carson’s report concluded:

“There were multiple wounds of the scalp, caused by heavy blows from a blunt instrument which was itself probably hard and made of metal. There were five discrete scalp lacerations, of varying size and shape, some suggesting an implement with a rounded end, whilst others were straight or Y shaped. In addition there was a very large and complex area of laceration on the top and left side of the head, probably caused by multiple blows producing areas of laceration which ran into each other. It was not possible to say how many blows landed in this area, but there could have been many.

Beneath the complex laceration there were gross fractures of the skull, reinforcing the view that considerable force was used. The skull was broken into many pieces and had been driven inwards. The damage was continued down into the side of the skull on the left side. There was also considerable injury of the brain, with extensive bleeding over its surface and within the brain

ventricles, bruising of some surface areas, and considerable swelling of its substance with some secondary internal haemorrhages. This injury was undoubtedly of a severity to cause death. The cumulative effects of the blows would have caused unconsciousness and death probably followed fairly soon afterwards.

The scalp injuries apart, there was also bruising of the left upper eyelid, on the right cheek and of the lower lip. Further bruising was noted on the back of the right forearm. These injuries would suggest blows from a fist, possibly with the right arm raised in an attitude of self defence. These other injuries were not serious. There was also a minor scratch on the back of the right wrist and an elongated scratch down the back of the left thigh and knee, the cause of which was not clear.

There was no indication of forced sexual intercourse in a conscious unwilling person. Intercourse could have occurred without resistance if the deceased was unconscious or indeed dead at the time."

8. The prisoner lived with his parents at 23 Colvil Street, some doors away from the deceased. The police first came upon him when they conducted door to door interviews. In the course of the police investigation he gave a statement on 6 October 1987 indicating that he had seen a man in a white Opel car in the vicinity on the afternoon of the murder, and had noticed it make off at speed. On Thursday 8 October 1987, as the investigation proceeded, the police called at the prisoner's home to interview him again. They were interested in his statement, as he had told them that he had been in the area on the afternoon of the murder. The officers asked the prisoner what he had been wearing that afternoon, at which point he produced his training shoes which were of the same brand as the footprint that the police had found in the deceased's house. The police took possession of the shoes and later that day the prisoner was arrested. On arrest the prisoner said: "You must be joking." The prisoner then handed over the clothes that he had been wearing on the day of the murder, all of which had since been laundered.

9. When first questioned the prisoner stated that he had nothing to do with the murder and gave a false account of his movements, alluding again to a suspect Opel car that he alleged he had seen in the vicinity. The police put it to the prisoner that they had found blood on his shoe, at which point he began to make admissions. The prisoner told the police about the attack, omitting any reference to the sexual assault. When pressed, he told police that he had thought the deceased was his girlfriend, that he had heard her voice asking for him to make love to her and that "I put the bag over her head so as I would not know that it was another girl. I must need help." The prisoner indicated that the murder weapon had been an 18 inch hard metal mallet.

10. The prisoner made a statement to police at 8.30pm on 8 October 1987. He gave an account of his movements on the day of the murder. He said that he had been walking his dog in the vicinity of the deceased's home, and he continued thus: -

"...then it started to happen. I got a noise in my head and felt that everything was closing in on me. It just made me feel that I wanted to run and hide. The door of the back yard of Carol's house was open and I just ran in and stood with my back against the door for a few minutes. I then ripped the window open and climbed into the bathroom. I went on through to the kitchen and opened the sliding door into the living room. I saw the wee door on the left of the room and as we have one I knew it was a cupboard below the stairs. I knew it was dark in there and I wanted somewhere like that to hide. I went in and sat down in there. It was in there that I found the metal thing which looks a bit like a hammer. I just sat squeezing it in both hands really tight. I was in there for about ten minutes but I did not like it as there was a bad smell and not enough air so I came out. I got behind the chair at the middle wall and sat down between it and the door to the hall. I was happy sitting behind there. I was starting to feel a bit better and I was thinking about my ex-girlfriend and the way we used to argue and about the happy

times too. It was then that I heard Carol come in by the front door and she open the wee lock on the other side of the door into the hall. She came in and saw me. She threw a carton of milk and I think her handbag on the settee and just before doing that she said what the fuck are you doing in here. I said I was sorry and I would go no problem. After throwing the stuff on the settee she just stood shouting at me asking what I was doing in the house. I tried to walk past her to get out the back of the house and it was at this stage that she punched me on the chest. She shouted for me to hold on that I had no bloody right being in the house. I kept on trying to get past. I still had this piece of metal in my hand. She grabbed me by the arm and I started to panic and it all started to happen again. She had grabbed my left arm and this is when I hit her on the head with the piece of metal. She started to say things and I started to feel worse and this is when I began hitting her on the head again and again with this piece of metal. I was holding her with one arm and hitting with the other. When I let go of her she fell on the ground face down with her head towards the fire place. I am not sure if I continued to hit her when she was on the ground. I had just lost control. It was when she was lying on the ground that I started to hear my old girlfriend's voice. Carol was making a sort of slurpy noise. I started to talk back to this voice and I bent over Carol and started to talk to her as if she was my girl. I just remember saying it would be alright and I was sorry. I looked at her hair and it was not the same as my girl's so I pulled a cushion out of its case and pulled the case over her head. I started to talk to her and my girl seemed to be talking back to me. She asked me to make love to her like we used to. I got a pair of tights which I found over the back of the settee and tied her hands behind her back. I then lifted her up by putting my hand under her body and pulling her up. I held her close to me and talked to her. Her

back was against my chest. It was then that I heard her ask me to make love to her. I put her over of the chairs face down. I pulled her pants down and entered her from the back. This is one of the ways my ex-girl and I would have made love. I don't know how long I made love to Carol for and I am not sure if I came or not. I don't know if I pulled up her pants but I would usually do this for my girl. I must have put the piece of metal down during this but I picked it up again before leaving the house. I did not know whether Carol was dead or not, I was just thinking about my girlfriend. I just got up and walked out of the house by the back door and up the entry to my house. It was at this time that I started to realise what I had done. I went into the house and changed my clothes and put on my black training shoes. I would not have brought the piece of metal into the house so I think I left it in the back yard and would have picked it up again on the way out to the car. I just got into my car and drove very fast down the Holywood Road along the Sydenham By-pass. I must have thrown this thin out of the car as I drove along but I can't remember where. I had already arranged to meet a girl called...at her house at...at about 7pm. I went direct to her house and we went to the pictures. Before we went to the pictures I called back at my house to get shaved. All I can say is that I did not want this to happen if she only had not come home everything would have been all right and I would have got over this thing. I think the break up with my girl had a bad effect on me."

After caution the prisoner is said to have told officers: "I think everybody knows I am sorry. I have told them enough."

11. In the course of the investigation evidence emerged of the prisoner's movements in the days following the murder. Later on the evening of the murder, probably within an hour of its commission, the prisoner went out with a girlfriend. She made a statement saying that as they walked past the deceased's house, he openly wondered why the deceased was not at work.

Later that same night he drove around Hollywood with a friend and gave two female friends lifts to their homes, arranging a date with one of them for the next Tuesday evening. When she spoke to him that Tuesday he discussed the murder, saying: "I suppose you thought it was me." He was said to have been cheerful.

12. The prisoner rang his ex-girlfriend's home at around 7pm on the day of the murder. He took her to the Priory Inn the following night, 3 October 1987, and as they drove along Colvil Street she recalled him saying "she must be on holiday as her car is still there". On Sunday 4 October 1987 the prisoner telephoned his ex-girlfriend to tell her that a policeman had told him about the murder. They discussed it later in the week, and he told her that he hated to think of her out when such people were about. She made a witness statement saying that they had enjoyed a lengthy relationship but that she had finished it as she did not see a future there. She said that the prisoner had not been in any way "strange" during their acquaintance.

13. The prisoner had no relevant medical history.

Personal background

14. The prisoner was a production operator at Short Brothers. At the time of the murder he was a single man living with his parents. The prisoner's record is minor and irrelevant, consisting of driving offences only.

The NIO papers

15. The deceased's mother, Mrs Myra Gouldie, has submitted a written representation. She stated that her life has been so brutalised that it can never be the same again. She finds it impossible to come to terms with the loss of her daughter whose life was deliberately taken through an act of violence. She expressed this graphically by saying, "Carol's life was ended by a premeditated act of such callous savagery that I would not have thought possible for one human being to inflict on another." She described her daughter as gentle, caring and gifted – a person who loved life and was loved by all who knew her. Mrs Gouldie stated that she thought of her daughter (and the manner of her death) every day. She fears for the welfare of her other children. Life is much less full for her than before. Mrs Gouldie feels locked in the past and stated that the impact has been more than she could ever express in words.

16. The prisoner's solicitors, McNally & Co, presented a submission on his behalf, making the following points: - the prisoner was aged 20 at the time of the offence, he admitted in police interview to causing the death, he pleaded guilty to murder, he expressed immediate remorse and he had no relevant convictions.

17. The prisoner has submitted two written representations. In the first he described the murder and rape as brutal, callous, horrific and degrading. He said that at the time he had "wrongly reasoned" his offending and had not recognised the situation he had got himself into. He said that he had made efforts to address his offence. The prisoner stated that he could only imagine the pain he had caused the deceased's family and had been deeply saddened by Mrs Gouldie's description of her torment, saying: "Anything that I have been through can never compare to what the Gouldie family live with daily." The prisoner's first submission concluded with the observation that the offence could and should have been avoided, that he would change things if he could and that it was the regret of his life.

18. In his second submission the prisoner stated that he would have liked to avail of an oral hearing but feared that the attendant publicity would bring further distress to the deceased's family. The prisoner explained that at the time of the murder he had been involved in a volatile and controlling relationship that had left him an emotional wreck. He stated: -

"The strains and increasingly twisted demands in this relationship helped create in me irrational thinking, and irrational behaviour, that rendered extreme, sick and bizarre thoughts of a fantasy that turned to reality in the becoming of my offence (*sic*). The futility, in the thoughts, of what I felt my life and future would be without this relationship, in its constant deterioration, added to my committing this murder. Were it not for my distressed, exhausted emotional state, and frame of mind at this time, due to these circumstances, I never would have committed any offence. This I realise is of no consolation to the Gouldie family, in what is truly my life's regret. In all of these circumstances I blame no one but myself, as I made the choices, in my naivety, to remain in that

destructive relationship. I also made the decision to commit this offence.”

19. The prisoner stated that he had been saddened and humbled by the deceased’s mother’s representation, adding that no words could convey his regret and remorse. His submission concluded with a description of the progress that he had made while in prison. He has completed three sex offender courses, two anger management courses and undergone counselling with a psychologist and victim awareness work. He stated that he had gained understanding of how he came to commit “such an inhumane act upon another human being.” The prisoner stated that he had enjoyed the continued support of his family.

Practice Statement

20. 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."

Conclusions

21. This is unquestionably a higher starting point case. There was gross sexual maltreatment of the victim. The deceased was clearly vulnerable in that she was a young woman, described in the post mortem as of slim to average build, and 5 feet 4 ½ inches in height. The prisoner was a 20-year-old man and a keen body builder who trained with weights 3 or 4 times each week. When examined in custody the prisoner bore no sign of recent injury, although the deceased's body had what was possibly a defensive bruise. Furthermore, even on the prisoner's own version of events, the deceased had slumped to the floor after the mallet attack, rendering her entirely vulnerable to being hooded, bound and raped.

22. The post mortem examination revealed that the deceased sustained multiple and extensive injuries. Her scalp had been severely lacerated by a hard, blunt metal instrument, (presumably the mallet), her skull had been broken into "many pieces" and her brain had been injured. She also sustained bruising of an eyelid, cheek and lip, probably as a result of blows from the prisoner's fist. This catalogue of injuries qualifies for the description of 'extensive and/or multiple injuries ... inflicted on the victim before death'. On that account alone, this would be a higher starting point case.

23. Although the prisoner now expresses remorse, his actions in the aftermath of the killing suggest that he felt no regret at the terrible deed that he had committed. His attempt now to portray this as some type of psychotic episode is not supported by any medical evidence and does not ring remotely true. This was a horrendous murder in which a young woman was brutally killed in the most callous of circumstances apparently for the sole purpose of the sexual gratification of the prisoner.

24. The only mitigating features of any consequence are the prisoner's age and his plea of guilty. As to the latter of these, it is relevant that when first questioned the prisoner presented a wholly false version of events. He only made admissions when confronted with the fact that blood had been found on his shoes. While the prisoner can claim credit for his plea, it was made in the face of overwhelming forensic evidence. Furthermore, he did not plead guilty at the first opportunity but only after a jury had been sworn.

25. The presence of a number of features each of which would have warranted the inclusion of this case in the higher starting point category inevitably requires the application of paragraph 18 of the *Practice*

Statement. Having given due consideration to this as well as all other relevant factors, I have concluded that the appropriate minimum period to be served by the prisoner is twenty-one years. This will include the period spent on remand.