

Comments on Passing Sentence:

A jury has found Ms Neill-Fraser guilty of a charge of murder. It is clear from their verdict that they were satisfied beyond reasonable doubt that she murdered her partner of 18 years, Robert Adrian Chappell, on the River Derwent on the afternoon or night of 26 January 2009. Mr Chappell's body has not been found. The case against Ms Neill-Fraser was based entirely on circumstantial evidence. In my view that evidence establishes that Ms Neill-Fraser dumped the body in the river, and that she made an attempt to sink the couple's yacht in order to get rid of evidence and divert suspicion from herself.

Mr Chappell was 65 years old. He had three children, all of whom are adults. Up to the time of his death, he was employed as a physicist at the Royal Hobart Hospital. He was a conscientious public servant. He was approaching retirement, but wished to complete a project involving the commissioning of a new machine used in cancer treatment before retiring. However, in determining the appropriate sentence for the crime of murder, the qualities of the victim, and the popularity or unpopularity of the victim, are not of great significance. By contrast, the fact that the killer took a human life has enormous significance.

For sentencing purposes, it is appropriate that I make findings as to how, when and why the crime of murder was committed, to the extent that the evidence enables me to do so.

I am satisfied beyond reasonable doubt that Ms Neill-Fraser attacked Mr Chappell on board their yacht, the Four Winds, which was at its mooring off Marieville Esplanade, Sandy Bay. The attack occurred in either the saloon or the wheelhouse, out of public view, when the couple were alone. Mr Chappell probably died on board the yacht, but I cannot rule out the possibility that the attack left him deeply unconscious, and that drowning was the cause of death. I am satisfied beyond reasonable doubt that Ms Neill-Fraser used the ropes and winches on the yacht to lift Mr Chappell's body onto the deck; that she manoeuvred his body into the yacht's tender; that she attached an old-fashioned fire extinguisher weighing about 14 kilograms to his body; that she travelled away from the Four Winds in the tender with the body for some distance; and that she dumped the body in deep water somewhere in the river. The evidence upon which I have based these findings includes evidence as to blood found on the Four Winds, blood found on a torch on the Four Winds, the state of the ropes and winches on the Four Winds on 27 January 2009, the absence of the fire extinguisher and of sections of carpet from the saloon of the vessel, the finding of the tender on the morning of 27 January, the scientific examination of the tender, DNA matching of samples from the blood on the yacht and Luminol positive areas of the tender with Mr Chappell's DNA, and the evidence that Mr Chappell's body was not found in the sections of the river searched by police divers.

It was not practical for the police to search the whole of the river bed because of its size, its depth, and poor visibility conditions on the bottom.

The Director of Public Prosecutions suggested that Ms Neill-Fraser killed Mr Chappell by hitting him to the head with a heavy wrench from behind. It is quite likely that that is what happened, but I do not consider that the evidence is sufficient for me to make detailed findings as to the manner of attack. I am satisfied beyond reasonable doubt that Ms Neill-Fraser attacked Mr Chappell, and that he must have been either dead or deeply unconscious when his body was hauled up onto the deck, manoeuvred into the tender, taken away, and dumped.

A witness named Christopher Liaubon gave evidence to the effect that he helped a woman launch a dinghy with an outboard motor at the southern end of the beach at Marieville Esplanade at about 2pm on 26 January. Ms Neill-Fraser told the police that she had launched the Four Winds' tender at that place at about that time; that Mr Chappell was aboard the Four Winds at that time; and that she went out to the Four Winds on that tender. She confirmed those facts at the trial. According to her evidence at the trial, she did not spend any time with anyone other than Mr Chappell from then until after she received a phone call from the police at 7.11am the next day.

A witness named Peter Lorraine gave evidence of observing a man on a yacht moored off Marieville Esplanade at about 5pm on 26 January. From his description of the yacht and the man, I am satisfied that at that time he observed Mr Chappell on the deck of the Four Winds. He gave evidence that he saw a dinghy tied up to the yacht at that time.

Ms Neill-Fraser told the police, and confirmed in her evidence at the trial, that she left the Four Winds alone in its tender that afternoon, leaving Mr Chappell on board, and that she travelled to the wharf of the Royal Yacht Club

Comments on Passing Sentence (continued):

of Tasmania, where she tied the tender to the wharf near a ladder. I am not able to make a finding as to when she did that. The evidence establishes that Ms Neill-Fraser was at home in West Hobart during the evening, and that she spoke to three different people on the phone there between 9.17pm and 10.34pm.

A witness named John Hughes gave evidence to the effect that he was near the rowing club sheds at Marieville Esplanade between 11.30pm and midnight on the night of 26 January and that, while there, he saw a person travelling in a dinghy with an outboard motor come into view from the direction of the Royal Yacht Club of Tasmania, and travel out, away from the shore. The direction of travel that he described was consistent with the dinghy travelling towards the Four Winds. He said that the person in the dinghy appeared to him to have the outline of a female, but that he could not be sure that it was a female.

Ms Neill-Fraser told the police during an interview on 5 May 2009, and repeated in her evidence at the trial, that she walked to Marieville Esplanade late on the night of 26 January; that she looked out towards the Four Winds but saw no sign of activity; that she had left her car in the Marieville Esplanade area earlier in the day; and that she drove home. I doubt the truth of the evidence that she left her car at Sandy Bay during the afternoon, walked home, and walked back. However I accept her evidence that she was at Marieville Esplanade in the middle of the night, and that she drove home. It is an agreed fact that at 3.08am on 27 January, a phone call was made to *10# from the landline telephone at Ms Neill-Fraser's home. No one but her could have made that call.

A witness named Timothy Farmer gave evidence that he found the tender from the Four Winds at about 5.40am on 27 January at a point very close to the place where Mr Liaubon had helped Ms Neill-Fraser launch it the previous afternoon. The painter — that is, the rope attached to the bow of the tender — was inside it, not in the water. That suggests that the knot by which the tender was secured to the wharf the previous afternoon had not come undone, but that somebody had used the tender and abandoned it at or near the point where it was found.

On the basis of the evidence that I have referred to, I make the following findings:

- Mr Chappell was alive at about 5pm on 26 January, when Mr Lorraine saw him, but was not seen alive by anyone other than Ms Neill-Fraser after that time.
- Ms Neill-Fraser attacked Mr Chappell either between about 5pm and about 9pm, or at about midnight, either killing him or leaving him deeply unconscious.
- Ms Neill-Fraser returned to the Four Winds in its tender between 11.30pm and midnight, and was seen by Mr Hughes during that journey.
- Thereafter, Ms Neill-Fraser sabotaged the yacht, hauled Mr Chappell's body onto the deck, manoeuvred it into the tender, took it away, dumped it somewhere in the river, and returned home by 3.08am.

Since Ms Neill-Fraser may have attacked Mr Chappell in the late afternoon or early evening, and not in the middle of the night, I am not in a position to make a finding that there was a significant interval between the decision to attack Mr Chappell and the time of his death.

I turn to consider the question of motive. Ms Neill-Fraser and Mr Chappell purchased the Four Winds in Queensland in late 2008, had work done on it in Queensland, and brought it to Tasmania during December 2008 with the help of two Queensland yachtsmen. A number of the witnesses at the trial were men from Queensland who had been involved in doing work on the boat or bringing it to Tasmania. One of them, Peter Stevenson, gave evidence that Ms Neill-Fraser told him during the delivery voyage that her relationship with Mr Chappell was over, and that it had been for some time. Another Queenslanders who travelled on the delivery voyage, David Casson, gave evidence that Ms Neill-Fraser said something during that voyage about buying out Mr Chappell's share of the Four Winds, but that he could no longer remember the context in which that was said. Another Queenslanders, Jeffrey Rowe, gave evidence that Ms Neill-Fraser told him during a telephone call on 8 January 2009 that she and Mr Chappell had separated. A fourth Queensland witness, James McKinnon, gave evidence that Ms Neill-Fraser told him, during a phone call in early February 2009, that she and Mr Chappell "had broken up previously and weren't together any more", and that she had not told the police that. In the light of the evidence of these four witnesses, I am satisfied beyond reasonable doubt that, before killing Mr Chappell, Ms Neill-Fraser had come to the conclusion that her relationship with him was at an end. She had not moved out of Mr Chappell's home. He might not even have known that the relationship was at an end.

The evidence suggests two possible motives for Ms Neill-Fraser to murder Mr Chappell: (1) a desire to acquire his interest in the Four Winds without having to borrow money to buy him out; or (2) a desire to acquire the assets that would pass to her upon his death in accordance with his will. Mr Chappell had about \$800,000 in superannuation entitlements. He owned the house in West Hobart where the couple had lived for 18 years. He

Comments on Passing Sentence (continued):

owed his bank about \$160,000, but his net worth was over \$1.3 million. By his last will, which he made in October 2004, he left Ms Neill-Fraser the house (free of the debt to the bank), his car, his personal possessions, and 50 per cent of the residue of his estate. He had requested that the superannuation money be dealt with in accordance with the terms of his will. One of his daughters, Kate Chappell, gave evidence of a conversation with Ms Neill-Fraser in or about 2004 about Mr Chappell's will. I accept that evidence, and infer that Ms Neill-Fraser was well aware of the benefits that she stood to receive in accordance with the terms of the will. If their relationship had ended in separation, rather than Mr Chappell's death, she would have been at a disadvantage. The house and the superannuation were his alone. She could have commenced negotiations for a property settlement, or applied for one under the Relationships Act 2003. There was no evidence as to how much or how little she knew about her rights in the event of a separation.

The Director of Public Prosecutions suggested at the trial that Ms Neill-Fraser had killed Mr Chappell because, having decided that their relationship was at an end, she wanted to acquire his share of the Four Winds without having to borrow money to buy him out. That may be so. I am not in a position to make precise findings as to what Ms Neill-Fraser was thinking. However I am satisfied beyond reasonable doubt that Ms Neill-Fraser was well aware that she would be substantially better off with the relationship ending in death rather than separation, and that she killed Mr Chappell with material gain in mind.

A witness named Philip Triffett gave evidence about two conversations with Ms Neill-Fraser in the mid-1990s. That evidence was disputed at the trial. My impression of Mr Triffett is that he is not always honest, but, after considering his evidence very carefully, I have decided that it was truthful. In substance, he said that Ms Neill-Fraser told him of a plan to kill her brother on board a yacht that she then owned, attach heavy objects to his body, throw the body into deep water, and scuttle the yacht. In the second conversation, she proposed that that plan be applied to Mr Chappell. Mr Triffett and his then partner had been close friends with Ms Neill-Fraser and Mr Chappell at that time, but the friendship came to a sudden end in 1997, shortly after the second relevant conversation. In the light of Mr Triffett's evidence, I infer that the killing of Mr Chappell involved the implementation of a plan that was concocted by Ms Neill-Fraser long ago.

I have had the opportunity to observe Ms Neill-Fraser during two very long police interviews. DVD recordings of both interviews were played during the trial. Ms Neill-Fraser also gave evidence at the trial over several days. She seems to me to be clever, very cool-headed, and well able to control her emotions. In my view Ms Neill-Fraser would not have attacked Mr Chappell unless she intended to kill him, had a substantial reason for killing him, was confident that she would succeed in killing him, and had a strategy to avoid punishment. This was not a killing that occurred because of a loss of self-control. It was not a crime of passion. It was an intentional and purposeful killing. I am satisfied beyond reasonable doubt that Ms Neill-Fraser deliberately killed Mr Chappell for a reason, and that that reason had to do with her financial betterment — possibly a desire to acquire all the assets that she stood to receive upon his death, and at least a desire to place herself in a position where she could acquire Mr Chappell's interest in the Four Winds without having to borrow.

Anything that a murderer does with his or her victim's body shortly after the murder is relevant for sentencing purposes: *Director of Public Prosecutions v England* [1999] 2 VR 259; *Bell v R* [2003] WASCA 216 at pars23–25, 61–62; *Colledge v Western Australia* [2007] WASCA 211 at par16; *R v Wilkinson (No 5)* [2009] NSWSC 432 at pars60–61. In this case, I regard it as an aggravating factor that Ms Neill-Fraser dumped Mr Chappell's body in the River Derwent, attached to a fire extinguisher, with the result that his body has not been found. She thereby deprived his family and friends of any opportunity for his remains to be disposed of with dignity in the context of a funeral or a cremation ceremony. She left those people in a situation where it was initially unclear whether Mr Chappell was alive or dead; eventually all hope of him being found alive was lost; and his final resting place, if that is the right term, is unknown.

Mr Chappell's children all chose not to submit victim impact statements. I was told that they wanted to preserve their privacy.

I am satisfied beyond reasonable doubt that Ms Neill-Fraser attempted to sink the Four Winds in order to destroy evidence relating to the killing and divert suspicion away from herself. She did the following things:

- She opened a redundant sea cock in a forward section of the vessel, so that water flowed in.
- She cut a plastic pipe near the toilet, with the result that water gushed in.
- She de-activated the automatic bilge pump and the automatic bilge alarm.
- She removed some sections of the carpet from the saloon. Some sections were simply able to be picked up, but one or more others were under some wooden fittings that had been screwed to the floor, with the screws

Comments on Passing Sentence (continued):

passing through the carpet. She unscrewed four screws in order to dispose of sections of the carpet.

As a result of the means that she adopted to kill Mr Chappell and dispose of his body, Ms Neill-Fraser made it necessary for the police to undertake a very time-consuming investigation. It involved a large number of officers making thorough inquiries over a long period. In my view the steps that Ms Neill-Fraser took on the night in question to conceal her crime, and the inconvenience and expense of the investigation that she made necessary, are aggravating factors that I should take into account.

Ms Neill-Fraser is now 56 years old. She has no prior convictions. She apparently led a blameless life until she murdered Mr Chappell. Otherwise, there is almost nothing that counts in her favour for sentencing purposes. She did not plead guilty. She has shown no remorse. She has not said or done anything that would assist in the finding of the body. There is no suggestion that Mr Chappell said or did anything to provoke this crime, or even to warrant hostility on the part of Ms Neill-Fraser. It was a deliberate killing for the purpose of some sort of personal gain. It warrants a heavier sentence than most murders.

Ms Neill-Fraser has been in custody since 20 August 2009. I will backdate her sentence to that date. I will make an order permitting parole because she has no prior convictions, and because a period of supervision is likely to be desirable after spending a long time in custody. In all the circumstances, I think it appropriate to impose a non-parole period well above the minimum.

Susan Blyth Neill-Fraser, I convict you and sentence you to twenty-six years' imprisonment with effect from 20 August 2009. You will not be eligible for parole until you have served eighteen years of this sentence. Finally, the Victims of Crime Compensation Act 1994 requires me to fix a time for you to pay a levy of \$50. I order you to pay that amount forthwith.