

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **25/6/04**

STEPHEN JOHN BOYLE

DECISION ON TARIFF

KERR LCJ

Introduction

[1] Stephen John Boyle is prisoner transferred to this jurisdiction from the Republic of Ireland following his conviction after a trial before Mrs Justice McGuinness and a jury at Dublin Central Criminal Court on 11 July 1997. He was found guilty by majority verdict of the murder of his flatmate, Gerard Hagan, on 3 August 1996. He was transferred to Northern Ireland on 10 May 1999. He is now aged 36.

[2] On 16 June 2004 I sat to hear oral submissions on the tariff to be set under Article 10 of the Life Sentences (NI) Order 2001. The tariff 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 the time of his death the deceased (who was originally from Belfast) was living with three other men, the prisoner (another Belfast man), Mark Brown and Douglas McManus, who were both from Scotland, in Flat 1, 31 Lower Rathmines Road, Rathmines, Dublin.¹ In the early hours of 3 August 1996 the prisoner returned to the flat in a drunken state and, for a period of about an hour, violently set about Mr Brown and Mr McManus with a hurley stick, accusing them of talking about him behind his back. At one point during the assault the prisoner *may* have produced a kitchen knife belonging to Mr McManus with which he threatened Mr Brown. The deceased had not

¹ According to one housemate, all four were heroin abusers. Mr Brown gave evidence that he and the deceased had smoked heroin in the afternoon before the murder. The prisoner accepts he used cannabis, but says that he was not used to it. Neither the prisoner nor (apart from the above) anyone else makes reference to him using heroin.

yet returned home. In the depositions the prisoner is said to have told the others that the deceased too would receive a beating, but this was not repeated at trial. In the aftermath of the assault the deceased arrived back at the flat and knocked on the door for entry. The prisoner instructed Mr Brown to answer the door. In pain, he simply unlocked the door and went back to the bedroom as the prisoner walked past him armed with the hurley stick. From the bedroom Mr Brown heard the prisoner attack the deceased, and the deceased saying, "Stop it". A short time later the prisoner returned to the flat (in an agitated state according to depositions) with bloodstains on his T-shirt saying words to the effect of "I have just done Gerry in" or "I have just done somebody out there". The prisoner changed his T-shirt and instructed Mr Brown to dispose of the bloodied clothing, which he unsuccessfully attempted to flush down the lavatory. He also instructed Mr Brown to look out to see if the deceased was all right. The prisoner then left the flat and the police arrived on the scene a few minutes later, questioned the two injured men and retrieved the prisoner's T-shirt.

[4] A taxi driver had witnessed the attack by the prisoner on Mr Hagan. He described how the deceased either staggered or was thrown by the prisoner on to the road into the path of his vehicle so that it was necessary for him to swerve to avoid the deceased. It appeared that the deceased was trying to get away from the prisoner. He was seen to get up from his hands and knees and stagger to the middle of the road before collapsing. The witness saw the prisoner returning towards the flat and watching proceedings from its steps. He and other witnesses attended to the deceased who briefly showed signs of life. The witness observed what he thought to be two stab wounds to the chest and stomach. The police were contacted and the witness pointed them towards the prisoner's flat.

[5] Another passer-by, a medical student, described the incident as a "...one sided fight. One guy was putting up absolutely no defence whatsoever and he seemed to be getting quite a hammering." He noticed the deceased make an escape and collapse in the middle of the road. He also witnessed the prisoner return to his flat, remarking: "I saw the guy who was involved in the fight casually turn away from the fight and down the steps and disappear." The witness went to the deceased's assistance. He found him to be breathing in a laboured fashion. In his deposition the witness said he believed life to have been extinct within 1 or 2 minutes of the deceased having collapsed on the road. Another witness, who initially thought that the men were "messaging", also remarked that the prisoner had the upper hand. He stated in his deposition: "...the fitter man stood on the footpath very composed and controlled as the victim staggered onto the roadway and fell. There was no sign of remorse or concern for the victim...and he seemed to have great control over his aggression." In evidence at trial however the witness merely described the prisoner as "calm" after the event. This witness also saw the prisoner return to his flat.

[6] The deceased was taken by ambulance to Meath Hospital where efforts to resuscitate him were unsuccessful and he was pronounced dead at 4.45am on 3 August 1996. Dr J D Gilsenan, assistant State Pathologist, carried out a post mortem examination later that same day. He found the deceased to have sustained stab wounds to the left side of the neck, left leg above the knee, abdomen and chest. There was a slash wound to the right palm. The immediately fatal wounds were those to the chest which penetrated the heart and would have caused almost instantaneous death. The post mortem revealed 10 stab wounds and a slash wound. The report concluded:

“The deceased suffered multiple stab wounds of which those to the left leg and left side of the neck were serious and would result in considerable bleeding but were not in themselves fatal. Two of the three wounds to the centre of the chest penetrated the heart and would have resulted in almost immediate death and must therefore have been the last wounds inflicted ... Death was due in my opinion to blood loss due to stab wounds to the heart.”

[7] At 6pm on the day of the murder, the prisoner arrived at his estranged wife’s home in Portlaoise and told her he had killed someone. His wife then accompanied him to a station in Portlaoise where he repeated the assertion (made earlier to his wife) that he had acted in self-defence. Evidence was given at trial that the prisoner was visibly upset. While at the station he talked freely with officers, telling them that he had felt intimidated by the deceased who had mistreated the other two flatmates. He claimed that he did not know that he had killed the deceased until he heard it on the news.

[8] Evidence was given at trial that the prisoner had been drinking in a flat upstairs from his own earlier in night and had expressed annoyance at the deceased having given others details of his movements. There was also evidence of a conversation between the deceased and the prisoner in a public house earlier in the evening during which the deceased is said to have enjoined him to contribute financially to the household. The prisoner said that this led to him telling the deceased to vacate the flat at which point the deceased threatened him with a glass. The prisoner gave evidence that he left the public house with the deceased issuing threats against him. He was frightened and felt resentment against the two other flatmates as the deceased had told him that they hated him. He gave evidence of a number of alleged instances of violence by the deceased.² The prisoner admitted to administering the beating to Brown and McManus, but said he had apologised for it in its aftermath.

² A number of witnesses describe prior instances of violence by the deceased.

[9] The prisoner said that he encountered the deceased at the door of the flat. The deceased wore an “evil” expression, his face “scrunched up with fury”. He continued:

“I thought he was going to stab me or something, you know. I just flipped it, you know, I just flipped. I mean, I turned around and seen a knife sitting on the table, lifted it, that’s what I remember. Just, all happened, I can remember, I can’t remember actually stabbing him eleven times, and even I can’t remember actually stabbing him once....I don’t know how the two of us ended up down the stairs...I didn’t mean to kill him...I didn’t like him. I just never wanted to kill anyone ... I felt fear when Mr Hagan stepped in through the door.”

[10] The prisoner agreed that he had been out of control with drink and that he had been drinking all day. He was in a daze immediately after the stabbing, but thought that the taxi drivers on the scene would radio for assistance. When he returned to the flat he snapped out of the daze.

[11] Under cross examination the prisoner accepted that he had been annoyed by the talk in the upstairs flat which he took to mean that the deceased had discussed his movements. He also thought that the deceased had been “cheeky” in the pub for demanding contributions to the household when the deceased was living there for free. He said he was not sure when he entered the flat what attitude Mr Brown and Mr McManus would have towards him. When he saw Mr Brown the past resentments came to the fore and the attack commenced. He accepted that he might have threatened Mr Brown with a knife. He also accepted that the deceased did not say anything to him when he appeared at the door of the flat, but merely exhibited an angry expression. There was nothing to indicate that the deceased had a weapon. The prisoner appears to have accepted the suggestion that the attack started at the door of the flat and moved from there outside.

[12] Defences of self-defence and provocation were raised but only provocation was ultimately put to the jury. The alleged provocation seems to have focused on the dispute in the pub earlier in the evening set against the deceased’s history of violence. A police officer was called to give evidence of the deceased’s 11 previous convictions between 1981 and 1990, including conspiracies to rob and firearms offences. The witness stated that the deceased was the “black sheep of an otherwise very decent family”.

[13] In the course of the earlier attack Mr Brown sustained, inter alia, two fractures of his right ulna and one fracture of his left ulna. Mr McManus sustained multiple injuries including a fracture in the lateral aspect of the head of his right radius and possibly a fracture in the tip of the right olecranon process. His facial bone x-ray showed a possible fracture of the nasal bones or right orbit.

Personal background

[14] A probation officer's report, dated 26 August 1997, was provided for the trial. The prisoner was brought up in Belfast. He was one of six children. His parents separated when he was a child. A troubled school career resulted in him being sent to Training School and later the Young Offender's Centre. He moved to Dublin in 1995 to avoid police attention in Northern Ireland. He married in the south and the couple had a child but they soon separated. He had little employment other than occasional labouring because he spent so much time in custody. He accepted that he had a long-standing problem with alcohol and described himself as a "binge drinker". He admitted to occasionally smoking cannabis. The probation report was written in relation to the assault counts, rather than the murder. When discussing the assault offences the prisoner claimed that he regretted his actions, which had resulted from alcohol and pent up anger at the injured parties having talked about him, but he maintained that he "hated" both injured parties. The report recommended that while in custody the prisoner should address his alcohol and anger management issues.

Antecedents

[15] The applicant made 30 separate appearances before the criminal courts between January 1980 and September 1995. Nine of these appearances were before the Crown Court and he was convicted of violence on a number of occasions. The following are the most significant convictions: -

Belfast 13/3/91	Robbery	2 years' imprisonment
Belfast 24/6/85	Rape & attempted robbery	30 month YOC (total)
Belfast 15/12/83	Robbery	Training School Order
Belfast 16/3/83	Robbery	Probation (2 years)

There are relatively few other instances of violent offending. In March 1993 the prisoner was imprisoned for 3 months by Belfast Magistrates' Court for assault on police. In February 1991, on appeal to Belfast County Court, the prisoner was sentenced to 2 months imprisonment for two assaults on police. In November 1983 he was sent to Training School for offences including possession of an offensive weapon, while in May 1982 he was sent to remand home for a month for common assault.

[16] A moving written representation has been submitted by the deceased's brother, Michael Hagan, on behalf of the Hagan family. Mr Hagan is anxious to ensure that his brother is not regarded simply as a statistic, but rather a much-loved person of great importance to his family who miss him deeply and who were devastated by the murder. Mr Hagan stated that the pain of his passing continues and the family members cope day to day, taking comfort from their religious faith. Mr Hagan points out that the deceased was not just a son and a brother, but also a father, and that his child will never know him.

[17] In describing the impact of the loss Mr Hagan wrote: -

"Our hurt is our human feelings, we miss him deeply, not being able to hear his voice or his laughter, never to see his smiling face, or embrace him"

Practice Statement

[18] 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 unupportable 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."

Conclusions

[19] Although Mr Barry Macdonald QC for the prisoner argued strongly that the starting point in this case should be in the lower category, there are certain features of the case that might be more closely associated with the higher starting point category. The view could quite easily be taken that the offender's culpability was exceptionally high. Despite his claims to have lifted the knife just before the attack, there is reason to suppose that he intended to attack the deceased as soon as he returned to the flat and that, accordingly, he would have armed himself with a knife in preparation for that attack. Moreover, it is clear that the victim, if not particularly vulnerable from the outset of the attack by the prisoner, was in no condition to offer any resistance after the initial assault.

[20] Mr Macdonald suggested that there was no intention to kill and pointed to the expressions of regret that the prisoner made to his wife within a short time of the killing. I have no difficulty in accepting that the prisoner regretted the killing but I am less sure that this indicates a lack of intention to kill rather than concern for his own plight. He must have realised within a very short time that he would readily be identified as the killer.

[21] Mr Macdonald also claimed that the prisoner had been provoked, albeit that this defence was not regarded as efficacious by the jury. Again I am reluctant to accept this. It does not chime well with what is known about the prisoner's behaviour before the victim returned home. While one would hesitate to describe this offence as well planned, nevertheless there was some element of preparation. It was suggested that the fact that the prisoner was heavily intoxicated is a mitigating factor but I do not accept that. It may

indicate that the killing was perhaps not as deliberate as it might have been if committed in complete sobriety but that is at best an indication of a lack of aggravation rather than mitigation of the culpability of the offender.

[22] Taking all these factors into account and the aggravating effect of the offender's previous convictions I have decided that the appropriate tariff is 13 years. This will include the time spent by the offender in custody on remand.