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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 31 January 2019

B e f o r e:

LORD JUSTICE DAVIS

MRS JUSTICE CHEEMA-GRUBB DBE

SIR ALISTAIR MACDUFF

R E G I N A

v

CHRISTOPHER MARTIN WALL

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Mr N Haggan QC appeared on behalf of the **Applicant**
Mr K Maylin appeared on behalf of the **Crown**

J U D G M E N T
(As Approved by the Court)

1. LORD JUSTICE DAVIS: The applicant is a man now aged 59. On 31 August 2017, after a trial in the Crown Court at Winchester before the Recorder of Winchester and a jury, he was convicted on a count of murder. In due course he was sentenced as required by law to a term of life imprisonment.

2. He now renews his application for leave to appeal against conviction, leave having been refused by the single judge.

3. That renewed application in fact came before the Full Court on a previous occasion and the application was adjourned to this present occasion with a direction that counsel for the Crown attend and also with a suggestion that perhaps the grounds, two in number at the time, might be supplemented by a further ground. That in the event the applicant through counsel has sought to do and we have already given leave to add the third ground to the proposed appeal.

4. We will not, we stress, set out in detail the background facts of this case. They are fully set out in the summing-up and they are recorded in the Criminal Appeal Office summary. Therefore our own summary will, we stress, be brief. But in order to make sense of our ruling we will briefly state the position as follows.

5. The applicant had been in an intimate relationship with Hayley Wall. She was 25 years of age at the time. They lived together in a flat at 221 Shelbourne Road in Bournemouth in a property in which there were a number of other occupants.

6. On 13 December 2016, the deceased, Hayley Wall, sustained a significant head injury that resulted in a subdural hematoma. She died on 22 December 2016.

7. It was the prosecution case that the applicant had inflicted the fatal blow to the deceased with the necessary intent. The defence case statement, as in due course served, put the defence as being self-defence and a lack of any relevant intent.

8. There was no doubt but that on 13 December 2016, earlier in the evening, the applicant and the deceased, Hayley, had been drinking at a particular bar. There was evidence that both were regular and heavy drinkers. The two left the bar at different times. There was some evidence that the applicant had been annoyed with the deceased because she had not responded as he wished to some of his advances in the bar.

9. There was evidence in particular from a lodger in the building called Adrian Bassett that the two arrived home separately. Bassett was to say that he had spoken to Hayley, who said she was unhappy because of arguments between her and the applicant. Bassett was to say that she had obviously been drinking but was not, in his view, drunk. When the applicant arrived home he appeared to be tipsy and angry and the two then were up in the flat above that of Mr Bassett. According to Mr Bassett, he heard shouting and indications of violence emanating from upstairs. According to him, Hayley then appeared in his room and asked him some questions and she then went back upstairs, at that stage having no visible injuries. He then was to say that he heard

sounds of the door being kicked in and shouting and arguing. He said that he heard the applicant hitting the deceased, saying, "Is this how you want to be treated?" and the deceased begging him to stop and crying in pain. He said that he heard something that sounded like him bludgeoning her head or using something to bludgeon and this happened four or more times.

10. It is right to say that Mr Bassett's evidence was the subject of strong attack at trial.

11. At all events, some 40 minutes passed before Hayley reappeared at his room, as he was to say. On this occasion he saw that her head was covered in blood and that blood was pouring down from her face. She appeared to be disorientated, not from drink but from pain and shock. He told her to go to "the shop" and call the police. She left the house and, according to him, although this was challenged at trial, he saw her turn left to walk up towards Charminster Road.

12. Other neighbours in the building, a couple called Kalinowska, also had heard a man shouting and loud thuds from the applicant's property. The wife heard somebody hitting something three times and somebody throwing something. She also said she heard sounds of a person being dragged on the floor. She said that she also heard a woman crying and moaning in pain. This could be timed at around 8.57 pm.

13. There is no doubt but that Hayley Wall did go out of 221 Shelbourne Road. A witness called Lee Turner was standing on the road opposite number 221, diagonally opposite albeit a couple of houses further down. He saw her coming up the road and she asked him if she could use his telephone. There was conversation between them but he declined to offer it to her. He said that she seemed unsteady on her feet and was distressed and crying and he saw blood dripping down her head. He walked away and when he looked back he saw her leaning against a wall but then standing up and walking towards Charminster Road. Shortly thereafter she entered the Charminster Supermarket and was provided by an assistant with a tissue which she asked for, for her blood. Her movements in Charminster Road were caught on CCTV footage. That evidence showed her holding her hand to her face or head area.

14. A little further down Charminster Road, Hayley then encountered three female foreign students. They gave evidence at trial. One of them was to describe her as walking as if she were drunk, that her hair was wet and she had blood in her face and mouth region. That student. Ms Hernandez, asked Hayley what had happened to her. She told her that she had fallen down. Owning to the nature and extent of the injuries which she observed, the student did not believe her. She summoned an ambulance. During that call, the student told the operator that she thought the deceased was under the influence of drink or drugs. The operator spoke to the deceased and the deceased told her that she had fallen over. An ambulance was dispatched.

15. Whilst they were waiting for the ambulance to arrive (and this took time) the student asked Hayley what had happened. She then said hat her partner had hit her. She also was to describe how she had been in a pub earlier with her partner and made other statements and also gave accounts of her personal background and life which were accurate. She described how she had returned home, that her partner was angry and

aggressive, had grabbed her to the hair and pushed her to the floor and when she had tried to escape he had continued physically to abuse her.

16. The other student was to say that Hayley had eventually told them that her partner had punched her. That particular student was to say that the first student, Ms Hernandez, had in fact directly asked Hayley, "Did your partner do this to you?": that is to say, in legal terms, in the form of a leading question.

17. Further contact was made with the emergency services to hasten the arrival of the ambulance. During that time Hayley's telephone received calls from her ex-partner, Oliver Powell. Such a call was at 9.47 pm. In that, she told Mr Powell that she had just been beaten up.

18. In a further call to the emergency services, Hayley told one of the students that her partner had hit her and also spoke to the operator, saying that she had had a fight with someone.

19. Two paramedics arrived and treated Hayley. She told them that she had been drinking and had also taken methadone that morning. The paramedics noted that she had obvious bruising to the left side of her face and ear and there was blood around her mouth, and lacerations. One paramedic asked her what had happened and Hayley said, "My partner smashed a TV over my head". She went on to say to the paramedic that she had then run out of the house and down the road, where she had fallen over.

20. In her oral evidence, the paramedic went on to say that Hayley had also said that she had put her hands down to cushion her fall and in fact grazes on her hands had been noted. In her statement, that paramedic had said that Hayley had said she had fallen over, landing on her face.

21. The deceased was taken to Poole General Hospital and later transferred to Southampton General Hospital. On that evening, when she was taken to hospital, among other things, grazing was observed to the left side of her face. It was identified that she had sustained a severe brain injury and she died from her injuries a few days thereafter, as we have said.

22. One of the witnesses called by the prosecution was Dr Purdue, an experienced pathologist, who had conducted the postmortem examination. He said that the most likely explanation for the right-sided subdural haematoma that had been identified was a fall to the left side of the deceased's head, there being a contrecoup injury. But he had noted no grazing or laceration to her skull to suggest that her head had struck the ground. No injuries were identified on the right side of Hayley's head.

23. In essence, the Crown relied upon the evidence of the lodger Adrian Bassett and of the husband and wife neighbours to show that Hayley had been attacked by the applicant and had sustained injuries whilst in the property in Shelbourne Road.

24. Further, there was the evidence of Lee Turner, who had noted that she had blood dripping down her face and who had not himself observed her fall over in the street.

25. Further reliance was placed upon the evidence of the foreign students and what the deceased had said to them and on the evidence of the paramedics and on what they observed and on what the deceased had said to them as well: as what was said in the telephone conversation with Mr Powell.

26. Further, there was forensic evidence of blood spatter found at the flat indicating that Hayley had been bleeding whilst in the property and possibly when she was lying down on the floor.

27. Additional forensic evidence was to the effect that hairs likely to have belonged to Hayley were found on the door in such a position which indicated that her head had made forcible contact with the door that was found off its hinges. There was further evidence from a scene of crimes investigation officer that the door had in fact been beaten open outwards from inside. There was also evidence to demonstrate that the applicant had been in some contact with the base and underside of a silver television set in the flat.

28. The applicant himself had shortly thereafter made videos but had deleted them from his telephone but these were recovered. These videos were consistent with the case that the applicant had struck Hayley but also made the case that the applicant had been acting in self-defence and that Hayley had stabbed him. There was evidence of injuries to the applicant.

29. The pathologist, Dr Purdue, the Crown also pointed out, had found no grazing or lacerations to the deceased's face or ear consistent with her having fallen and hitting her head on a road surface.

30. In a nutshell, the defence case was that it was Hayley who had attacked him and she had done so with a pair of scissors and had stabbed at him. She had been under the influence of drink and/or drugs and he had acted in reasonable self-defence. Furthermore, he denied intent.

31. One issue which was pursued at trial was the issue of causation. It was suggested on behalf of the defence that the Crown could not exclude the possibility that the deceased, Hayley, may have fallen and hit her head after leaving the flat and that particular fall may have caused the fatal haematoma.

32. In that regard, there was evidence from the students and from Ms Watkins, the paramedic, that the deceased had stated that she had at one stage fallen. In particular, it was noted that the pathologist, Dr Purdue, had in his evidence thought it entirely possible that she had fallen and hit her head; and indeed Dr Purdue's view was that the identified haematoma was more likely to have resulted from a fall rather than a blow, although he did not by any means exclude the blow as being the potential cause of the haematoma.

33. The applicant gave evidence at trial. It is clear that the jury by its verdict must have rejected his evidence as untrue.

34. There are three grounds of appeal now advanced. The first ground is that the trial judge erred in permitting the Crown to adduce as hearsay evidence the statements made by the deceased to others after she had come out of 221 Shelbourne Road. In particular, objection was made as to the admissibility of statements made by the deceased to the group of students as to how Hayley said she had come to be injured; although Mr Haggan QC, appearing for the applicant today, as he did at trial, made clear to us that in fact he had objected to the admissibility of *all* the statements made by Hayley after she came out of the flat: that is to say the entirety of what she had said to the three students, the entirety of what she said to Mr Powell on the phone and the entirety of what she said to Ms Watkins, the paramedic.

35. We have to say that we found, and find, the whole approach to this issue of admissibility to be puzzling. In the first place, the Crown had seen fit in its hearsay application to invoke the provisions of section 114(1)(d) of the Criminal Justice Act 2003. That is puzzling, because these statements had been made at the time by a person who is now deceased. Accordingly, they were admissible without more by reason of section 114(1)(a) and section 116(2)(a) of the Criminal Justice Act 2003. The gateway of admissibility contained in section 114(1)(d) simply did not need to be opened. Thus, the application got off to a bad start.

36. However, overall we agree with Mr Haggan that ultimately the question was and is whether it was fair that such hearsay evidence should be placed before the jury; and no doubt for the purpose of assessing the fairness of admitting that evidence, or, more strictly, whether or not it should be excluded, it could be considered appropriate to have regard to the matters set out in section 114(2). At all events, the approach taken by the judge was in fact favourable to the applicant.

37. The judge started his ruling by saying:

> "Right, this is a ruling that I've been asked to make concerning the admissibility of statements of three witnesses whose names are Mantika, Hernandez and Panchal. These are the three students who spoke to the deceased after the incident ..."

38. It seems that by this stage the judge had understood that the only question of admissibility related to the statements of the student witnesses; but Mr Haggan has assured us that his application - certainly in writing it had been - was to exclude all the statements made to all the witnesses after the incident in the flat.

39. One only has to stand back and consider the position to see how wrong it would have been to have excluded this evidence as statements made by the deceased. In truth, using old-fashioned language, this was all part of the res gestae. What the deceased was to say as to what had happened to her in the flat according to her was material which the jury ought properly to have heard. To have denied the jury the benefit of hearing what the deceased allegedly said about what had happened would have been utterly wrong. Of course there were potential weaknesses in that evidence, as was much stressed: for example the deceased had been drinking and perhaps was coming through the effects of taking methadone, she would have been in a total upset state of

mind on any view by what had happened to her, perhaps also exacerbated by the effect of the physical injuries and so on. But there was no unfairness in allowing that evidence to go in as hearsay. After all, it was open to the defendant, as indeed he did, to give evidence explaining his own position and disputing the correctness of what Hayley had said had occurred in the flat.

40. Indeed, we have to say that we are rather surprised that the application by the defence was to exclude the entirety of the evidence: because, on the face of it, one would have positively thought that the defence would have wanted in before the jury the evidence of Hayley's statements to various people that she had fallen over in the street. Indeed, in the absence of such evidence of her statements, it is difficult to see, notwithstanding Mr Haggan's assertions to the contrary, that there could have been any evidential basis at all for saying that Hayley had fallen over in the street.

41. But, be that as it may, insofar as the argument was directed to excluding the entirety of these hearsay statements, we are in no doubt whatsoever that, even if the judge's approach was in some respects rather surprising and indeed surprising in favour of the defence, his ultimate conclusion was unquestionably correct. It was right and just that this hearsay evidence went before the jury and the defence were not unduly prejudiced by that happening.

42. Moreover, not only did the statements go to a very important matter in issue, it also cannot be said that these hearsay statements were in any way the sole or decisive evidence against the applicant. Indeed, as the judge was later to point out, there was an entirely sufficient case against the applicant even in the absence of these hearsay statements.

43. Moreover, the prosecution case, quite apart from the direct evidence, had further support from the forensic evidence.

44. Mr Haggan explained to us that he felt unable to seek to exclude the statements made by Hayley with regard to the applicant having hit her but at the same time seeking to maintain inclusion of the statements that she had made that she had fallen over. We entirely understand that. We think Mr Haggan was right to say that he was not in a position to cherry pick the hearsay evidence in this way. But that simply goes to confirm that the totality of such evidence was properly before the jury.

45. Thus, although, in our view, with all respect, the judge made unnecessarily heavy weather of this application, his conclusion was amply justified; indeed we would say it was clearly correct.

46. The second ground of appeal was to challenge the judge's refusal to accede to the submission of no case to answer made at the halfway mark. Mr Haggan says that the submission was based, essentially, on the issue of causation: in particular based on Dr Purdue's evidence that the subdural hematoma was caused either by a blow or by a fall and where Dr Purdue himself considered the latter scenario, that is to say a fall, was the more likely.

47. It was said, and is said, that a reasonable jury properly directed could not be sure that it was the alleged assault by the applicant in the flat that had caused the fatal injury: that fatal injury in the form of the subdural haematoma may well have been caused by a fall and the jury could not properly discount that, it would be speculation if they were to.

48. The judge's ruling on the submission of no case to answer, as it happens, focuses almost entirely on the issue of whether there was sufficient evidence that the applicant had violently struck the deceased (undoubtedly there was ample evidence in that regard before the jury) and on the issue of whether the Crown had adduced sufficient evidence to rebut the defence of self-defence (undoubtedly it had).

49. It is not, however, obvious from the judge's ruling that the defence had much, if at all, pressed the proposition that there was insufficient evidence on causation; and we also note that causation is not positively put in issue in the defence case statement. But Mr Haggan assures us that he did press that causation point before the judge in the course of his submission. Indeed one of his complaints is that the judge did not properly confront that issue of causation in his ruling in rejecting the submission of no case to answer.

50. In our view, the judge was fully justified in rejecting the submission of no case to answer. In particular, there was sufficient evidence on causation to justify the matter being left to the jury. Whilst the prosecution case seems primarily to have been based on there being a blow, whereas Dr Purdue thought that the most likely mechanism was a fall, the point remained a jury matter. Indeed, the defence argument based on a fall seems to presume that any relevant fall would have occurred in the street. But there was evidence that the deceased had in fact - as the jury may have thought - fallen in the flat and there was evidence which the jury could accept that her head had come into violent contact with the door. There was also the forensic evidence about blood spatters and so on.

51. So it is difficult to understand why the relevant fall in question, if there was one, had to be in the street outside as the defence case presumed. Moreover, Dr Purdue, it is to be repeated, had found no signs of the head having come into contact with gravel or a road surface and nor had he identified any signs of grazing and lacerations, which one might have expected had there been a fall in the road to the left side of the head in such a situation.

52. It is, in fact, as we see it, almost impossible to see how the point about the alleged fall in the street could even have come into play without the hearsay statements of the deceased made to the students and Ms Watkins. Certainly no-one had actually seen Hayley fall in the street. We accept Mr Haggan's point that Hayley had not been seen at every stage after she walked out of 221 Shelbourne Road; but the window of opportunity for her to fall in the way asserted was very, very limited and the jury may well have thought, and would have been entitled to think, that it strained reality and incredulity beyond acceptable limits to say that she had happened to have fallen in the very short moments when no-one had seen her and when the CCTV had not captured her. At all events, this was clearly a jury matter.

53. In the circumstances, there clearly was a case to answer on the issue of causation. We repeat that whilst Dr Purdue had favoured the mechanism of a fall, he had never excluded the mechanism of a blow and, moreover, his evidence had to be placed into the context of all the other evidence taken as a whole. Thus, there was sufficient evidence on causation, in our judgment, to justify this matter being left to the jury. Indeed, it would have been a surprising conclusion had it been otherwise.

54. We have to say that in legal terms, even if it could be said that the deceased had fallen in the street and even if it could be said that such an asserted fall in the street may have been causative of the subdural hematoma, it is difficult to see how that could give rise to any defence to the applicant For the deceased was only in the street because she was trying to get away from the flat and contact the emergency services. That is to say, it would appear that what happened in the flat was a substantial cause of her being in the street and would have been a substantial cause of her falling over and striking her head, if that is what she did. Thus, in point of law, that scenario would seem to have afforded no ground of defence in any event to the applicant. However, for reasons we do not fully comprehend, the Crown never took that point as an alternative point. At all events we think Mr Haggan is justified in saying that the defence could only be expected to deal with the case that was being presented at trial. We thus simply raise this point as a matter of concern. It should not have happened, without at least debate before the judge on this asserted issue of causation.

55. The final ground relates to the alleged inadequacy of the summing-up on causation. Put shortly, it is said that the judge should specifically have instructed the jury that they could not convict unless they were sure that the deceased had not fallen at some point after she had left number 221.

56. If this was indeed a crucial direction that was required, then it is regrettable that no-one at trial ever asked the judge to supplement his summing-up accordingly, either when he gave his initial legal directions, this being a split summing-up, or when he thereafter gave his summing-up on the evidence and recapitulated the issues.

57. It is also perhaps a point of comment that such a criticism was not raised in the original grounds of appeal, by which time the defence team would have seen the transcripts, but only was raised as a result of a prompt from the Full Court on the previous occasion.

58. In our view, the judge gave perfectly sufficient instructions to the jury on this issue. In his legal directions, he, amongst other things, said this:

> "Firstly, he caused her death, namely he injured her on the 13 December 2016 by causing her to suffer the subdural hematoma from which she later died ..."

59. He then went on to say that it is very important that the three elements, that is to say causation, attack and unlawfulness, had to be proved.

60. The judge then went on to say:

> "The issue of causation is quite a central issue in this case ... But how did

> she suffer the trauma which caused that haematoma? Dr Purdue ... gives the opinion that such a brain injury was caused by a blow or trauma to the head, which could have been either from a fall or a blow to the head ... So that's causation. That's the first element. Did Christopher Wall cause, was he responsible for a blow to the head of Hayley Wall which caused that subdural haematoma."

That was entirely correct as a direction.

61. The judge then, in dealing with the matter in the route to verdict, again set out the matter correctly in law, posing the question:

> "Has the Prosecution proved so that you are sure the Defendant caused the death of Hayley Wall?"

62. The judge fully summarised the evidence of Dr Purdue and furthermore he fully set out the defence case on this matter. He said this:

> "The Defence say, well, that may be the case, but we cannot rule out the fact that she may have fallen over on the road or somewhere else during that time, how she herself said so, Hayley Wall said so. Others reported so. And so therefore you cannot rule out that that injury, or she may have had other injuries from Mr Wall, but the injury which was the fatal injury may have occurred not with anything to do with Mr Wall ..."

63. That again entirely and fairly encapsulates the issue as raised by the defence.

64. The judge went on at a further stage in his summing-up to give further instruction to the jury to like effect.

65. Overall, we can see no error in the summing-up taken overall, both in its legal directions and in the summing-up on the evidence, at the end of which summing-up on the evidence the judge yet again recapitulated the point about causation. There is no substance whatsoever in the challenge to the summing-up.

66. We should say that we have also endeavoured to stand back and consider this case as a whole. Our impression has been, and indeed it has only been confirmed by what happened before us, that the wood seems to have been lost for the trees. The focus before us has been on the issue of causation and of course we accept that that was made into a major issue at trial. But one must not overlook the fact that much of the trial also was devoted to the issue of self-defence and intent and the issue of the credibility of the defendant when he denied the prosecution case against him. Indeed, in many ways the defence case on causation had very obvious potential weaknesses. At all events, it was for the jury to decide whether they had doubts on that issue and their verdict shows that they did not.

67. We take the grounds both individually and cumulatively. We are of the clear view that they afford no arguable appeal. The single judge was quite right in his ruling to reject the two grounds then advanced as he did and the third ground has no validity either.

68. We refuse this application.

69. LORD JUSTICE DAVIS: Any other points?

70. MR HAGGAN: No, thank you, my Lord.

71. LORD JUSTICE DAVIS: Thank you both very much indeed for your helpful submissions.

72. Ms Maylin, we would like to repeat that it is the responsibility of the Crown to assess the prosecution case as a whole and not simply respond to the way the defence choose to run their own argument.

73. Thank you both very much.

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