

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

KENNETH MARK McCONNELL

HART J

[1] The defendant has pleaded guilty to the murder of Annabella Symington, together with the theft of her purse and its contents of £200, on 31 October 1989. He has been sentenced to life imprisonment, and it now remains for the court to fix the minimum term that he must serve before he can be considered for release by the Parole Commissioners under the provisions of the Life Sentences (Northern Ireland) Order 2001. I am obliged by virtue of the provisions of paragraph 25 of sch. 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform the defendant that the Independent Barring Board will include him in the barred list concerned for adults by virtue of his conviction.

[2] At the time of her murder Mrs Symington was 77 and she lived alone at 38 Willesden Park, Stranmillis, a quiet residential area in South Belfast. She was a widow with no children of her own, and had moved back from England some years before to live near her relatives after she was widowed. On 1 November 1989 one of her sisters became concerned when Mrs Symington did not answer the telephone, a neighbour was contacted who let himself in and found her lying on her back on the floor of the dining room.

[3] Mrs Symington was in the habit of wearing her cardigan over her shoulders with the arms hanging loose, and when the police and ambulance arrived it was noted that part of one of the sleeves of her cardigan was in her mouth. The post mortem examination by Dr Crane (at that time the Assistant State Pathologist for Northern Ireland) found that the cause of death was mechanical asphyxia due to suffocation. He commented as follows:

“There can be little doubt that the presence of the sleeve of her cardigan found stuffed in her mouth must have been of significance in relation to her death. It had been removed prior to the post mortem examination and therefore it was not possible to determine how much of the garment was in the mouth or to comment on how tightly it had been packed. Nevertheless a gag of this type, pushed into the mouth during life would have occluded the upper air passages and thus interfered with breathing. The resulting asphyxia would thus have resulted in death. It is well recognised that death from this form of suffocation is not associated with any specific diagnostic signs although the finding of some small pinhead-sized haemorrhages in the lining of the eyelids would be consistent with a period of asphyxia.”

[4] There were no signs of forced entry, although the back door was not locked, despite it being her practice to always keep it locked. There were indications that she had been preparing food in the kitchen, and a teapot had two teabags in it, this was unusual because if Mrs Symington made tea for herself she would only use one teabag. The house was otherwise immaculately tidy.

[5] Mrs Symington had suffered from asthma for some years and her inhalers were found beside a chair. Dr Crane recorded in the commentary to his post mortem report:

“This elderly woman had suffered from chronic chest disease for a number of years but despite this she was still quite active for her age and able to get about.”

[6] No one was made amenable for her death at the time. DNA samples were recovered from nail clippings from her hands, and from her cardigan. Initial tests at that time did not produce any result, but subsequent advances and scientific techniques enabled further analysis of these samples to be carried out in 2010. These revealed that DNA matching that of the defendant was identified as the minor profile in a mixed sample from the nail clippings, with the major component matching Mrs Symington’s DNA. Analysis of the DNA from the right sleeve of her cardigan also produced a mixed DNA profile, with the majority attributed to her. The minor part of the profile was in keeping with the profile having originated from more than one person, and the report of the forensic scientist was that McConnell could not be excluded as being a part contributor of the DNA testing. In the opinion of Dr Whitaker:

“The DNA profiling results are in keeping with Annabella Symington having had contact with Kenneth McConnell at some time since she last washed her hands such that DNA from him has been transferred to her fingertips. In this respect these results cannot be explained by the contention that Mr McConnell does not know nor has been in contact with Annabella Symington.”

[7] One of Annabella Symington’s nieces was Margaret Fleming. She and her then husband lived beside McConnell at one time, the families became friendly, and the friendship continued after McConnell and his then wife moved to various other addresses in the Greater Belfast area. Margaret Fleming remained friendly with McConnell after he separated from his first wife and he told her about his gambling problems. She gave an account of what happened to the police in a statement which she made on 1 December 1992. She made a second statement covering the same ground on 10 November 2009, but in the second statement disclosed that there had been an intimate relationship between herself and McConnell on an occasional, infrequent, basis over many years, the first time she said had been no more than a year before her aunt’s death.

[8] She made no secret of her expectation that she would inherit a substantial sum of money from her aunt upon her death, and McConnell knew that, and also knew that she and her husband were also heavily in debt. In her first statement Margaret Fleming described how in August or September 1989 the defendant asked her to contact her aunt to try and persuade her aunt to lend him £11,500. She said that she telephoned her aunt, but her aunt refused, saying that she did not have that amount readily available. After the aunt’s death Margaret Fleming formed the suspicion that the defendant had murdered her aunt, and said to him that she thought he had done so, but he denied that.

[9] The defendant was arrested for blackmail in October 1992, and when Margaret Fleming learnt this, and that the defendant had told others that she would clear his debts once her aunt’s money came through, this strengthened her earlier suspicions that he had murdered her aunt, she contacted the police and made her first statement in December 1992. However, she later said that because the police appeared to believe that the defendant had not murdered her aunt she saw him again and their occasional sexual relationship continued both before and after he was sentenced to four years’ imprisonment for blackmail. The case was reopened by the police in late 2009, Margaret Fleming was re-interviewed, and made the second statement already referred to.

[10] The defendant was arrested on 26 January 2010, and during the first two days of interviews he frankly admitted that he had been a compulsive gambler on a very large scale for many years both before and after Annabella Symington's death. He admitted that he had asked Margaret Fleming for a loan of perhaps £3,000 prior to her aunt's death, and that a month or two after her aunt's death Margaret Fleming had asked him did he know anything about the murder. He accepted that he had been in Annabella Symington's house, but asserted that that was only after her death when he went there with, and at the request of, Margaret Fleming. He denied the murder and denied that his DNA would be found on her nail clippings.

[11] On 28 January, at an early point on the third day of his questioning, the police put to the defendant that his DNA had been found under Annabella Symington's fingernails, and the defendant then asked that the interview be terminated to allow him to consult with his solicitor. In subsequent interviews he confessed that he had committed the murder. He described that he had known from his conversations with Margaret Fleming that she had expectations of inheriting money from her aunt, and that she had been refused financial help for herself and her husband by her aunt. The defendant asserted that he thought that he could ask Mrs Symington for money for Margaret Fleming and her husband and also for a loan for himself. He went to her house and explained their situation and asked for money. He described how Mrs Symington listened to what he had to say, then said that he was "bold", in other words that it was impertinent of him, to come to her looking for money, got up and went to the telephone to phone her niece. He described how he pulled her back from the phone and that there was a sort of a struggle. He said she started to scream, he put his hands round her mouth, and somehow part of the cardigan got into her mouth

"and I thought that would keep her quiet you know. I just didn't stop in time enough and then I realised she was dead, I panicked and, I went to Bangor, I didn't go to that house with any intention of killing her, I never had any intentions, the whole situation just went wrong, just got out of hand".

[12] In the remainder of the interviews he described how he kept his hands over her mouth until she was quiet, how he pulled her back into the room when she was screaming, saying that he forcibly walked her back into the room. He put his hands over her mouth whilst she was still struggling and she fell to the ground. He went down on one knee and in the process of going down the cardigan got caught round her face. He then said he stuffed the cardigan into her mouth, saying:

"at that time I just thought that's the only way to keep her quiet you know."

He said that he was in a state of panic and that he supposed he knew that she was going to die.

[13] He described how he rubbed the seat of the chair in which he had been sitting with his sleeve to take away any fingerprints that there might be. Then he looked round the house to see if there was any more cash after he had taken £100-£200 from her purse, later throwing her purse in the Lagan.

[14] At the time the defendant was an inspector in the RUC, and he undoubtedly made use of this position in order to persuade Mrs Symington to let him into the house, although he denied that. However it is inconceivable that this elderly lady would have admitted anyone other than a person of authority and apparent reliability, such as a clergyman or a policeman, if she did not know them.

[15] Under art. 5(2) of the Life Sentences (Northern Ireland) Order 2001 the minimum term to be served is the period the court considers appropriate

“To satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.”

[16] In The Queen v McCandless & Ors [2004] NI 269 the Court of Appeal in Northern Ireland directed judges in this jurisdiction to apply the *Practice Statement* issued by Lord Woolf CJ in 2002 (reported at [2002] 3 All ER 417). The *Practice Statement* sets out the approach to be adopted in respect of adult offenders, and sets two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. In The Queen v Hamilton [2008] NICA 27 Kerr LCJ stated that “the touchstone in this jurisdiction for the fixing of minimum terms in life sentence cases remains the *Practice Statement*.” It is essential to bear in mind that the *Practice Statement* serves to provide guidance to judges who have to decide what the appropriate minimum term is in the circumstances of each case, and the court does not attempt to place a case in either of two rigidly defined categories. As Carswell LCJ observed in McCandless, the starting points are

“as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case”.

[17] I have carefully considered the submissions of Mr O’Donoghue QC (who appears for the defendant with Mr Farrell) that the case did not justify the higher starting point, but I am satisfied that this is a case where the minimum term should be at least 15 or 16 years. Annabella Symington was

77, not in very good health and living alone, and she was therefore exceptionally vulnerable to an attack of this sort from a man who was in the prime of life. Whilst I accept that the attack was not premeditated in the sense that the defendant went to the house intending to harm Mrs Symington, on his own account this was not an attack that was over in a flash, but a protracted struggle during which he could have desisted at any time. In addition there are a number of aggravating factors. The first is that the defendant stole from her afterwards. The second is that this murder represented a very grave breach of trust indeed by him. Not only did he abuse the knowledge of Mrs Symington that he had gained through his friendship with Margaret Fleming to go to try to borrow money from this lady whom he did not know, he was a serving police inspector at the time. This is an exceptionally grave aspect of this case.

[18] I have received a pre-sentence report on the defendant, and in it he is described as “an amoral person devoted to self-justification”, a description that I consider entirely justified, as is the statement in the report that the PBNI has

“concluded that Mr McConnell poses a risk of serious harm, influenced by long established/entrenched attitudes devoted to self gratification. We see a history of Mr McConnell manipulating others, uninhibited by awareness or care for the negative impact on those he came in contact with.”

[19] I have also been provided with psychiatric reports prepared upon the defendant by Dr Bell and Dr Helen Harbinson, both of whom are consultant psychiatrists. They describe in very considerable detail how the defendant has suffered from compulsive addiction to gambling throughout almost the entirety of his adult life, except for short periods when he managed to restrain himself from gambling. His gambling appears to have started in his early teens, and I have no doubt that this addiction was severe and long lasting, and led him to approach Annabella Symington for money. I have no reason to doubt the account he has given of the enormous sums which he has wasted through gambling throughout his life, amounting to some hundreds of thousands of pounds.

[20] Mr O’Donoghue submitted that this addiction should be regarded as reducing his culpability because the defendant was not in control of his normal faculties at the time. However, it must be firmly stated that addictions, whether to alcohol, drugs or gambling, cannot provide mitigation for the commission of serious crimes. This was made clear in R v Lawrence 10 Cr. App. R. (S) 463 at 464 by Simon Brown J (as he then was) who said:

“We cannot make too plain the principle to be followed. It is no mitigation whatever that a crime is

committed to feed an addiction, whether that addiction be drugs, drink, gambling, sex, fast cars or anything else. If anyone hitherto has been labouring under the misapprehension that it was mitigation then the sooner and more firmly they are disabused of it the better.”

This was approved by our Court of Appeal in R v McIlwaine [1998] NI 136 by McDermott LJ.

[21] I have received a number of letters from the defendant’s present wife, and his two daughters, as well as from two clergymen. His family speak lovingly of him, and his wife says that he “is burdened with guilt and remorse”. The Rev Spence, who has had contact with the defendant as a prison chaplain, writes that he believes the defendant is repentant for his actions.

[22] I have also received a victim impact statement from Sheelagh Miller, Mrs Symington’s other niece. She describes in detail how her continuing concern that her aunt’s murderer had not been found led her to contact the R.E.M.I. team to urge them to reinvestigate her aunt’s death, and she expresses high praise for the officers of that team who successfully conducted this further enquiry. She also expresses the grief she felt for many years caused by her aunt’s death, and describes in telling words the effect on her late mother and her two aunts in their declining years when their lives were blighted by their sister’s murder.

“My mother and her two sisters are no longer living. But I witnessed their suffering and pain. As elderly dignified ladies they couldn’t understand how this evil deed entered their lives. They found it difficult to lose their beloved sister in such a brutal way. They went to their graves without being allowed to know who the fiend was who killed her.”

[23] I have considered those points advanced by Mr O’Donoghue by way of mitigation, including the defendant’s age, but I consider the only mitigating factor is his plea of guilty. His clear record at the time is of little weight in the context of a crime of this gravity, and is cancelled out by his subsequent conviction for blackmail because one cannot ignore his conduct thereafter. It is noteworthy that the defendant only admitted what he had done after two days of interview during which he repeatedly denied any involvement in the murder. He only admitted what he had done when the police put to him the DNA information which they had now received and when he plainly knew that he was trapped. Despite that, and despite repeating his admissions in prison, he pleaded not guilty on arraignment and only changed his plea to guilty on the Friday before his trial was due to start

on the following Monday. The lateness of his plea is relevant because it casts doubt on any expression of remorse that he has given. Despite what his wife and children, and the Rev Spence, say about the defendant's remorse, I am not persuaded that it is genuine. His consistent denials of guilt until confronted with irrefutable evidence, and his waiting until the last minute before changing his plea, speak volumes about his true attitude. Whilst he is entitled for some credit for his plea, that it was not entered until the last minute greatly reduces the credit to be given for his plea. The reports to which I have referred were completed by Dr Bell on 5 January 2011, and by Dr Harbinson on 9 November 2010 and were therefore available to the defence more than two months in advance of his trial, and if other lines of enquiry were unsuccessfully pursued after the reports of Dr Harbinson and Dr Bell were available in order to see if there was a defence that could be put forward on his behalf that cannot excuse his late plea.

[24] The Court of Appeal in this jurisdiction has repeatedly emphasised that defendants can only receive the full credit which the courts give to those who plead guilty when they plead guilty at the earliest possible moment. There is no legitimate reason why the defendant should have maintained his plea of guilty to such a late stage, and it is indicative of a desire on his part to minimise his conduct in carrying out this brutal murder of an elderly lady who had quite properly refused to provide him with the means to continue to fund his addiction. I am satisfied that if the accused had been convicted after a contest the minimum term of imprisonment he would have been ordered to have served would have been at least 20 years imprisonment. Taking into account his late plea of guilty I consider the appropriate period he should serve before he can be considered for release is 18 years imprisonment. As is the normal practice this will include the time spent on remand.