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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202201299/A2

[2022] EWCA Crim 1732

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 22 November 2022

Before:

LORD JUSTICE WARBY
MRS JUSTICE McGOWAN DBE
THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY KC
(Sitting as a Judge of the CACD)

REX
V
MONIKA SOLARSKA

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MR R HERRMANN appeared on behalf of the Appellant
MR P MAKEPEACE KC and MR D CORDEY appeared on behalf of the Crown

JUDGMENT
(Approved)

LORD JUSTICE WARBY:

1. This is an appeal against sentence by Monika Solarska, aged 37. On 2 March 2022 in the Crown Court at Teesside she pleaded guilty to one count of doing acts tending and intended to pervert the course of justice. On 8 April 2022 she was sentenced by Stacey J to five years and six months' imprisonment. The appeal is mounted on the basis that this was manifestly excessive.
2. The charge arose from the discovery of the corpse of Tomasz Dembler in April 2021. Mr Dembler was a Polish national who had lived in the United Kingdom from about 2002. He had married and had a daughter. In 2018 he moved to the Northeast. In the months before his death his lifestyle had deteriorated. He had fallen out or lost touch with extended family members who lived here, he had no settled address or employment, and he was in a bad way with drink and drugs. In March 2021 he moved to an address in Edward Street in Middlesbrough. He was aged 39 at the time.
3. On 21 March 2021 there was a party at the Edward Street address. A few weeks later, Mr Dembler's body was found by two teenage girls in a shallow grave in woodland bordering Flatt's Lane Country Park near Middlesbrough. They found the body because a foot was sticking out of the ground.
4. A post-mortem examination found bruising and cuts to the lips and mouth, a fracture to the right side of the upper jaw, bruising over both sides and the back of the scalp, dense bruising around the jaw line and muscles of the neck and to the tongue, bruising to the chest wall with 15 associated rib fractures, and generalised bruising to the muscles of the back, the upper arms and the lower limb. Mr Dembler's back had been broken and there was partial dismemberment of the lower part of each arm which had been severed above the wrist. There was also some brain injury.

5. The expert analysis was that the injuries to the head were likely to have been caused by kicks or stamps, and the injuries to the neck by compressive pressure. The multiple fractures to the ribs were indicative of repeated kicks or stamps which would have been very painful and would have impaired Mr Dembler's ability to breathe. It was most likely that the spine was broken when Mr Dembler was still alive. The injuries were so extensive that the medical expert could not be sure which were fatal. The headlock which may have cut off the oxygen supply to his brain could have been what had killed him. The separation of the hands from the body was probably carried out after death. There was hypostasis at the front of the body indicating that it had been lying at the Edward Street address for a time on its front, before being transported and buried sometime later.
6. A police investigation under the name of Operation Spark led to the arrest of seven individuals, all of whom were initially indicted for the murder of Tomasz Dembler. Of those, five were proceeded against. They were: (1) Rafal Chmielewski (RC), (2) The appellant, who was RC's girlfriend, (3) Adam Czerwinski (AC) (4) Tomasz Reczycki (TR) and (5) Zbigniew Pawlowski (ZP).
7. The trial began on 19 January 2022. The prosecution case was that the Edward Street party had involved heavy drinking and the taking of drugs. Mr Dembler was not involved but he was killed at the house in the early hours of 21 March. All five defendants were present at the time and the prosecution alleged that all were involved in a joint enterprise to kill or cause really serious harm to Mr Dembler.
8. RC and ZP were said to have been the ringleaders in the killing. Those two were also alleged to have been the principal actors in the actual burial. Evidence was called to show that a white Mercedes belonging to RC and a black Mercedes belonging to the appellant had made repeated journeys between Edward Street and the burial site after Mr Dembler's

death. The purpose of these, the prosecution alleged, was to reconnoitre the burial site by day and by night, to take the body there and finally to pick up the two involved in the burial itself. Further, the prosecution adduced evidence that the cars were cleaned of all DNA or other evidence of Mr Dembler. The house too was scrupulously cleansed of all traces of the deceased. The carpet was changed, the sofa was replaced, and the mobile phone of the deceased was also disposed of. The appellant was alleged to have been involved in all of this as part of a joint enterprise.

9. By day 29 of the trial the prosecution was in the course of cross-examining RC when guilty pleas acceptable to the prosecution were offered by all defendants. The indictment was amended by consent to add count 2 (manslaughter) to which RC and ZP pleaded guilty, and count 3, to which the appellant and the other two defendants, AC and TR, pleaded guilty. That was the count of perverting the course of justice. No further evidence was offered on the count of murder and the case was adjourned for sentence.
10. The judge was left to reach her own conclusions as to the facts of the offending based on the evidence she had heard and seen in the course of the trial. The key facts as the judge found them to be were these.
11. In early March 2021 RC and the appellant had taken Mr Dembler into their home at Edward Street which they shared with AC. During the party, at some point in the early hours of 21 March, RC and ZP had launched a sustained and brutal attack on Mr Dembler in his bedroom lasting up to 30 minutes, in the course of which they beat and kicked him to death. This was unplanned and unpremeditated but it was also unprovoked. They broke Mr Dembler's spine while he was still alive. After his death in his bedroom his hands were severed. Evidently the purpose of this was to ensure that he could be fitted into the suitcase in which he was transported to the burial site.

12. Although RC and ZP had pleaded guilty to manslaughter, not murder, said the judge, the deceased's injuries made clear that their intention "fell only just short of intending to cause grievous bodily harm" and the assault had been one that carried a high risk of death.

13. The appellant did not go upstairs until after the assault, but she must have known something of what was happening. It was a small house with thin walls and the assault would have been noisy. The operation to dispose of the body and destroy evidence and all trace of the deceased was "chillingly slick, ruthlessly efficient and callous". That operation, said the judge, was led by RC and it was he and ZP who were involved in dismembering and burying the deceased but, over 21/22 April 2021 the appellant was busy ferrying RC and ZP to and from the burial site.

14. Whilst it was not possible to identify who had played exactly what part in the clean-up operation, the appellant had colluded with the others in that part of the offending and in doing all of her power to ensure that Mr Dembler's death would never come to light or be linked to any of the defendants. In that respect they were all in it together. Like the others, the appellant had repeatedly lied to the police and put forward a false defence case statement.

15. Victim personal statements were provided as to the impact of Mr Dembler's death. The judge's findings were that this had devastated his family and friends, not just by the savage way in which he had been killed, the desecration of his body and his dismemberment, but also, she said, the concealing of his body, denying him a decent burial. All of this was said to have caused "unimaginable pain and grief" for three generations of his family -- his mother, his brother, his daughter and his nephew.

16. For the manslaughter of Mr Dembler the judge identified the appropriate sentence after a

trial for each of RC and ZP as one of 17 years. She allowed a six-month reduction for the guilty pleas and thus sentenced each to imprisonment for sixteen-and-a-half years.

17. She turned to the appellant and the remaining co-defendants. There are no sentencing guidelines for perverting the course of justice but the general approach to sentencing applies and the authorities identify three main factors to be taken into account when deciding the seriousness of the offending. These are: (1) The seriousness of the substantive offence; (2) the degree of persistence of the criminal conduct; and (3) the effect of that conduct on the interests of justice: see R v Tunney [2006] EWCA Crim. 2066 and Attorney General's Reference No 16 of 2009 (Yates) [2010] 2 Cr.App.R (S) 11.

18. Applying these principles the judge found, first, that the killing in this case was at the top of the range for manslaughter. It was a Category 1A killing, and hence extremely serious. Secondly, she found that there was "a thoroughness and persistence to the destruction and cover up of all aspects of the evidence and the facts that went on for a number of days after Tomasz's death". Thirdly, addressing the effects of the offending, she said that the killing had only come to light through the sheer luck that the teenagers found the body: "You very nearly got away with it". Bearing in mind the harm to Mr Dembler and his family the judge said this was "one of the most serious of cases of perverting the course of justice."

19. This is a common law offence and sentence is at large, with no statutory maximum. There is a large number of decided cases which may be considered to offer some guidance to a sentencing judge, many of which were placed before the judge in this case for her consideration. They featured a range of sentences from two years to eight years' imprisonment. The judge observed that only limited assistance could be gained from other cases as each would turn on its own facts, but she did derive some help from R v

Amin [2014] EWCA Crim. 1924. In that case the appellant had driven his car from Birmingham to London with the body of the deceased in a suitcase in the boot and this court refused leave to appeal a sentence of eight years' imprisonment after a trial. The judge said the cases shared some common features, whilst identifying two distinctions: Amin was a case of murder, not manslaughter, and culpability was higher in that the murder was premeditated and Amin had known of it in advance.

20. Turning to the cases of the three who had pleaded guilty to this offence, the judge found that the appellant was the most closely involved in the post-mortem activities. She was the driver on two of the journeys to Flatt's Lane and took cunning steps to try to avoid detection, such as by changing routes. She had knowingly transported the body to the burial site and she had worked side by side with RC on the clean-up and cover up operation. The judge took account of the appellant's previous good character but found that she had become involved with RC and his family out of genuine choice. The judge said that the starting point was one of six years' imprisonment which she reduced by six months for the late guilty plea. After similar reductions the other two defendants, AC and TR, received sentences of five years and three years six months respectively.
21. Three grounds of appeal were advanced before the single judge. The first was that the judge's notional sentence after a trial was too high, given the role that the appellant played and for that reason the sentence was manifestly excessive. Secondly, there was a complaint of disparity. Thirdly, there was a suggestion that the guilty plea should have attracted a greater reduction. The single judge gave leave on ground 1 but rejected the other grounds of appeal which have not been renewed before us.
22. For the appellant, Mr, Herrmann, who appears today, submits that the judge placed too much reliance on the comparison with Amin which he says was a very different case.

This appellant had no prior knowledge of the killing, and no direct dealings with the body. Her role, it is submitted, was the secondary or supportive one of being present in the car to divert suspicion. The written grounds of appeal referred us to two decisions of this court where the substantive offence was one of manslaughter and co-defendants were sentenced for preventing lawful burial. In Munday [2003] 1 Cr.App.R (S) 118 the principal offence was one of gross negligence manslaughter by leaving the victim of a heroin overdose to die without calling for help. That led to a sentence of five years' imprisonment on a guilty plea. The appellant had helped to bury the victim and the sentence was two-and-a-half years after full credit. In Gale [2018] EWCA Crim. 120 the principal offence was manslaughter by reason of loss of control, leading to a sentence of 12 years. A sentence of four years after a trial was imposed on a co-defendant for helping to move the body.

23. For the Crown, Mr Makepeace KC responds that these comparisons do not assist as the facts were so different from those in the present case. Mr Makepeace argues that Mr Herrmann's analysis of the appellant's conduct does not fully or properly encompass her true role as found by the judge. Mr Makepeace emphasises the factors we have already mentioned and, in addition, that Mr Dembler's body was left overnight in the house which was the appellant's home. He describes the principal offending and the offence to which this appellant pleaded guilty as "as bad a case as the court is likely to come across".

24. We have reflected on these submissions. In our judgment the judge was clearly right to regard this as a particularly serious case of its kind. This appellant, knowing that her boyfriend and ZP had killed Mr Dembler, helped them try to get away with it. On the judge's findings the appellant played a leading role in every aspect of an attempted cover

up involving five individuals, which was elaborate and sophisticated, lasted at least two days, and must have taken up most of her waking hours during that period of time. The attempt to erase all traces of the killing very nearly succeeded. It increased the pain suffered by the family of the deceased.

25. There is rightly no challenge to the judge's findings of fact. There can be no doubt that those findings were open to her on the evidence. We consider that her approach reflected a faithful application of the principles identified in the authorities. She had proper regard to the case of Amin without affording it undue weight.
26. We have not found the cases cited by Mr Herrmann of great assistance, for the reason given by the Crown. We do consider that the application of the first of the criteria in Tunney should lead to a sentence for perverting the course of justice that bears some reasonable relationship of proportionality with the gravity of the principal offending. Here, that turned out to be a joint offence of manslaughter by assault falling just short of murder. Even testing proportionality by reference to the sentences imposed, which can only be a rough and ready guide, the notional sentence for the appellant's interference with justice was just over one-third of the sentences for the principal offending. On neither approach does the judge's sentence strike us as in itself disproportionate or manifestly excessive.
27. That conclusion is reinforced when we consider the second criterion, which focuses on what the defendant did to interfere with the course of justice. Some offences of this kind involve a single brief and spontaneous act, such as obstructing access to a fleeing offender, or some other short-lived conduct. The prolonged and persistent nature of this appellant's behaviour clearly places her case at the other end of the scale.
28. So far as the comparison with Amin is concerned, although the appellant did not have full

knowledge of the killing she clearly did know about it when she took part in the burial arrangements and the clean-up of the cars and the house. She may not have touched the body but she had close dealings with it. Participation in the other aspects of the cover up is an aspect of the appellant's offending that goes beyond the conduct of the defendant in Amin. There were other factors that made this appellant's case one of higher culpability: her leading role in a group activity and the significant degree of planning that must have been involved.

29. Turning to the third factor, we can see no grounds for criticising the judge's assessment of the impact of the appellant's offending. It came close to being a complete success in defeating the ends of justice. Indeed, the appellant's intention was that Mr Dembler's disappearance should remain a mystery forever. His relatives and friends would never have known what had become of him but for the chance discovery by the teenagers and the diligent police investigation. Of course, an offender's previous character and any personal mitigation must be taken into account but there was nothing about the offending or its circumstances here that mitigated this appellant's culpability. The only mitigation was her previous good character which the judge took into account.

30. Standing back, the sentence in this case was towards the upper end of the scale indicated by the authorities on sentencing for this offence. But in our judgment that is because the gravity of the offending was in the upper range. For these reasons, we consider that the judge's sentence was not manifestly excessive but just and proportionate and we dismiss this appeal.

proceedings or part thereof.

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