

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

**THE QUEEN v IAN ALEXANDER QUINN**

**DECISION ON TARIFF**

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**Ruling by Kerr LCJ**

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1. On 30 November 1987 Carswell J sentenced the prisoner to life imprisonment for the murder of Mary Catherine Fitzsimmons, aged 76, on 25 October 1986. He had pleaded guilty to the offence. The prisoner has been in custody since 28 October 1986.

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 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. Shortly after 1pm on Saturday 25 October 1986 police were called to the home of the deceased, Mamie Fitzsimmons, at 80 Commons Road, Ballykinler. Miss Fitzsimmons was aged 76 and lived alone in what seems to have been a relatively rural location. Unable to gain entry to the house, and having spotted a broken window, the deceased's home help had gained entry to the cottage with the assistance of a number of neighbours. They found the deceased lying dead on the heavily bloodstained living room floor, her body naked from the waist down. The emergency services were called to the scene. A large (19.5cm x 3.4cm) sheathed knife was

found on the bathroom floor. The prisoner later admitted that the knife was his.

4. A senior forensic officer examined the scene. His report contained the following: -

“The body lay on the floor of the living room. It was on its back, with the legs bent and spread apart and the hands drawn up towards the chest. The lower part of the body was unclothed except for a pair of knickers and entwined stockings still on the right foot. The dress and suspender belt had been pushed upwards on the body exposing the lower trunk. Serious injuries were apparent to the head and a considerable volume of blood lost...

Bloodstaining was heavy and extensive throughout the living room and bathroom at these premises.

In the bathroom the window had been broken and sufficient glass removed to allow free access by a person. Fragments of a footprint could be seen on the side of the bath immediately under the window. In the bath were fragments of glass from the window, a soap dish, an old Marvel dried milk tin, a blood soaked towel and drops of blood. These had been wetted by water and the blood streaked in the bath. On the outside of the sink and on the panel at the side of the bath extensive blood smearing. The inner sides of the bath did not have this find blood splashing and it appeared that some effort had been made to clean them. The distribution of blood on and around the bath would suggest that someone who was already bleeding had been dragged into the bath and further beaten there.

On the floor immediately beside the bath was a large ornamental sheath knife and a tin mug. Both were blood stained...In the middle of the floor was a recently broken and bloodstained tooth.

Dirt and blood had been streaked on the floor at the door of the bathroom and a dragging trail could be followed from here into the small hallway and then into the living room where the trail appears to turn towards the centre of the room where the body was found...

Opposite the door leading from the bathroom to the living room was a tall storage cupboard, the door of which was slightly ajar. On the floor at its base was a large pool of blood and radiating upwards from this spot were a large number of small blood splashes. This fine blood splashing was extensive and spots of blood which appear to have originated from this area were found on the ceiling at heights up to 2.62 metres. This is consistent with a severe and sustained beating having occurred, most probably to the head, at the base of the storage cupboard.

In my opinion access to 80 Commons Road by the assailant was gained through the broken bathroom window. No implement for breaking this window was apparent either in the house or outside.

It would appear that the assailant then broke the glass in the bathroom door and entered the living room. It is probable that Miss Fitzsimmons was attacked there, knocked to the floor and beaten around the head at the base of the cupboard. She then went or was taken to the bathroom, bleeding profusely and dropping blood over the floor and television on the way. In the bathroom she was further attacked either over the bath or in it causing fine blood splashed to be sprayed over the surrounding walls, smeared blood to be left on the outside panel of the bath and a tooth to be knocked out. She was then dragged across the floor from the bathroom to the living room. It is probable at this stage that her head was pushed into the settee

and the body finally left where it was found. Whilst lying on the floor the dress and upper clothing of the deceased were pushed up and the pants and stockings pulled down. Seminal material was not detected on either the swabs or clothing from the deceased.”

5. Dr Jack Crane, Assistant State Pathologist, carried out a post mortem examination on the deceased on 26 October 1986. He concluded that the cause of death was mechanical asphyxia due to injuries of the neck and chest. The following extract is taken from the post mortem report: -

“Death was due to mechanical asphyxia as a result of interference with breathing. This had occurred principally in two ways. There was blotchy bruising on the front and sides of the neck and in the underlying muscles. A small bone, the hyoid, in the upper part of the front of the neck was fractured, there were fractures of the two bony projections on the top of the voice box and another cartilaginous structure just below the voice-box was also fractured. There was more bruising of the tissues at the back of the throat and in the lining of the voice box. Taken together these injuries indicate considerable force having been applied across the front of the neck. They are unlikely to have occurred as the result of the grip of the hand and suggest the application of heavy pressure, possibly by an assailant standing or kneeling on the neck.

There was also bruising on the front of the chest and in the underlying muscles with fractures of the breastbone and of one of the right ribs. These injuries had probably been caused, whilst she was lying on the floor, by an assailant pressing or kneeling on the chest. The pressure would have interfered with breathing and this would have played a contributory part in the asphyxial process.

She had also inhaled a little blood into the air passage but the blood had not gained the lungs. This inhalation of blood is unlikely to have played a significant part in the death.

She had sustained a number of other injuries principally to the head, but also to the upper and lower limbs and to the genital region and anus.

On the head the injuries consisted of extensive bruising of the forehead and cheeks; the eyelids; the nose, which was fractured; and of the right ear. Associated with the bruising were lacerations at the inner end of the right eyebrow, across the right upper eyelid, behind the right ear, on the bridge of the nose, on the left cheek and there was another on the back of the scalp. There was considerable bruising, with lacerations, of the inner lining of the lips in the mouth and here two of the teeth at the front had been broken. There was considerable bruising of the undersurface of the scalp and although the skull was intact there had been very slight bleeding over the surface of the underlying brain. The injuries were due to blunt force and probably due to repeated blows by kicking and punching.

On the upper limbs there was bruising on the backs of the forearms and hands where the thin delicate skin had torn. The injuries were probably also caused by punching or kicking as the arms were raised in self-defence.

The injuries to the lower limbs consisted of some abrasions on the outer side of the right buttock and bruised abrasions on the knees. None was of a specific type but they could have occurred if she had been dragged across the floor or had been kneeling down.

She had also been sexually assaulted. There was some bruising around the opening of the vagina with a laceration of its inferior margin and some slight bruising internally on the posterior wall of the vagina. These injuries could have been due to the forcible insertion during life of a penis or other similar object. The anus was also dilated, outwith the limits of normality and there were two superficial tears at its margin. These findings could have been caused by the introduction of a penis or as a result of digital interference.”

6. When questioned by the police the prisoner at first gave a false version of events, stating that he had returned home from a night out in Downpatrick and spent the rest of the evening indoors. Very soon after, however, he made relevant admissions. The questioning continued with police putting it to the prisoner that he had raped and buggered the deceased. The prisoner, who admitted feeling embarrassed talking about the sexual aspect of the offence, made a supplementary statement at 6.15pm on 27 October 1986. He said that he tripped and fell on the deceased’s body:

“As I lay across the body I tried to get up. I put one hand above me on the chair or whatever it was I grabbed I put my other hand above her pubic hair. I tried to get up and slipped my hand went down onto her vagina. I tried to get up off the ground again and again I slipped. It was during this that I accidentally slipped and put 2 or 3 fingers up her vagina and moved them in and out for a bit. I don’t know why. I don’t know for sure if I had intercourse with her, but I remember I put some fingers up her bum. I left after catching myself on and realising what I was doing and went home.”

#### *Personal and medical background*

7. The prisoner was unemployed and lived at home in Ballykinler with his parents and two brothers, both of whom were also unemployed and had criminal records.

8. A neuropsychological assessment by Doctors Lumsden and Howard, dated 18 March 1987, concluded that the prisoner was an isolated, socially withdrawn individual with a low level of self-esteem. He was said to be prone to self-doubt and dysphoria, impulsive. He was hotheaded and inclined to emotional lack of control. The report concluded:

“In this respect he shows a clear picture of a socially withdrawn psychopath, who sees himself as a misunderstood victim of a hostile world with which he attempts to cope by externalised blame.”

9. Dr Helen Harbinson, a consultant psychiatrist, reported that these findings indicated that the prisoner suffered from a severe personality disorder. When she asked him what he thought of what he had done he replied: “I don’t know. I would have been better going straight home.” She advised that an EEG be sought, which proved, when obtained, to be within normal limits.

10. The prisoner had already been convicted of a number of serious offences, and had received an 18-month prison sentence, prior to the murder. He had three previous appearances during 1985 and 1986, one before the Crown Court. He had three prior convictions for burglary, four for criminal damage and one for common assault. He was also convicted of attempted burglary and conspiracy to rob for which he received an 18-month custodial sentence at Belfast Crown Court in March 1986.

*The NIO papers*

11. The victim’s family did not submit a representation.

12. The prisoner’s solicitors, McNally & Co, made a written submission in which they pointed out that he was just 18 years old at the time of the offence; that he made a full admission to police; that his previous offences were not relevant; and that the victim had surprised the prisoner while he burgled her home and to that extent the offence was unpremeditated.

*Practice Statement*

13. 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*

**14.** This is clearly a higher starting point case. Several of the factors outlined in paragraph 12 are present: -

1. The deceased was exceptionally vulnerable: she was a frail, 76 year old woman, who lived alone in a semi-rural location;
2. The killing was done for gain - in the course of a burglary at night. The prisoner admitted that he was looking for money. A large amount of cash was subsequently found in the deceased's wardrobe;
3. The prisoner sexually assaulted the deceased. It is clear that he (at least) digitally penetrated both her vagina and anus. Even if this occurred after death, it was a grotesque degradation;
4. The prisoner inflicted extensive and multiple injuries. The post mortem revealed horrific injuries and it is clear that the deceased was seriously assaulted in different locations and dragged around the cottage.

**15.** I have concluded that because of the presence of several factors each of which would have warranted the selection of the higher starting point, paragraph 18 of the *Practice Statement* should be applied.

**16.** The offender armed himself with a weapon in advance and this must be regarded as an aggravating feature. As against this he was very young at the time the killing took place and he pleaded guilty. As to the last of these, however, it must be recalled that the evidence against him was overwhelming.

**17.** Taking all these factors into account I have concluded that the appropriate minimum term in his case is twenty-two years. This will include the time spent on remand.