

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

THOMAS MARTIN GREEN

CARSWELL LCJ

On the morning of 16 March 1986 the body of John O'Neill was found lying in a small river at Carr's Glen, to the north of Ballysillan Road, Belfast. His death was due to head injuries, which the pathologist considered were caused by a blow or blows from a broad flat surface. A trail of blood and drag marks on the ground led back to the nearby Tyndale Community Centre, reputed to be frequented by members of the Ulster Defence Association. The trial judge found that O'Neill, a Catholic, had visited the Centre after 11 pm the previous evening. He had drunk a good deal during that day. The judge concluded that he had at some time been severely beaten and dragged down towards the river, sustaining on the way the fatal head injuries from a piece of bloodstained stone found along the trail.

On 20 May 1986 at 6.30 am the appellant was arrested and taken to Castlereagh Police Office. There he was interviewed in a series of twelve interviews on 20, 21 and 22 May, in the course of which he made a number of

admissions and made and signed two written statements. On the basis of these admissions the trial judge held that the appellant took part in the murder of John O'Neill as a participant in his removal from the Centre and the assault which caused his death.

The appellant was tried by MacDermott J sitting without a jury at Belfast Crown Court. The admissibility of the verbal and written statements was challenged at the trial and the judge held a voir dire, following which he held them all to be admissible. He gave a judgment in writing on 1 June 1987, in which he set out his reasons for admitting the statements and for finding him guilty. The appellant was sentenced to imprisonment for life. He appealed to the Court of Appeal, which dismissed his appeal on 29 June 1988. Several applications were made to the Secretary of State for a review of the conviction, but all were refused. On 25 March 1997 the appellant applied to the Criminal Cases Review Commission and following the obtaining of further evidence and consideration by the Commission it referred the conviction to this court under the provisions of section 10 of the Criminal Appeal Act 1995. In accordance with the direction contained in section 10(2) of that Act the matter has been treated as an appeal to this court. On an application by the appellant under section 25 of the Criminal Appeal (Northern Ireland) Act 1980 we gave him leave to call further evidence, that of Professor Vincent Marks, an expert on hypoglycaemia, and Dr David Baxendale, a forensic document examiner. When the appeal came on for hearing on 21 January 2002 counsel appearing for the Crown informed the

court that on the basis of the findings and opinion expressed by Professor Marks in his report (which was admitted by consent) his instructions were not to oppose the appeal. Having heard a succinct presentation of the case by Mr Harvey QC on behalf of the appellant, we indicated our intention to allow the appeal, but reserved our reasons. This judgment now contains our considered reasons for our decision.

The sequence of interviews of the appellant in Castlereagh was as follows (we use the numbering from MacDermott J's judgment):

Tuesday 20 May 1986

1. 11.25 am – 1.25 pm D/Sgt Kildea and D/C Kell
2. 3.05 pm – 4.15 pm D/Sgt Kildea and D/C Kell
3. 4.35 pm – 5.55 pm D/Sgt Boyd and D/C Beattie
4. 7.30 pm – 10.55 pm D/Sgt Kildea and D/C Kell

Wednesday 21 May 1986

5. 10.10 am – 11.05 am D/Sgt Kildea and D/C Kell
6. 11.05 am – 12.50 pm D/Sgt Boyd and D/C Beattie
7. 2.05 pm – 4.50 pm D/Sgt Kildea and D/C Kell
8. 4.50 pm – 6 pm D/Sgt Boyd and D/C Beattie

Thursday 22 May 1986

9. 10.00 am – 10.30 am D/Sgt Kildea and D/C Kell
10. 11.30 am – 12.00 D/Sgt Kildea and D/Sgt Boyd
11. 2.25 pm – 3.50 pm D/Sgt Kildea and D/Sgt Boyd
12. 7.15 pm – 7.55 pm D/C Kell and D/Sgt Boyd

At 7.30 am on 20 May the appellant was given a routine admission medical interview by Dr Johnston, who recorded no significant abnormal findings. In Interview 1 Detective Sergeant Kildea and Detective Constable Kell asked the appellant about his movements on the night of O'Neill's murder and put it to him that he had lied to the police about that. When they put to him details about O'Neill's treatment the appellant became extremely agitated and ceased to reply to questions put to him. He was returned to his cell and seen again in Interview 2 at 3 pm. He continued to deny that he had been in the Tyndale Community Centre on the night of the murder and averred that he had been at home drinking with his sister and her fiancé. He was much calmer throughout this interview than he had been before the termination of Interview 1. He maintained this denial in Interview 3.

Interview 4 was conducted by D/S Kildea and D/C Kell. According to their account the appellant made no reply to any questions for a while, then suddenly said "I'll tell you the truth". He then admitted that he had been in the Centre on the night of O'Neill's murder, between 11.30 pm and 1.30 am, and that he had hit him when he said that he was a Catholic. A scuffle followed and then O'Neill was taken outside and beaten and kicked by five or six men. The appellant admitted that he kicked O'Neill a number of times in this incident, which went on for about five minutes, then stopped when the others desisted. He stated that he then went home and had no more contact with O'Neill. He made a written statement, Exhibit 5, in which he made admissions to the same effect. During the interview the appellant drank as

many as fourteen cups of water, which the detectives brought into the room for him.

Dr Rowan saw the appellant in his cell on a routine visit at 7.46 am on 21 May. He made no complaint and the doctor did not note any tension or nervousness. At Interview 5, which commenced at 10.10 am that morning, D/Sgt Kildea and D/C Kell continued to question the appellant about the matters which he had admitted the previous evening. He did not admit any further complicity in the murder. Interview 6, with D/Sgt Boyd and D/C Beattie, took a similar pattern. In Interview 7, which commenced at 2.05 pm, D/Sgt Kildea and D/C Kell pressed the appellant, saying that they did not believe his story about going home after kicking O'Neill. They stated in evidence that he then admitted that he took part in carrying O'Neill down the hill to the river, and that on the way down he was hit on the head with a brick or a boulder. They then rolled him off the wall of the bridge into the river. He made a second written statement, Exhibit 6, which contained these admissions. Interview 8 was a continuation of Interview 7. D/Sgt Boyd and D/C Beattie attempted to get from the appellant the names of those who were with him on the night of the murder, but he refused throughout the interview to give them.

The case made by the appellant in the voir dire was that he had been put under physical and mental pressure by the interviewing officers, particularly Kildea and Kell. He described his treatment as having been "tortured" by them. He said that during most of the interviews D/Sgt Kildea

had shouted into his ear that he was a liar and a murdering bastard and D/C Kell shouted obscene remarks about his mother and girlfriend. He stated that Kildea had slapped him on the stomach and leant on his shoulders, and the judge had the impression that he was alleging that this type of treatment occurred throughout the interviews. The allegations were denied by the interviewing officers.

At 6.37 pm on 21 May the duty gaoler Reserve Constable Bradley was sitting at his desk in the cell area when he heard a noise of moaning and retching coming from the appellant's cell. He looked into the cell and saw the appellant curled up on the bed holding his chest. He was shaking violently as if having a fit and complained of pains in his chest. R/Con Bradley summoned Sergeant Dove and they held him to keep him from injuring himself until the doctor arrived. When the duty doctor, Mr R Loane FRCS, visited the cell a few minutes later he found the appellant lying quietly and unable to respond to him. His eyes were open and staring. His pupils were equal and reacted to light. His heart rate was 140 per minute (which is very fast) but regular and his blood pressure was 105 over 70 (within normal limits). There was poor air entry to his chest, so that his breathing was shallow. Mr Loane thought it advisable that the appellant should be admitted to hospital, in view of the sudden onset of the condition, and thought that the chest pain might have a cardiac connection. He arranged for the appellant to be transferred to the Ulster Hospital.

At the hospital he was seen by a casualty officer Dr Richard Lawson in the Accident and Emergency Department. He found the appellant in a drowsy and incoherent state, resembling a drunk man, and unable to give a clear history. Chest X-ray and cardiac examination did not show any abnormality. The doctor was informed that the appellant had not eaten anything that day, so he carried out a blood sugar estimation. He found that the blood sugar count was 2.2 mmol/L, well below the normal range of 3.9 to 5.8 mmol/L. He concluded that the low blood sugar would account for the appellant's symptoms and that he had had a hypoglycaemic episode, which was unlikely to recur. He directed that he be given sweetened tea and some toast. He was not diabetic and so the hypoglycaemia condition departed. Dr Lawson considered that when the appellant left him at 9 pm he was "sorted out" and that that was the last he would hear of him. The appellant was accordingly discharged and returned to Castlereaugh.

Dr Lawson agreed that if a patient had a general anxiety state and a superadded sugar deficiency this would tend to add to his state of anxiety. He thought, however, that after recovery from the episode he would have been fit for interview the following morning. He was unable to say whether he would have been fit prior to the acute episode. The low level of blood sugar would make him more anxious. The judge asked him whether it would affect the mental processes, but Dr Lawson's answer did not take the matter as far as Professor Marks' report has now put it, which is understandable in

view of the state of medical knowledge of the topic at the time and the fact that Dr Lawson was not a specialist in it. He replied:

“It can do, my Lord, in so far as you can develop coma with a low blood sugar, but it would depend on the extent, I think, of the lowness of the blood sugar and irrational behaviour may come before a coma.”

The appellant was passed fit for interview next morning by Dr Henderson, who had not received any report from the hospital. Dr Henderson saw him first at 8.02 am in his cell, when he complained of nausea, and then examined him at 8.37 am in the surgery. He assumed from the absence of a hospital report that they did not find any serious illness. He was not informed of the finding of hypoglycaemia. If he had known of it, he would have encouraged the appellant to take more sweet things to combat it. He also appeared to agree, when it was put to him, that he would have been more cautious about certifying the appellant fit for interview if he had known of the hypoglycaemia, though when asked in re-examination he did not revise his conclusion that he had been fit.

Four further interviews were held on 22 May. These were concerned with attempts to obtain from the appellant the names of those who took part in the beating of O'Neill, but the appellant refused throughout to reveal them, insisting that he feared for the safety of himself and his family. He became increasingly agitated and annoyed as the interviews progressed. According to the appellant D/Sgt Kildea and D/C Kell in Interview 9 produced a piece of paper bearing a list of twelve names, including that of his brother John

Anthony Green. They promised him that if he picked out three names of men who carried the body down to the river they would give his brother a “bye-ball”. Both D/Sgt Kildea and D/C Kell denied in their evidence that they had had any list of names or that the appellant had been asked to pick out any names in the way he alleged.

The appellant was charged later that evening with the murder of John O'Neill, and saw his solicitor again. When seen by Dr Rainey at 9.35 pm made the first complaint, which was recorded:

“Put under pressure by the police at Castlereagh to such an extent that nerves cracked up – pressure was policemen shouting at me the previous 3 days.”

He was interviewed at 10.20 pm by Sergeant Fanning, who recorded his complaint:

“Alleges he was shouted at by plain clothes police officers during interview at Castlereagh on 20th and 21st May 1986 resulting in his having to be admitted to hospital with a nervous complaint.”

The trial judge examined the evidence and the appellant's allegations fully and carefully in his judgment and concluded that he was satisfied beyond reasonable doubt that he had not been abused in the manner alleged by him or at all. He considered that the evidence given by the appellant was a lying case and he rejected it. He expressed the view that there was a simple and acceptable medical explanation for the “fit”, namely hypoglycaemia, which can come on suddenly. After examining the medical evidence he concluded:

“On all the evidence I am satisfied that the ‘trigger’ was either hypoglycaemia alone or hypoglycaemia affecting an anxious person whose anxiety was heightened by a realisation that his part in a brutal murder had been discovered and that he had admitted his involvement and that he would be charged.”

The judge accordingly admitted the statements in evidence. He went on to consider the reliability of the statements, both verbal and written, as a true account of the incident and concluded that they were a reliable version of the facts and that he could be satisfied beyond reasonable doubt that the appellant had taken the part in the episode which he described in those statements. This was sufficient to make him a party to the murder and he therefore convicted him.

The Criminal Cases Review Commission obtained a report from Professor Vincent Marks, Professor Emeritus of Clinical Biochemistry at the University of Surrey and a specialist in hypoglycaemia. The report was admitted in evidence by agreement on this appeal and its correctness was not questioned by the Crown. He examined in some detail the history of the appellant and the evidence given at trial about his behaviour and the medical findings. He considered that the appellant had been at the material time suffering from hypoglycaemia of unexplained origin, ie not caused by any of the major metabolic disorders characterised by a tendency to develop hypoglycaemia. It is possible for such a hypoglycaemia to become manifest under excessive stress coupled with abstinence from food. He laid stress on the fact that hypoglycaemia and the neuroglycopenia to which it gives rise are

quite different from an anxiety state, which had been the focus of attention at trial. He stated that the effect of hypoglycaemia is to disturb cognitive function as well as to activate the autonomic nervous system which is responsible for some of its best known symptoms.

For present purposes it is sufficient for us to quote paragraph 5 of the executive summary of Professor Marks' report, which contains his considered opinion:

"It is my opinion, on the evidence, that Mr Green was because of neuroglycopenia unfit for interview on the afternoon of 21st May - during the period he was undoubtedly hypoglycaemic - and for the same reason probably unfit for interview on the morning of 21st May and on 22nd May. I am also of the opinion that any information obtained from him during the period of hypoglycaemia would be factually unreliable and forensically worthless."

If this opinion had been available to the trial judge he might very well have refused to admit the verbal and written statements made on 21 May 1986. It is certainly unlikely that he would have been satisfied that what the appellant said in Interview 7 in the afternoon of that day was a reliable account of what took place on the night of 15-16 March 1986, and we cannot now be so satisfied. The appellant did not in any other interview implicate himself in carrying O'Neill down to the river or the fatal blow or blows to his head. In these circumstances we could not regard the conviction as safe.

The Commission raised a second issue about the admissibility of the statements which we need only mention in passing for the sake of completeness. As we have recounted, one of the allegations made by the

appellant in his evidence given in the voir dire was that D/Sgt Kildea and D/C Kell produced a list of names in Interview 9, which was denied by the officers. In the course of the Commission's examination of the RUC files a handwritten note containing a list of twelve names, including that of the appellant's brother John Green, was discovered in a file of copy documents relating to the case. Dr Baxendale, a handwriting expert, gave a report stating that in his opinion the handwriting was that of D/Sgt Kildea. ESDA examination showed impressions from that list on the sheet on which the interview notes relating to Interview 7 were written. These facts, if they had been available to the trial judge, might have caused him to reach a different conclusion on the credibility of the evidence of the interviewing officers Kildea and Kell, which was an important part of his reasons for admitting the statements. On the other hand, as the appellant's counsel stated at the hearing of this appeal, because of the appellant's hypoglycaemic condition his recollection of what took place at the interview may not be reliable, and it might not have been possible to draw any valid conclusions about the credit of any witness from the existence of the note. For this reason he did not propose to rely on this factor as a ground of appeal, and we do not take it into account in our conclusion.

For the reasons which we have given on the issue of the appellant's hypoglycaemia and its effect upon his mental state, we consider that the conviction was unsafe and we allow the appeal and quash the conviction.

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