



JUDICIARY OF
ENGLAND AND WALES

R -v- Donald Graham

Newcastle Crown Court

20 June 2014

Sentencing remarks of Mr Justice Openshaw

After a long trial, the defendant Donald Graham was yesterday convicted by the jury of the murder of Janet Brown; he now falls to be sentenced. Having presided over the trial, I must set out the facts.

Janet Brown disappeared on or about the 17 June 2005; she has never been seen since; her body has never been found. She was then aged 45. Her parents Eric and Olive Brown lived at Planetrees Farm, in the hamlet of Lowgate, near Hexham; she lived in the converted barn. She had had a long-standing relationship with the defendant, although he never left his own wife.

Janet Brown had no regular employment; she occasionally worked as a film extra and a market researcher.

On 1 June 2005, she booked a ferry passage for herself and for the defendant to travel, with her car, from Dover to Calais in the early hours of June 18, returning on the 27 June; she told her friends that they were to go on holiday together touring in France.

Some time later, the defendant gave back word. He said his wife was very ill; that was a complete lie. Janet Brown, who was highly independent, decided she would go alone. I do not think that he had the slightest intention of ever going on holiday; he had other plans, realising that her planned holiday created an opportunity of claiming that she had gone abroad and stayed by choice.

I need not repeat Mr Smith's outline of the singular financial transactions that she made shortly before her planned departure in June 2005 but she made various attempts to withdraw £300,000 from one of her accounts, telling the bank that she required the money to buy property; she gave no further details.

Eventually, on June 16, she made a telegraphic transfer of some of £300,000 from one of her savings accounts to one of the defendant's accounts. That transaction is also entirely unexplained: it is not accompanied by any documentation, the defendant repeatedly said in interview that that he could not say anything about it unless Janet Brown authorised him to do so – and of course she was by then dead.

I am sure that this sum was obtained by some deceit on his part. It is at least possible that she may have thought that he intended to buy a property with the money. In fact, within a couple of months, he had spent £193,000 of the £300,000 that he had obtained from Janet Brown, to buy a house at 109 Elsdon Avenue, Seaton Deleval for his new girlfriend Elisabeth Todd, whom he met only a couple of weeks before Janet Brown's disappearance; she has always claimed that she was an innocent dupe, yet another victim of his deceit and manipulation. If Janet Brown intended that he should buy property with the money, she certainly did not have in mind that he would buy a house for Elizabeth Todd to live in.

If Janet Brown was to catch the ferry at Dover in the early hours of the 18 June, she would have had to leave Hexham during the early afternoon of the 17 June. That evening, by arrangement, a friend went round to her house to collect her dog; Janet Brown was nowhere to be seen; the friend naturally assumed that she was on her way to Dover to catch the ferry. In fact, she never caught the ferry; indeed, she never left Hexham.

I cannot properly infer from the evidence where, or when, or how, the defendant murdered Janet Brown but it is proved beyond doubt that he did so. Nor can I say where or how he disposed of her body; he was once a JCB driver; he could have disposed of her in some deeply dug pit, or put her down one of the many mineshafts in the area or perhaps buried her in some wild and remote place. That he has disposed of her body is an aggravating factor.

I find as the fact that this murder was committed for gain, either to obtain or to keep the £300,000; the seriousness of this murder is 'particularly high', as defined in Schedule 21 of the Criminal Justice Act 2003.

Furthermore there was a clear element of planning.

It is a curious feature that, even when Janet Brown should have come back from her holiday, but did not so, no one raised the alarm. Her parents were elderly; the relationship between Janet and her parents was strained, although there is clear evidence that she held them in affection. Somehow, the defendant managed to persuade them, by writing letters and cards, as if from her, that she had left England and intended to make her life abroad, variously in France or in Switzerland.

There was some evidence of a telephone call on 23 July 2005; if such a call was made, which I doubt, it was certainly not made by Janet Brown herself, it must in some way have been devised and engineered by the defendant.

He must have been astonished that her parents seemed to accept her disappearance and that no missing person investigation was set in train. But, as the months and years passed, he must have come to believe that he had indeed got away with murder. He then turned his hands to other frauds and forgery.

Even after paying out the £300,000 to which I have already referred, over £85,000 still remained standing to Janet Brown's credit in her various accounts: over the course of the next few years, by forgery and fraud he cleaned out the credit balance on her two accounts obtaining in all over £100,000. In this way, he had taken every penny she had.

Janet Brown's parents were elderly, Olive Brown died in January 2007. Eric was mentally alert but was suffering from failing eyesight. The defendant became a regular visitor to his house. It is obvious that in some way he managed to insinuate his way into Eric's confidence, for even before Eric's death, he had persuaded him to make some payments to him.

Eric Brown died on 16 March, 2008; the defendant arranged the funeral; he did not inform Eric Brown's few relatives, nor his (Eric's) solicitor of his death.

After his death, the defendant realised that with Janet Brown dead, and no other children to interfere, he could embark upon an even more audacious series of frauds. By his genuine will, Eric Brown had left his estate to his daughter Janet Brown; if she predeceased him, his estate was to pass to the Guide Dogs for the Blind, he was no doubt sympathetic to that charity by reason of his own failing eyesight.

He made Elizabeth Todd write out a forged will, purporting to have been made and signed by Eric Brown, leaving all Eric Brown's property to the defendant himself. He even made her forge Janet Brown's signature to give the impression that she (Janet Brown) had been a witness to the will by which she had been disinherited by her own father. Although the will is dated in May 2007, it is not possible to say when it was actually written.

Armed with this forgery, and seemingly having access to the relevant passwords and security questions, he issued a series of forged cheques and withdrawal slips, he obtained £123,000 from Eric and Olive Brown's Nationwide account and nearly £40,000 from their NatWest accounts.

He then started to make withdrawals from Eric's account at the Skipton Building Society. This was his undoing, because an alert clerk realised that the signature on one of his withdrawal slips did not match the specimen signature in their records. When the Society wrote saying that they intended to visit Mr Brown to validate his signature, the defendant prevaricated; he wrote a series of ever more extravagant letters, first writing as Eric Brown claiming that he was now aged and infirm, and later getting Elizabeth Todd to write to pathetic letters in the name of Janet Brown, explaining that in his now pitiful condition, a personal visit was simply out of the question as he was moving into residential care. Fortunately, the Society was not deceived by these devious and extravagant falsehoods and they informed the police.

The police investigation started as an investigation into this fraud and forgery but it gradually developed, as the scale of the frauds and the forgeries became clear. Eventually, the missing person enquiry became a murder enquiry.

Meanwhile, the defendant had even attempted to have the farm transferred to him: he made a personal visit to the solicitors in Hexham, claiming that he was entitled to the farm. He later compelled his wife to impersonate Janet Brown over the phone; fortunately, the solicitors refused to proceed with the transfer without documentary validation and Janet Brown's identification, which of course he could never provide.

Over and above the original £300,000 he actually obtained £285,000 by fraud and tried to get more. These withdrawals were fraudulent from the outset, they were professionally planned and were carried out on many occasions over a long period of time: these are all aggravating factors as identified by the Guidelines. Furthermore, all these offences were made possible only by the murder. He used the money to fund his extravagant and flashy lifestyle.

As the police enquiry proceeded, the defendant persuaded Elizabeth Todd to ring the Overstone Care home in Hexham on the pretext of ringing one of Janet's friends who worked there, the purpose of the call was for her to pretend to be Janet Brown, back home on a visit from Switzerland, and for this information to be passed on to the police, with view to deflecting or impeding the investigation into her disappearance. He was on bail at the time; providing false information to the police during a course an investigation into murder is a serious business. This was the subject of the charge of perverting the course of justice in count 19.

I entirely accept that these later forgeries and withdrawals were opportunistic; he did not have them in mind when he murdered Janet Brown; these later offences were committed over and above the gain that he originally intended, and they must therefore result in some increase in the minimum term, otherwise, he will have committed these later offences without any additional penalty, which cannot be right.

The defendant is aged 60. He has a conviction thirty years ago for making a threat to kill. I do not say that this is entirely irrelevant but I do not consider that after thirty years it is a separate aggravating factor. His other convictions are, it seems to me irrelevant.

This murder is a murder for gain, which should normally carry a starting point of 30 years. No substantial mitigation has been put forward, therefore I see no reason to reduce the starting point. I have already said that it is an aggravating factor that he disposed of the body. It is, as I have just said, a further aggravating factor that he committed these other frauds and forgeries after her death.

I have anxiously considered whether I should make some reduction on account of the fact that the defendant will be a very old man by the time he would be eligible for release, but when Parliament enacted that the age of a defendant could be a mitigating circumstance, they surely had in mind his age at the time of sentence, not at the time of his release. The defendant has been convicted of a terrible offence and he must now pay the price. I fix the minimum term at 32 years; he will of course have credit for the 279 days that he has already spent in custody.

I must pass determinate sentences for the other offences to which he has pleaded guilty; he is entitled to some credit for his pleas of guilty entered on 14 March, that was after he had entered pleas of not guilty back in January but seven weeks or so before the trial started on 6 May; I make a reduction of 20%, as required by the relevant guidelines.

Count 17 charged him with forging the will, forging a will is a very serious type of forgery: it thwarts the wishes of the testator and deprives the beneficiaries – here the Guide Dogs for Blind – of their due, which was £300,000 and more. This is as bad a case of forgery as one

ever encounters in practice; I take a starting point of 10 years, being the statutory maximum, which I consider to be justified in these singular circumstances; the sentence therefore on those counts will be 8 years to reflect the late guilty plea.

The sentences for the other frauds must be severe to mark the fact that they were committed in circumstances only made possible by the murder. This, and the other aggravating factors to which I have drawn attention, justify – indeed they require - sentencing outside the range laid down by the Sentencing Council.

On counts 2 and 3 charging obtaining money by deception, on counts 4 to 16, charging fraud, and count 18 charging a conspiracy to commit fraud, I take a starting point of 7 years; the sentence therefore on those counts is 5½ years to reflect the late guilty plea.

The sentence on count 19 for perverting the course of justice, of which he was convicted after a trial, will be 4 years.

Those sentences will all be concurrent.

I direct that a transcript of these sentencing remarks is sent to the lifer unit at the prison for retention on the defendant's file.