

IN THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

v

JAMES PATTON KEMP

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SENTENCE

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NICHOLSON LJ

[1] On Monday 3 March 2003 a jury was sworn to try this case. The only count on the Indictment alleged that the accused murdered William Morrison on 24 December 2000. Before the case was opened to the jury, Mr Adair QC, who appeared for Kemp with Mr Barry Gibson, asked that his client should be re-arraigned and I directed that this should be done. Kemp then pleaded guilty to murder.

[2] On 2 May 2003 the facts of the case were presented to the court by Mr Gary McCrudden who appeared for the prosecution with Mr Creaney QC.

[3] Mr Morrison was 35 years of age at the time of his death. He was married for 9 years but had been separated from his wife for about 4½ months. He and Kemp had been on friendly terms for a considerable time but after his wife left him Mr Morrison became even more closely attached in friendship to Kemp and at the time of his death they were 'best mates'. Kemp who is now 35 had been married for 14 years but his marriage had also gone wrong and he had formed a relationship with Ms Walsh.

[4] The two men were drinking companions and the closeness of their friendship is indicated by the fact that Mr Morrison had been invited to Ms Walsh's house to share Christmas dinner with her and Kemp and her children. On 23 December Mr Morrison and Kemp spent most of the day in

each other's company in Mr Morrison's house, drinking heavily. An indication of this is that at post mortem Mr Morrison was found to have 269 milligrams of alcohol per millilitre in his blood and 350 milligrams of alcohol per millilitre in his urine. He was not just drunk. He was very very drunk. On the available evidence Kemp was probably as drunk as Mr Morrison.

[5] The only witness to what happened was a sixteen year old youth, Gary Sweetlove, but his account of what happened cannot be fully relied on because he was very drunk. At some stage late in the evening of 23 December and in the early hours of 24 December an argument started between Mr Morrison and Kemp. How or why it started will never be known but it was probably started by Mr Morrison who accused Kemp of being a child molester and told him that he would be shot for it. He may not have realised how wrong he was in making this accusation and he may not have realised the stress under which Kemp was living at the time, as will appear later. It seems that Kemp made considerable efforts to get his close friend to withdraw this accusation but that he persisted. I am satisfied that this is what provoked Kemp to kill him. According to Sweetlove Kemp said he would kill Mr Morrison, found a knife in the house and proceeded to stab Mr Morrison. Mr Morrison died from these stab wounds. I have taken into account the version of events given by Gary Sweetlove, what Kemp said in interviews with the police, the evidence of Mr Speers, the forensic scientist, and the pathologist's evidence. It is unnecessary to set them out here.

[6] I had the benefit of evidence from Detective Inspector Miller who was in charge of the case. After killing Mr Morrison Kemp left his house although in his drunken state he may not have known that his friend was dead and made his way to his parents' house. It was apparent to them that he had been involved in a serious incident and they summoned the police. It was, said the Detective Inspector, an admirable step on their part and they have been very supportive to the Morrison family ever since.

[7] The Morrison family need all the support that they can get, especially Leonora Morrison, the mother of the dead man. She had three sons. The second son died sixteen months before William. The family were still grieving when William was killed. Her husband is on dialysis and, she says, wants to die. Her youngest son, Cecil, is, it appears, a manic-depressive, suffers from diabetes and has taken to heavy drinking which causes blackouts. According to her he says that he wants to be with his brothers. Her two daughters have also suffered. She herself suffers from angina and tells me in her letter that she has suffered some mild heart attacks since the murder of her son. She ends her letter: "I hope this gives you some insight into just how many lives are touched and affected by the action of one person".

[8] Mr Miller says that Kemp is a “binge” drinker. The allegation from someone who knew Kemp so well that Kemp was a “child molester” came “out of the blue” as did the threat that Kemp would be shot. The remarks inflamed an alcohol inflamed situation. The threat was made over a period of hours. There were verbal altercations and blows exchanged before the knifing. Morrison had taken his shirt off, presumably for a fight. It was a tragic, drunken row, he said, lasting for some four hours between midnight and 4.00am.

[9] The background to the allegation of child-molestation was that a distant relation of Mr Morrison, referred to by Mr Lyttle and Mr Miller by a letter of the alphabet, who may well have paramilitary connections, had made sinister approaches to the nine year old daughter of Ms Walsh. He was reported to the police by Ms Walsh and Kemp. I do not propose to go into the details of his behaviour but it has been ongoing it appears, and if anyone deserves to be described as a child-molester, he fits that description if the allegations are true. In August 2000 a petrol bomb was thrown at Ms Walsh’s house and a pet dog was burnt to death. Ms Walsh and Kemp made statements to the police. A “hate” campaign was started up against Kemp with written threats, posters on the Castlereagh Road accusing him of child-molesting. All of this was borne out by the Detective Inspector. He told the court that the Kems had cooperated with the police as fully as possible. He saw no reason to disbelieve Mr Kemp senior who told him that just before he sent for the police his son told him that he did not know what happened, that his son burst into tears and said: “He just kept coming at me.”

[10] I would fail in my duty if I did not express my admiration for Mr Lyttle’s plea on behalf of Kemp. The stress of the situation relating to Ms Walsh’s daughter and the vicious campaign against Kemp, doubtless in retaliation for reporting X to the police and to the Social Services, had led him into psychiatric problems and within a short while of the petrol bombing he was attending at Albertbridge Road Psychiatric Outpatients Unit. The hospital offered to take him in as an in-patient on 12 December but because it was coming up to Christmas, he declined. He was on anti-depressants and he was binge drinking. In the 11 days following the offer of in-patient treatment he deteriorated.

[11] I was shown all the relevant medical and psychiatric reports. He was forced by illness to give up his work as a painter and decorator. As he deteriorated his medication was increased. His psychiatric condition became extremely unstable, not least because of the public allegations of child-molesting which, the Detective Inspector had assured me, were completely unfounded.

[12] Mr Lyttle dealt in detail with the circumstances of the murder. The allegation that Kemp was to be shot caused genuine fear and the allegation of

child-molesting made by his friend caused despair and upset. I suspect that Mr Morrison may have picked this story up as a result of the campaign being waged against Kemp. X is, as I have stated, a distant relative of Mr Morrison.

[13] After Kemp's arrest at 5.00am on 24 December Dr Hamilton, the police forensic medical officer, directed that he was not to be interviewed until he had had 5 hours of sleep and medication brought from home. Interview times were restricted. He directed that he was to be watched every 15 minutes in his cell as he was suffering from endogenous depression. Mr Lyttle took me to the Practice Direction of Lord Woolf and the relevant portions of it and on behalf of Kemp and all the members of Kemp's family offered their condolences to the family of William Morrison.

[14] It is now my duty to fix the minimum period which Kemp must serve before he appears before the Life Sentence Review Commissioners who will ultimately decide when he is to be released. The Morrisons must not assume that he will be released after that minimum period has been fixed. I suspect that they may wish life imprisonment to mean what it says. They will have the opportunity, no doubt to make representations to the Life Sentence Review Commissioners at a later stage.

[15] Guidelines have been set by Lord Woolf, Lord Chief Justice of England and Wales for setting of the minimum term and I propose to adopt them. Unless and until the Court of Appeal in Northern Ireland decide otherwise, it seems to me appropriate to follow the English practice. William Morrison is dead. He should not have died at such an early age. James Patton Kemp is alive. That is the harsh reality which the Morrisons face and must try to overcome. Kemp's parents are suffering though the extent of their suffering is not as great as that of the Morrisons. James Patton Kemp will have on his conscience for the rest of his life that he has taken the life of a good friend. For my part I believe that William Morrison would still be alive but for the activities of the person who has been referred to by me as X, but they have not been established in a court of law.

[16] It is the Crown view as well as that of the Defence that one should start at paragraph 10 of the Practice Direction. That means a starting point of 12 years based on a determinate sentence of 24 years for punishment and deterrence. Cases falling within this starting point normally involve the killing of an adult victim arising from a quarrel or loss of temper between two people known to each other. Exceptionally the starting point may be reduced and at paragraph 11 it is stated that where the offender's culpability is significantly reduced by certain factors, these may justify a reduction to 8 or 9 years.

[17] I am satisfied that the starting point for the minimum term should be 12 years and that there are factors which significantly reduce Kemp's culpability.

[18] I consider that the case came close to the borderline between murder and manslaughter. I have no doubt that the jury would have convicted Kemp of murder and the plea of guilty to murder was the only course open to him. Having seen the psychiatric reports I am satisfied that at the time of the killing, Kemp was suffering from mental disorder or mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility. I am also satisfied that he was provoked by the allegation of child-molesting. Mr Morrison was unaware, I am sure, of the effect which such an allegation would have on Kemp. I am also satisfied that Kemp was provoked by the threat of being shot. Again William Morrison was only repeating rumours which he had heard but I am sure that Kemp had a real fear of being shot.

[19] Having regard to all these circumstances I fix the minimum period for punishment and deterrence at 8 years. I remind the Morrisons that Kemp has been sentenced to life imprisonment and it will be for the Life Sentence Review Commissioners to decide whether life means life or what period Kemp will serve and the Morrisons will have their say. The desire for vengeance can be very strong and the suffering of the Morrisons is very deep-seated.

[20] But I have a duty to the public which is ill-served by taking into account the Morrisons' understandable attitude.

[21] Accordingly James Patton Kemp, having sentenced you to life imprisonment I fix the minimum term or tariff in your case at 8 years, to include periods of remand in custody.