

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 24-01-08

THE QUEEN v JOHN KERR

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DECISION ON TARIFF
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Ruling by Kerr LCJ
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KERR LCJ

Introduction

[1] On 29 September 1998 the prisoner was sentenced to life imprisonment for the murder on 31 August 1997 of Ms Pamela Bennett, a 21 year old woman after a trial by Pringle J and a jury at Belfast Crown Court. The prisoner was 26 years of age at the time of the murder. He has been in custody since 2 September 1997.

[2] Although the prisoner was offered the opportunity to make oral representations through legal advisers on the tariff to be set under the Life Sentences (NI) Order 2001, he elected to have this determined on the papers. 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] On the evening of Saturday 30 August 1997 Ms Bennett went out for the evening with her two cousins, Carol Hinton and Yvonne Mulligan. They went first to Monkstown Social Club and later, at approximately 11.15pm Ms Hinton and Ms Bennett got a taxi from the social club to the Fern Lodge Bar arriving at around 11.30pm.

[4] Ms Bennett met the prisoner in the Fern Lodge and they were observed by Carol Hinton kissing while they waited at a taxi depot after leaving the public house. At approximately 1.45am on the morning of 31 August, Ms Bennett and the prisoner got a taxi back to her home at 34 Tynan Drive, Monkstown. The taxi driver described both of them as having had drink taken and "the fella was drunk compared to the girl. I would describe him as staggering; he certainly had more drink taken than the girl." They were kissing, talking and laughing in the back of the taxi.

[5] Shortly after Ms Bennett and the prisoner arrived at her home, Carol Hinton called over to check if Ms Bennett was home safely. Ms Hinton spent approximately ten minutes sitting in the living room with Ms Bennett and the prisoner. They appeared to be getting on well together and were kissing each other.

[6] Some time after Ms Hinton left, the prisoner stabbed Ms Bennett a total of ten times and she bled to death. He then changed from his jeans which were heavily blood stained into a new pair of jeans which he found in the house and he covered his shirt, which was also stained with blood, with a sweater. He put his own jeans into a bag and took them with him and left the house. He then went to a public phone box nearby and called a taxi between 5.20am and 5.30am. The taxi driver on arrival at the phone box found the prisoner lying, apparently asleep, on the ground. The taxi driver roused the prisoner who then got into the car and told the taxi driver to take him to his home at 15 Ardmillan Drive.

[7] Ms Bennett's body was discovered by Carol Hinton and Samuel Mulligan when they called at her house at approximately 5.40pm on Sunday 31 August 1997. She was certified dead at the scene. Ms Bennett was found lying on her back on the floor of the living room. She was naked apart from her dress which had been pulled up around her neck. Her bra was loose across her neck and her pants and tights were found under her head. There was heavy blood staining on the settee and on the carpet. A large kitchen knife was discovered on an armchair beside the settee, a knife blade was found beside the settee, a knife handle was found on the floor, a small bent steak knife was found underneath the left hand armchair and a blade from a pie server was found on the floor beside the body. Some weeks later a bent carving knife blade with blood stains was discovered in a drawer in the kitchen.

Autopsy report

[8] An autopsy was carried out by Professor Crane and the cause of death was found to be stab wounds of the trunk. The most serious of these were: -

- i. on the centre of the lower chest into the abdominal cavity which had punctured the wall of the stomach;
- ii. two stab wounds on the right side of the chest, one of which had incised the liver;
- iii. two stab wounds on the right side of her back which had penetrated the abdomen. One had passed through the liver and the other had incised the right kidney; and
- iv. a stab wound to the left side of the back of the chest.

[9] These wounds would have caused significant bleeding into the chest cavity and abdomen and ultimately the effects of this haemorrhage caused the death. This would not have been immediate but it was not possible to determine how long it would have taken since it was not known whether there were any time intervals during the infliction of the stab wounds. Further stab wounds to the upper arms and back of the right hand and also to the right breast had penetrated soft tissue only. All the stab wounds were consistent with having been made by a blade and could have been made by one or more of the knives found at the scene.

[10] There were numerous other injuries on the body consisting of small punctate abrasions or puncture lacerations on the front of the lower chest and abdomen, back and thighs. Most of these had been sustained while the victim was alive and were consistent with having been made with a tip of a knife superficially penetrating the skin or the blade being lightly drawn across her skin. There was one particular group of linear abrasions on the front of the left wrist which were almost certainly caused by a serrated blade being drawn across the skin surface. There were also some abrasions and bruising to both breasts which although of a rather non-specific nature might possibly have been bite marks.

[11] There was no evidence of any injury to the genital area and no evidence of sexual assault.

[12] Ms Bennett was found to have consumed a considerable quantity of alcohol which would have rendered her heavily intoxicated when she died. The level of intoxication is likely to have prevented her from being able to put up much resistance from her assailant. It was considered that her death had occurred in the early hours of 31 August.

Forensic Evidence

[13] The forensic evidence suggested that the main attack had taken place on a sofa and that the body was then moved on to the floor either during the attack or after it while the victim was still bleeding. It appeared that she had been wearing her dress when she was attacked as there were cuts to the fabric matching the position of the wounds.

[14] All five blades or knives found at the scene were blood stained. They consisted of: -

- i. a wooden handled steak knife with an 11cm long blade with a serrated edge. This was bent to a right angle.
- ii. a serrated blade approximately 17cm long with no handle. It was also bent.
- iii. a Prestige kitchen knife with a 22cm long blade.
- iv. a metal pie cutter blade with a 14cm long oval blade and serrated edge.
- v. the right handed blade of an electric carving knife bent to the right (the most heavily blood stained and found in the kitchen drawer).

Evidence of family members confirmed that the blades and knives had all originated in the victim's home and would normally have been in kitchen drawers.

[15] Forensic testing of the prisoner's clothes showed that he had been close to the victim when she was bleeding. There was heavy blood staining to the sleeves of his shirt and extensive blood staining to the front and back of his jeans. The blood staining on the knives and the prisoner's clothes was confirmed as being that of Pamela Bennett. No semen was found on the victim's body or clothing. There was a slight semen stain to the middle of one of the cushions on the settee but this was insufficient for DNA testing.

The prisoner's police interviews

[16] The prisoner was arrested by police at his home at 15E Ardmillan Drive, Rathcoole Estate on Monday 1 September 1997 at around 7.00am. On entering the flat police found the prisoner standing naked in his bedroom. Heavily blood stained clothing was on his bedroom floor. He was asked whether these were his clothes. He was cautioned and replied: -

"See that wee girl I never killed her. I was seeing her. I went away and came back and she was dead. I know it looks bad I lifted her up. I should have rang yous but I'm a dick. I'm a spastic with drink in me."

[17] In the course of police interviews the prisoner gave the following account:

"I think I met her in the Fern Lodge or else just outside it. I was very drunk on Saturday night and the first recollection I have of her is standing outside the taxi depot kissing her and we must have been waiting on a taxi to go down to her house. We went to her house and we were sitting on the settee kissing and then there was another woman came at one stage. She sat down for a while ... it is very hazy like because I was drunk. We attempted to have sex. I remember that, but I couldn't get an erection. At no point at all did she laugh at me or anything ... She took it good natured. She actually ... said to me 'don't worry about it wait until the morning.' We were lying on the settee together. I had my arm round her and

sitting talking to her and she fell asleep and I just said you know 'oh fuck this I'll go home' you know. I walked up to the phone box at the top of Monkstown with the intention of phoning a taxi but I mustn't have done it because I woke up and I don't even know how long I was sleeping or anything but I woke up and I decided to go back again and stay there the night and then you know go out with her tomorrow or on Sunday but when I went back I rapped the front door and there was no answer so I went round the back, I left the back door the first time and the back door was lying open and when I went in she was lying there. That's it. And then I panicked and I'd leant over and stuff and stupidly I was trying to give her the kiss of life and I'd lifted her up and there was a cushion or something lying off the settee. It was lying on the floor I think and I must have been lying on it or something, lying over it and when I looked there was all blood over me and that's when I panicked. I must have went up the stairs and put a pair of jeans on or something. I put my own in a bag and then I went up and I phoned a taxi again for the first time because I hadn't done it, went up, phoned a taxi but I must have fell asleep somewhere, I must have dandered up and feel asleep because I woke, I woke up and I thought 'where the hell is that taxi,' so I phoned again and he says that it had been so sent another one and I just went home that was it."

[18] Throughout the time that he was interviewed the prisoner maintained that when he left the house for the first time, Pamela Bennett was still alive and then when he returned to the house he found her dead and he attempted to lift her body. He accepted that he did not try to summon assistance at any time.

The prisoner's evidence at trial.

[19] The prisoner's evidence was summarised by the trial judge as follows: -

“It was agreed between the prosecution and defence that on 22 August 1997, about a week before the murder, the defendant had attended his doctor and admitted to drinking heavily which was causing episodes of incontinence.

In his evidence to the court the defendant said he was a regular customer at the Fern Lodge, every weekend from Friday to Sunday was basically a drinking spree. He had experienced a problem that if he got drunk and went to sleep he had wet himself a couple of times. He told the doctor who told him to stop drinking.

On Saturday 30 August he went with friends to the Fern Lodge at 4.30pm where he had 8 to 10 pints and nothing to eat. At about 9.30pm he left with his friends and went to Madigans at Glengormley where he had at least another 6 pints. He was very drunk but remembered getting a lift back to the Fern Lodge which was usually closing about 1.00am. While there he had more drinks. He had no less than 20 pints in all. His evidence of events on leaving the Fern Lodge and thereafter in so far as he had a recollection was much in line with what he told the police. In cross-examination he was asked about his shirt and he accepted that he had hidden it by putting the jumper over it. He also put his jeans in a bag so that they were hidden.

He said that on Sunday night he probably decided to keep them for the police as to get rid of them would have been worse. He clearly remembered a conversation with Pamela Bennett when he could not get an erection and she told him not to be embarrassed about it etc. When Pamela went to sleep on the settee he was at the back of the settee naked except for jeans at his ankles and she was naked. Then he said he climbed over her when he

decided to leave. He said that when he left she was naked with no clothing at all but a black coat was over her. When he returned to the house he had a total panic as there were lots of injuries to her. He lay down on her left hand side; she was lying on her back. He tried to feel a pulse at her neck and tried the kiss of life and lifted her up with his hands beneath her shoulder blades.”

Previous convictions

[20] The prisoner had 16 previous convictions before various magistrates’ courts. These were for offences occurring in the period 1987 to 1990. His first court appearance was in April 1988 on offences of obtaining property by deception for which he was fined. In September 1988 he was convicted of indecent exposure with intent to assault a female and disorderly behaviour and received a suspended sentence of three months in the young offenders centre suspended for two years. In February 1989 he was convicted on charges of theft, common assault, burglary and theft and sentenced to six months detention in the young offenders centre. He was released from the Young Offenders Centre in May 1989. He appeared in court again in July 1989 on charges dating back to November 1988 of possession of an offensive weapon in a public place, disorderly behaviour and indecent exposure. He received a further suspended sentence. In October 1989 he was convicted of disorderly behaviour and in February 1991 he was convicted of attempted theft, common assault and in view of the suspended sentence for the previous offences of disorderly behaviour and possessing an offensive weapon, he received a sentence of three months detention in the young offenders centre which was then varied on appeal to a probation order for two years. He has no convictions during the seven years prior to the murder.

Personal background

[21] There is little information contained in the papers on the prisoner’s personal background. His date of birth is 28 October 1970 and at the time of committing the offence he was 26 years old. He was living at a flat in the Rathcoole Estate. He had been married but was separated from his wife. They had a 5 year old daughter.

The NIO papers

[22] Written representations have been submitted by the victim's mother, brother and two of her aunts. The victim's mother, Mrs Heather Bennett, states that she was a single parent with two children, Pamela and David. Pamela was still living at home with her and they were very close. Since Pamela's murder she finds "each day a constant struggle" and she has been on medication since the day she was informed of the murder. She required counselling immediately after Pamela's death and this has continued until the present. She does not feel in control of her life and describes herself as being "in a zombie like state." She also lost her home as a result of this incident as it was the scene of the murder. She states that she has changed from a confident outgoing woman to a nervous, irritable, introverted person. She is filled with dread at the thought of seeing the perpetrator after his release.

[23] Ms Bennett's brother David describes how the death of his sister has had a profound effect on him. She was his confidant and the person he was closest to. He feels the family has not been the same since as his mother has been on a downward spiral ever since the day of the murder and has changed beyond recognition. He expresses concern that the perpetrator might carry out another similar act.

[24] The victim's maternal aunt, Mrs Hilary Morgan, refers to the traumatic effect the murder has had on her and her daughters' lives. She described her niece as a lively and bubbly person who is greatly missed. She now finds herself paranoid with regard to the safety of her own daughters who are now 18 and 20. She feels unable to leave her daughters alone overnight and believes that her daughters are very wary and cautious of new people. She believes that her sister, the victim's mother, has become increasingly withdrawn and unable to communicate with her family and has suffered greatly as a result of the loss of her daughter.

[25] Susan Bennett, another aunt, refers to the devastation of the family. It was her daughter, Carol, who found her murdered cousin. She finds it particularly difficult and has been very nervous since the murder particularly as she lives close to the house where it occurred. She believes that the prisoner showed no remorse in court for what he had done which left her feeling she could never forgive him for what he has put the family through.

Representations from the prisoner

[26] A letter from the prisoner has been submitted by way of representations. In that letter he fully admits his guilt and expresses remorse. He states:

“On the day of these terrible events happening my ex-wife and I had an argument resulting in her telling me that I would not set eyes on my 5 year old daughter Ashley again. As a result of this I decided to go the local bar, the Fern Lodge, at 1.00pm in the afternoon which was far too early to start drinking. I met a bunch of lads I’d known from school and I even drank with them. I didn’t normally take drugs but unfortunately they were taking them and I ended up doing the same. As a result by the time 12 hours had passed the mixture of alcohol and drugs, and my mental state at the breakdown of my marriage and resulting argument had all left me in a bad way.”

[27] He refers to the fact that he left the bar openly with Pamela and also that one of her relatives called at the house while he was there and he submits that this shows that he “never had murder in mind.” He says that they were cuddling on the sofa and “fooling around” although did not have sexual intercourse. He then says that a silly argument developed about Princess Diana which turned into a fight between two very drunk people. He states:

“I still cannot believe to this day that I stabbed her because I had never ever before even thought about hurting someone so badly.

...

I do not remember which knife I used first but I do know that we had been eating cake and there was one in the living room. The next thing I remember is walking into the living room, I must have been coming from the kitchen, but I do not remember going for the other knives. I can only assume that the first knife bent and I made the terrible decision to get more.”

[28] In relation to the various marks on the victim's skin the prisoner states that this was not done to deliberately mark her but because he knew what he was doing was wrong, and therefore some blows did not go through her skin.

[29] At a later point in this submission the prisoner states: -

“As I came round I realised the gravity of what I had done and started to cry. I totally panicked and took her dress off to make it seem as if she had been raped by some lunatic. I obviously had not regained all of my sense because I stupidly thought that people would not think it was I if she had been raped. I think I thought that people knew I was a decent lad and would not do something like that. My head was reeling though from what I had just done and I tried to check if she was still alive. I knew I could not hurt her anymore and decided that if she was alive that I would phone an ambulance. I could not see any signs of life. I really wish I had phoned just in case because I was in no fit state to decide.”

[30] The prisoner claimed to have little recollection about going home but decided not to get rid of his blood stained clothing as he was waiting for the police to catch up with him. He said that he did not plead guilty to the murder because he was concerned that he or his family would be harmed by paramilitaries who were saying that they would kill the person who had murdered Pamela. He believes that upon release his life will be in danger from loyalist paramilitaries if they become aware that he has now admitted his guilt and has requested that his admission and content of his representations be kept confidential.

[31] In a subsequent passage of his letter he says: -

“I wanted to hopefully let you see that I am not a monster but a human being who has regretted his actions every day since. I honestly never thought I would do something like this, I still cannot believe that I did. I think I had a complete breakdown that night and totally lost my mind. I think my losing my

wife and my daughter, losing my job and a feeling that I have messed up my life caused this. I had become depressed and I think that coupled with alcohol and drugs tipped me over the edge to a total loss of control and morality.”

[32] The prisoner refers to his criminal record but makes the point that this was confined to a three year period when he was aged 17 to 20 and was “in with a bad crowd.” He states that he was given up by his birth mother when he was 2 years old, that he was sexually abused by an older boy and that one of his friends had died when he was 18. When he was married he distanced himself from his former associates and had a stable life but he and his wife split up a couple of months before the murder.

[33] He is now taking an Open University degree which he will complete next year and will follow up with a Master’s degree. He would like to teach adults English Literature in the future. He states that he has been promised a job with a magazine upon his release and has also built up a relationship with his mother.

[34] The prisoner ends his letter by stating:

“One thing I have not said to you is how sorry and remorseful I am for Pamela’s death. I wish every single day and night that I could take it back but I cannot...I am truly sorry for what I did but that does not even seem to be enough. How do you put right the lives that I have destroyed? Her mum and family have to live with what I did for the rest of their lives. My wife and daughter, the mum who brought me up since I was 2 and loved me like her own son lost me as well. My daughter lost her daddy through no fault of her own and we’ve not set eyes on each other since she was 5 years old. I will have to tell her in the future of what I did and I can only hope she will forgive me some day. I know Pamela’s family will never forgive me for taking their daughter but I honestly mean this - if someone said to me that I could lay down my own life to let her live so much of what she will never get now I would do it.

I have a different and wiser outlook on life now and realise that life is short and so precious it is folly to spend it unwisely. I am really ashamed and really sorry for what I did and can assure you I will never ever repeat the terrible deeds that I have committed. I can only say that was not the real me there that night."

Practice Statement

[35] 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 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 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.

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 that there is no minimum period which could properly be set in that particular case."

Conclusions

[36] This is plainly a higher starting point case. The young victim was heavily intoxicated and not in a position to offer much resistance. None of the reports refers to any defensive injuries and it is likely that Ms Bennett was rendered incapable within a very short time of the assault on her commencing. She was entirely vulnerable to the superior strength of the

prisoner and the murderous attack that he launched on her. Several weapons were used in what must have been a sustained assault. Multiple injuries were inflicted. Ms Bennett sustained 10 stab wounds; she bled to death and this would not have been immediate. It was not possible to determine how long it would have taken for her to die but death was not instantaneous. If medical help had been summoned immediately she might have survived as the cause of death was the loss of blood. The fact that the prisoner did not summon assistance is a particularly serious aspect of this killing.

[37] As well as the stab wounds there were numerous other injuries on the body consistent with either the tip of a blade superficially penetrating the skin or being lightly drawn across it. The prisoner's explanation of these marks is wholly implausible. The marks on the breast consistent with Ms Bennett having been bitten by the prisoner is further evidence of the barbarity of the attack.

[38] Not only was the attack on the victim sustained, it was carried out with weapons that had been obtained from the kitchen, indicating a measure of premeditation on the part of the prisoner. The most heavily blood stained blade was found in the kitchen drawer which suggests that he must have replaced it there.

[39] The only possible mitigating factor is the prisoner's expressed remorse and his claim to have insight into the effect of his crime. The authenticity of these claims is open to question, however, since he contested the charge and put his victim's family through the added ordeal of a full trial. I am not impressed by the excuse offered for this. He claims that he was afraid that he would be targeted by paramilitaries if he admitted the murder but he could have pleaded not guilty without giving evidence in the mendacious way that he did. His claims of remorse and insight must therefore be treated with some caution and cannot be accepted without reservation.

[40] The fact that the prisoner was heavily intoxicated – and, possibly, under the influence of drugs – at the time of the murder is not, of itself, a mitigating factor, although it must be taken into account. If he had been sober that would have rendered his culpability even higher than it must be judged to be on the available evidence. It remains, in my view, at a significantly high level.

[41] Taking all these factors into account and having regard to the submissions that were made both by the prisoner and the relatives of the victim, I fix the minimum term to be served by the prisoner before he may be considered for release at sixteen years.