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Neutral Citation Number: [2024] EWCA Crim 68

Case No: 2023/02409 A3

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)  
ON APPEAL**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25 January 2024

**Before:**  
**LORD JUSTICE POPPLEWELL**  
**MR JUSTICE CHOUDHURY**  
**and**  
**HIS HONOUR JUDGE ANDREW LEES**  
**(sitting as a Judge in the CACD)**

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**Between:**

**RICHARD LEE NORRIS**  
**- and -**  
**R**

**Appellant**

**Respondent**

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Mr J McNALLY (instructed by The Ringrose Law Solicitors) for the **Appellant**  
Mr J JANES (instructed by CPS) for the **Respondent**

Hearing date: 25 January 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 6 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Mr Justice Choudhury:**

**Introduction**

1. On 16 June 2023 in the Crown Court at Lincoln (before HHJ S Hirst), the Appellant (then aged 54) was convicted of murder. On 19 June 2023, he was sentenced to imprisonment for life with a minimum term of 27 years (less 194 days spent on remand). The Appellant appeals against that sentence with the leave of the Single Judge.

**The Facts**

2. The background to this matter may be briefly stated as follows: in the early hours of 2 December 2022, the Appellant murdered Marcus Tott, then aged 47. Tott and Marie Edge had been in a volatile and sometimes violent relationship. The pair lived together at 11 Grosvenor Road in Skegness.
3. On 28 November 2022, Marie Edge left Tott and went to stay with Petra Ross at 37A Grosvenor Road. Whilst there, Edge began a relationship with the Appellant and told him about her problems with Tott.
4. At approximately 02:50 on 2 December, the Appellant, intoxicated with drugs and alcohol, took a knife from Ross' home and went to 11 Grosvenor Road. Tott's front door was unlocked, and the Appellant went inside. Tott was asleep on his bed. The Appellant stabbed Tott to the right side of his chest. The knife passed through muscles and a rib before incising the superior vena cava and left pulmonary artery. Tott collapsed and died a short time later.
5. The Appellant returned briefly to Ross' home before going back to the hostel where he had been living, disposing of the knife down a drain en route. At the hostel, the Appellant telephoned his mother and told her that he had stabbed Tott while Tott was asleep. He also told Ross that he had stabbed Tott.
6. Tott was discovered lying on the floor by his landlord later that morning. Paramedics were called and he was pronounced dead shortly after 09:30. A post-mortem examination concluded that the cause of death was a single stab wound to the right side of the chest. The wound was consistent with the injury having been caused by a kitchen knife. The Appellant was arrested and denied all knowledge of the offence.
7. The Appellant's antecedents comprised 53 convictions for 184 offences spanning from January 1987 to 30 July 2020. His relevant convictions included offences of assault occasioning actual bodily harm (1987, 1988 and 2005), having a bladed article in a public place (1999, 2004 and 2007), possessing an offensive weapon in a public place (1999) and common assault (2003).

**The Sentence**

8. In sentencing the Appellant, the Judge considered that the case fell within paragraph 4 of Schedule 21 to the Sentencing Act 2020 because a knife was taken from Ross' flat to the scene of the murder. That gave a starting point for the minimum term of 25 years.
9. As to aggravating and mitigating factors, the Judge considered that whilst there was significant premeditation, this did not amount to a "significant degree of planning" within the meaning of paragraph 9A of Schedule 21 to *the Sentencing Act 2020* ("the 2020 Act"). The Judge was sure that there was an intention to kill which meant that there could be no mitigation for the absence of such intent. The Judge then proceeded to consider further aggravating factors:

"The aggravating factors are, first, your previous convictions. You are heavily convicted for dishonesty, including receiving twenty-eight months in 2020 for two offences of burglary of non-dwellings. In addition, you have the following relevant convictions: 1987 assault occasioning actual bodily harm, 1988 assault occasioning actual bodily harm, 1999 possession of an offensive weapon, 2003 common assault, 2004 having an article with a blade, 2005 assault occasioning actual bodily harm and common assault, 2007 having an article with a blade. Second, the murder took place in the home of Marcus Tott. Third, the vulnerability [of] Marcus Tott since he was lying sleep in his bed. Fourth, the taking of some, albeit unsuccessful, steps to cover your tracks by trying to dispose of the weapon in a drain. Fifth, you blaming Petra Ross for the death of Marcus Tott from the time of your first defence case statement until the second defence case statement provided on the first day of the trial."

10. The Judge then referred to the mitigating factors:

"The mitigating factors are, first, you behaved in a way which was out of character for you in recent years and at a time when you suffered some recent losses. Second, there was no sophistication about what you did. Third, you killed Marcus Tott when you believed he had treated Marie Edge badly. Fourth, you struck a single blow, albeit a blow of severe force, rather than a sustained assault."

11. Taking all of these factors into account, the Judge sentenced the Appellant to a minimum term of 27 years less days spent on remand.

### **Grounds of Appeal**

12. The Appellant was permitted to appeal on the sole basis that the aggravating factors were insubstantial and should not have outweighed the mitigation so as to lead to an uplift from the starting point of 25 years. In granting leave, the Single Judge said as follows:

"I have considered the papers in your case and your grounds of appeal. The Judge was bound to take the starting point of 25 years for your minimum term and was entitled to find the victim

was asleep when you killed him. I give leave on the basis it is arguable that the aggravating matters relied on by HHJ Hirst were, with respect, insubstantial and should not have outweighed the slight mitigation [a belief the deceased had been violent to your then-partner]. To consider the 5 matters the Judge relied on as aggravation:

(i) Your previous convictions: your most recent conviction for violence was about 17 years earlier and not the most serious. It may be that your more recent numerous convictions for dishonesty are not very relevant to the sentence for murder.

(ii) The murder was in the victim's home: This is not a specified aggravating factor under schedule 21 of the Sentencing Act. While the schedule it is not an exclusive list, it is sadly a very common feature that people are killed in their own homes, yet Parliament has not seen fit to identify it as an aggravating feature.

(iii) The victim was asleep. This is not a specified aggravating factor [in contrast to vulnerability through age or disability, which is]: that absence is not determinative, but I note paragraph 9(c) of Schedule 21 specifies "mental suffering inflicted before death" which could suggest that a prolonged attack on an awake victim is itself an aggravation. It is arguable that Judges imposing these very long minimum terms need to be cautious before identifying aggravating factors that are not in the Schedule.

(iv) Taking steps to cover your tracks by dropping the knife down a drain: those who kill by stabbing very frequently do not keep the murder weapon thereafter and, once more, this is not a specified aggravating factor.

(v) Blaming another for the crime in a Defence Statement: It is wrong in principle to treat the nature of the defence run at trial [however unattractive] as a reason to increase a sentence, see for example *Lowndes* [2014] 1 Cr App R (S) 75."

## **Submissions**

13. Mr McNally, who appears for the Appellant, as he did below, submits that, whilst the Judge was entitled to take account of aggravating features not appearing in Schedule 21 to the 2020 Act, the aggravating features on which the Judge relied were either not aggravating features at all or, if they were, should have been afforded minimal weight. The previous convictions, he submits, were historic and of an entirely lesser order of seriousness, and the more recent dishonesty offences to which the Judge referred were of little moment in the context of this offending. As such, the previous convictions should not have been given any significance. He submitted that where it is rare for a knife to be left at the scene of a murder and where it is commonplace for a knife to be removed and disposed of upon leaving the scene, the dropping of the knife should not

be treated as an aggravating feature. The blaming of Ross for the offence was not pressed by the Prosecution as an aggravating feature and it was wrong in principle to rely on that. The fact of the offence being committed in the victim's home should not be regarded as an aggravating feature because the victim of a murder, unlike the victim of a lesser offence, is not left, post-offence, to suffer any ongoing dread or fear when at home. Mr McNally submitted that the fact that the victim was asleep did not render him particularly vulnerable in the way that age or infirmity might as per the example in paragraph 9 of Sch 21 to the 2020 Act. As to the mitigating factors, it was submitted that these should have been afforded more weight. As well as the fact of the offence being out of recent character, there was evidence of a violent incident between Tott and Edge which had been on the Appellant's mind when he committed the offence. Finally, the fact that there was a single blow does provide some mitigation in circumstances where knife attacks often involve multiple blows or a frenzied attack. Stepping back and bearing in mind that the taking of a knife to the scene had already resulted in a higher starting point of 25 years, the sentence of 27 years was, he submits, manifestly excessive.

14. Mr Janes, who appeared for the Crown as he also did below, submits that the Judge carried out an appropriate analysis of the aggravating and mitigating factors and reached a sentence which was just and proportionate. He emphasises that of the different circumstances in which the taking of a knife to the scene would engage paragraph 4 of Sch 20, the Appellant's conduct in this case was at the more serious end of the scale, involving significant premeditation in deliberately taking the knife from one location to the victim's home with the intention of killing him. Whilst the previous convictions and the dropping of the knife would not greatly aggravate the seriousness of the offence, the Judge was entitled to take these features into account. Mr Janes accepted that the blaming of Ross should not have been taken into account but contended that that would not undermine the Judge's analysis overall. The two principal aggravating features, in Mr Janes' submission, were the fact that the victim was at home and particularly vulnerable through being asleep. Taking all the factors into account entitled the Judge to increase the sentence from the starting point to 27 years.

### **Analysis**

15. Paragraphs 9 and 10 of Sch 21 to the 2020 Act set out a non-exhaustive list of aggravating and mitigating factors, detailed consideration of which "may result in a minimum term of any length (whatever the starting point) ...": paragraph 8 of Sch 21 to the 2020 Act. It is well established that Sch 21 does not seek to identify all such factors and that it "merely provides examples": *R v Last* [2005] EWCA Crim 106 [2005] 2 Cr App R (S) 64. A Judge sentencing an offender for murder is therefore entitled to consider and take account of aggravating and mitigating factors not specifically mentioned in Sch 21 if these are relevant to an assessment of the seriousness of the offending in question.
16. In the present case, the Judge treated the Appellant's attempt to blame Ross as an aggravating factor. However, in *R v Lowndes* [2014] 1 Cr App R (s) 75, it was held that lying about another's involvement should not be treated as an aggravating factor in passing sentence (although it could be relevant when considering the value of a mitigating factor). We consider that, in view of the decision in *Lowndes*, the Judge should not have treated the Appellant's attempt to blame Ross as an aggravating factor.

17. We note that the Sentencing Council’s ‘General guideline: overarching approach’ (“the General guideline”) provides:

“Where the investigation has been hindered and/or other(s) have suffered as a result of being wrongly blamed by the offender, this will make the offence more serious.

This factor will not be engaged where an offender has simply exercised his or her right not to assist the investigation or accept responsibility for the offending.” (Emphasis in original)

18. The second paragraph in the General guideline reflects the position set out in *Lowndes*. As for the first paragraph, there has been no suggestion in the present case of the investigation being hindered as result of the attempts to blame Ross or that Ross has suffered by reason of e.g. being investigated or charged (although no doubt she was discomforted by the Appellant’s attempt to make her a suspect). Furthermore, the progress of the trial was not significantly affected by the Appellant’s conduct as the allegation in respect of Ross was, we are told, withdrawn before the Prosecution’s opening.

19. As to the other aggravating factors identified by the Judge, our views are as follows:

i) *Relevant previous convictions*: The Judge was entitled to have regard to these. However, the age of the convictions (the last one dating from 2007) and their less serious nature meant that their aggravating effect was, in the circumstances of this case, not very substantial. This was not a case where there was a pattern of recent, serious or escalating violent offending that would warrant a significant uplift from the starting point. Although it may be said that the age of the offending was taken into account by the Judge in that he referred to the Appellant’s offending behaviour to be “out of character for [him] in recent years”, that was said in the context of considering mitigation, and it remains unclear whether the age and nature of the previous offending were properly considered as diminishing any aggravating effect.

ii) *Disposing of the knife*: We do not accept Mr McNally’s contention that this should not be an aggravating feature at all. Notwithstanding its absence from Sch 21, an attempt to conceal or dispose of evidence is an aggravating factor. We agree that in the circumstances of the particular offence in this case, the weight to be attached to that factor would not be very substantial, as the Appellant’s act of dropping the knife down a drain was far from being a sophisticated or effective attempt at concealing or disposing of evidence.

iii) *Location*: The General guideline states as follows:

“In general, an offence is not made more serious by the location and/or timing of the offence except in ways taken into account by other factors in this guideline (such as planning, vulnerable victim, offence committed in a domestic context, maximising distress to victim, others put at risk of harm by the offending, offence committed in the presence of others). Care should be taken to avoid double counting.”

Whilst location will not generally render an offence more serious, it was not inappropriate for the Judge to have regard to the fact that the crime was committed in the victim's home, as that is where a person is entitled to feel safe: see e.g. *R v Reeves* [2023] EWCA Crim 384 at [17]. This is a reflection of culpability and applies as much to a murder as to any other crime where the offender targets the victim in their home.

- iv) *Victim asleep*: We reject Mr McNally's contention that the victim being asleep did not render him particularly vulnerable. The state of sleep means that a person is, in that moment, defenceless against any attacker and highly vulnerable. The fact that the state of vulnerability is only transient does not diminish the culpability of the attacker.
20. A factor not mentioned by the Judge, but which could also be treated as aggravating is the Appellant's state of intoxication.
21. The combination of these aggravating factors justifies some increase from the starting point.
22. As to the mitigating factors relied upon, the Appellant was certainly not a person of good character, but the lack of any conviction for violence in the last 15 years (which caused the Judge to comment that the offence was "out of character for [him] in recent years) was a factor to which the Judge was entitled to attach at least some weight. The second factor, namely the absence of sophistication, is not a significant mitigating factor in this context, and would, in any event, have been taken into account in determining that there was not a significant degree of planning or premeditation over and above that which was inherent in taking the knife to the scene. The fact that the Appellant acted as he did because he believed that Tott had treated Edge badly is also not a significant mitigating factor. It cannot be said that there was any provocation involved or that his actions had the effect of defending Edge so as to diminish to any extent the seriousness of the Appellant's offending. The final mitigating factor identified by the Judge was the fact that there was only a single blow. We do not consider that that can afford the Appellant any real mitigation at all in these circumstances where there was an unprovoked attack against a sleeping victim and where the Judge has formed the view that there was an intention to kill; at most the infliction of single blow means that the offence was not rendered more serious by the nature of the attack. In short, the mitigating features in this case can properly be characterised as insubstantial.
23. It is important to keep in mind the guidance in *R v Jones* [2005] EWCA Crim 3115 [2006] 2 Cr App R (S) 101 and subsequent case law as to how the guidance in Sch 21 is to be applied. That guidance is provided to assist the judge to determine the appropriate sentence. The judge must have regard to the guidance, but each case will depend critically on its particular facts. The assessment of the aggravating and mitigating factors (whether set out in Sch 21 or not) and the resulting shift (if any) to a point above or below the starting point is a question of judgment based on those facts and is not a mechanistic exercise comprising the arithmetical summation of such factors.

24. In our judgment, taking account of the factors identified above, the minimum term of 27 years imposed by the Judge in this case, whilst undoubtedly a severe sentence, cannot be said to be manifestly excessive. Accordingly, this appeal is dismissed.