

IN THE CROWN COURT OF NORTHERN IRELAND

SITTING AT BELFAST

THE QUEEN

v

**STEPHEN LESLIE BROWN
(AKA STEPHEN LESLIE REVELS)**

GILLEN J

[1] Stephen Leslie Brown, I convicted you on 3 March 2009 of the murders of Andrew Robb and David McIlwaine on 19 February 2000 at the Druminure Road, Tandragee. The deceased David Andrew Robb was 19 years at the time of his death and David McIlwaine was 18.

[2] In order to spare the feelings of the families of the deceased, I do not intend to revisit the now well publicised and harrowing details of these two murders save to say that they undoubtedly rank amongst the most gruesome of the past 40 years in Northern Ireland. The post mortem on the bodies of these two teenagers bears silent testimony to the sadistic manner in which you and your accomplice brought about their deaths.

[3] These crimes were so horrendous that they do not speak about human nature or the recurring pattern of human behaviour. Civilised reason can offer no explanation for them. They represent a sadistic adherence to unbridled violence and total disregard of the value and dignity of human life.

[4] The manner of their execution, cold-blooded and sadistic, and the disposal of their bodies, cast aside on a public road, must have engendered unimaginable anguish and grief to their parents, trauma from which I suspect they will never recover. Without the slightest hint of remorse for your crimes or consideration for the feelings of these parents, you obliged them to relive the agony of these murders during the several weeks of this trial, during the course of which you brazenly perjured yourself in unavailing denial.

[5] I have already sentenced you to imprisonment for life on both counts of murder and I now must consider an order under Article 5 of the Life Sentences (Northern Ireland) Order 2001 and fix the minimum term which you are to serve before the release provisions are to apply to you.

Determination of Tariffs in Life Sentence Cases

[6] Article 6 of the 2001 Order, where relevant, provides as follows:

“Determination of tariffs

5.-1 Where a court passes a life sentence, the court shall, unless it makes an order under paragraph (3), order that the release provisions shall apply to the offender in relation to whom the sentence has been passed as soon as he has served the part of his sentence which is specified in the order.

(2) The part of a sentence in an order under paragraph (1) shall be such part as 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.

(3) If the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under paragraph (1), the court shall order that, subject to paragraphs (4) and (5), the release provisions shall not apply to the offender.”

[7] Where a minimum term is imposed and has elapsed, the Secretary of State will refer the case to the Commissioners under Article 6 of the 2001 Order. By Article 6(4)(b) the Commissioners must be satisfied that it is no longer necessary for the protection of the public that you should be confined and if they are so satisfied they will direct a release pursuant to Article 6(3)(b), whereupon it will be the duty of the Secretary of State to release you.

[8] The Court of Appeal in Northern Ireland has made clear in R v Hamilton [2008] NICA 27 per Kerr LCJ at paragraph 28 that the touchstone in this jurisdiction for the fixing of minimum terms in life sentence cases remains

the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412.

[9] The relevant parts of the *Practice Statement* are these:

“The normal starting point of 12 years

10. Cases falling 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 8/9 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) Extension 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 there is no minimum period which could properly be set in that particular case".

Applying the Guidance in the Practice Statement to the Present Case

[10] I consider that it is appropriate to follow the sequence provided in the Practice Statement. In the present instance, I consider that the starting point must be that of 15/16 years. I so conclude because the accused's culpability in this case was exceptionally high. This case is characterised by a number of the features referred to in paragraph 12 of the Practice Direction. In particular there was evidence of sadism and/or gratuitous violence carried out on both of the deceased. The accused, although he had not initiated the knife attack upon Mr McIlwaine, returned to the victim from his car to visit further gratuitous, sadistic and extensive injuries on the victim before he died given the noises which Burcombe said were emanating from the deceased at that stage. Not only were there multiple murders, but I am satisfied that the killing was politically motivated in so far as the killing was motivated by the expressed view of the deceased Mr Robb as to the death of the accused's friend Mr Jamison and the deceased's support for the LVF. I am also satisfied that Brown's references after the murder that he was "buzzing" and had "forgotten what it was like to kill" all inevitably pointed to a sadistic element in his participation in the killing. I pause to observe that I was not satisfied that McIlwaine had necessarily been killed to prevent him being a witness to what happened to Robb because it may well be that the accused and Dillon had decided to kill both of them from an early stage.

[11] Having selected therefore the higher starting point, I consider it appropriate to vary upwards that starting point to take account of a number of aggravating factors relating to the offence and to the offender. The killing was clearly planned and the killers had armed themselves with a knife in advance. There was no spontaneity or lack of premeditation in this instance.

[12] The only mitigating factor in this whole affair is the offender's age in so far as the accused was only 19 at the date of these murders.

[13] Having decided to vary the starting point upwards, I have come to the conclusion that only a substantial upward adjustment would be appropriate in this most serious of cases. As I have indicated, these offences involve several factors which attracted the higher starting point.

No Minimum Period

[14] Having applied the broad sequence of the Practice Statement, I now turn to consider whether this is one of those rare cases where the offender should be kept in prison for the rest of his life.

[15] The principles governing such an instance have been dealt with recently in the Court of Appeal in Northern Ireland in Hamilton's case. And in particular at paragraphs 23-27 of that judgment. I have distilled the following principles:

- The basis on which a whole life tariff is chosen must be that this is required to punish the offender because there is no concern in relation to deterring from further offending the person who is to remain incarcerated for the remainder of his life albeit the question of deterring others is still in play.
- Although the Criminal Justice Act 2003 which governs the choice of a minimum term in life sentences in England and Wales is different from the 2001 Order, the court in Hamilton's case drew attention to paragraph 4 of Schedule 21 of that Act which sets out the circumstances on which a Whole Life Order is the appropriate starting point for the determination of the minimum term in relation to a mandatory life sentence. It provides so far as is material:

“(1) If -

(a) The court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) The offender was aged 21 or over when he committed the offence,

the appropriate starting point is a Whole Life Order.

(2) Cases that would normally fall within subparagraph (1)(a) include -

(a) The murder of two or more persons, where each murder involves any of the following -

(i) a substantial degree of premeditation or planning;

(ii) the abduction of the victim, or

(iii) sadistic or sexual conduct.

...

(c) A murder done for the purpose of advancing a political ... cause."

Hamilton's case also drew attention to what Lord Phillips CJ had stated in R v Jones & Ors [2005] EWCA Crim 3115 as follows:

"A Whole Life Order should be imposed where the seriousness of the offending is so exceptionally high that just punishment requires the offender to be kept in prison for the rest of his or her life. Often, perhaps usually, where such an order is called for the case will not be on the borderline. The facts of the case, considered as a whole, will leave the judge in no doubt that the offender must be kept in prison for the rest of his or her life. Indeed if the judge is in doubt this may well be an indication that a finite minimum term which leaves open the possibility that the offender may be released for the final years of his or her life is the appropriate disposal. To be imprisoned for a finite period of 30 years or more is a very severe penalty. If the case includes one or more of the factors set out in paragraph 4(2) it is likely to be a case that calls for a Whole Life Order, but the judge must consider all the material facts before concluding that a very lengthy finite term will not be a sufficiently severe penalty."

[16] In this instance I am satisfied that there was a substantial degree of premeditation or planning in this murder and that there was sadistic conduct

in the manner of the carrying out of the murders, both of which carried a political resonance in the context of the feud between the UVF and the LVF.

[17] Having reviewed all the circumstances of this case however, I have come to the conclusion that this is one of those cases where, to borrow Lord Phillips statement, I entertain some measure of doubt that Brown must be kept in prison for the rest of his life. He was only 19 when this was committed and that in itself would have taken him outside paragraph 4 of the 2003 Act if it applied in Northern Ireland. Moreover whilst I am satisfied that he was part of a joint enterprise to murder Mr Robb, I am not aware of the precise role that he took in the killing itself and it was Dillon who initiated the knife attack on Mr McIlwaine albeit with the strong encouragement of the accused and it was the accused who returned to the body at a time when Mr McIlwaine may not have been dead. Brown does not have a material criminal record prior to this or indeed since the offence was committed. For these reasons therefore I consider that a very lengthy finite term will be a sufficiently severe penalty.

Conclusion

[18] I have come to the conclusion that this crime merits a very substantial minimum period to be imposed and I have determined that the minimum period to be served by the accused in accordance with the provisions of Article 5 of the 2001 Order is that of 30 years which will be reduced by the time he has already spent on remand.