



Neutral Citation Number: [2023] EWCA Crim 421

Case Nos: 202300434 A3
202300435 A3
202300436 A3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM PLYMOUTH CROWN COURT
Mr Justice Garnham
T20227049

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 April 2023

Before:

LADY JUSTICE MACUR
LORD JUSTICE MALES
and
MR JUSTICE GOOSE

SOLICITOR GENERAL'S REFERENCE
UNDER SECTION 36 OF
THE CRIMINAL JUSTICE ACT 1988

Between:

REX

Appellant

- and -

(1) BENJAMIN RICHARDS PARRY
(2) THOMAS PAWLEY
(3) CHAD PAUL BRADING

Respondents

Tom Little KC for the Solicitor General
Sean Brunton KC and Ali Rafati (instructed by Walker Lahive Ltd) for the First
Respondent
Ignatius Hughes KC and Barry White (instructed by Plymouth Defence Solicitors) for the
Second Respondent

Joe Stone KC and Deni Mathews (instructed by Walker Lahive Ltd) for the Third Respondent

Hearing date: 5 April 2023

Approved Judgment
.....

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Lady Justice Macur:

1. Benjamin Richard Parry (“BP”), Thomas Pawley (“TP”) and Chad Paul Brading (“CB”) were tried for the murder of David Crawford, aged 59. After a three-week trial they were convicted of manslaughter. On 13 January 2023, BP was sentenced to 12 years imprisonment. No separate penalty was imposed for ‘failing to comply with a notice issued under the Regulation of Investigatory Powers Act, 2000’, which had been issued requiring him to reveal the PIN to an encrypted telephone chat line. TP and CB were each sentenced to 4 years imprisonment.
2. His Majesty’s Solicitor General seeks leave pursuant to section 36 of the Criminal Justice Act 1988 to refer those sentences to this Court as unduly lenient.
3. David Crawford was a member of the Cornish based motorcycle group called the Red Chiefs, who describe themselves as a ‘support club’ of the Hell’s Angels - an international ‘outlaw’ motorcycle organisation. The offenders were all members of the Plymouth based branch of another international ‘outlaw’ motorcycle group called the Bandidos. CB was the President. The Red Chiefs and the Bandidos were rival groups. The wearing or flying of the group’s ‘colours’ on the other’s territory/county was regarded as insulting and provocative.
4. During the early evening of 12th May 2022 members of the Red Chiefs and Hell’s Angels (both wearing their colours) had gathered at a Retail Park adjacent to the A38 Devon Expressway in Plymouth. Members of the Bandidos became aware.
5. At about 7.30 pm there was a call between the ‘Sergeant at Arms’ of the Bandidos and CB. Shortly afterwards TP and CB drove towards Plymouth in TP’s Mercedes motor vehicle to look for members of the Red Chiefs/Hell’s Angels. They came across the rival gang at the Retail Park. TP called the Serjeant at Arms.
6. BP travelled to meet TP and CB in his employer’s Ford Transit van after receiving a message from the Serjeant at Arms. His journey was recorded on his dash cam.

7. At about 8.30 pm the Red Chiefs/Hell's Angels, including Mr Crawford, began to leave the Retail Park and started travelling in a westerly direction towards the Tamar Bridge. Several of them stopped on the Devon side of the Tamar Bridge toll booths. The Mercedes containing TP and CB arrived just before 9 pm and stopped in the middle of the roundabout. As the Mercedes approached the roundabout a telephone call was made from CB's telephone to BP's telephone. Just after the start of that call most of the Red Chiefs/Hell's Angels moved off towards Cornwall. However, Mr Crawford, who lived in Devon, headed eastwards towards Plymouth.
8. TP and CB pursued him at speed in the Mercedes, cutting in front of one vehicle on the roundabout and then undertaking another. The motorcycle and the Mercedes came off the eastbound A38 at the first slip road at St Budeaux. Mr Crawford crossed the roundabout at the top of the slip road but then headed straight down the slip road with the aim of rejoining the A38 eastbound; he was followed by the Mercedes. Throughout, TP or CB were still speaking on the telephone to BP.
9. BP travelled to the scene. As he joined the slip road Mr Crawford, sitting astride his motorcycle, and the Mercedes are clearly visible on the dash cam footage. The motorcycle was behind the Mercedes that had stopped in front of him on the slip road. As the van approached, Mr Crawford moved his motorcycle alongside the Mercedes, BP was observed to say something like "watch this" and struck the motorcycle directly from behind.
10. Mr Crawford's body was thrown upwards and onto the middle of the bonnet from where it pitched headfirst in front of the van. As the van ran over the motorcycle its front lifted off the ground. The deceased fell underneath the van and became trapped. BP did not stop but continued down the slip road back onto the A38. As he exited at the next junction (about 900 metres) Mr Crawford's body came free from underneath the van onto the road surface.
11. The post-mortem examination revealed numerous injuries to the body and were in keeping with a prolonged period during which the deceased was trapped/dragged along under the van. The cause of death was multiple injuries.
12. BP was tracked to his home address and arrested. When interviewed under caution he provided a prepared statement to the effect:

"I did not intend to knock the motorcyclist off his bike. I did not intend to kill him or to even cause him any injury. I only intended to bump the back of his bike. When I realised I had knocked him off the bike I panicked and drove on. I did not realise he was still under the van until he became free of the van as I pulled off the Parkway again. I left the scene as I just panicked and was not thinking clearly. At no time did I intend to harm anyone."
13. TP was arrested on 14 May 2022. He was interviewed and produced a prepared statement which indicated that he and CB had followed Mr Crawford so that CB could talk to him about not wearing his colours in Plymouth. He had pulled up in front of the motorcycle to make him stop and they were alongside when, out of the blue, the van driven by BP turned up and ran over Mr Crawford.

14. CB surrendered himself on the 15th May 2022. He was shown a clip of the incident and stated, *“From what it looks like there, I suppose, I genuinely think that was just a massive miscalculation on his part.”* When asked what he meant he replied *“Well, no one set out to kill anybody...no one has ever set out to kill anybody...that wasn't meant to happen, that's all I can say..”*
15. On 26th July 2022, all three offenders were arraigned and pleaded not guilty to the offence of murder. BP indicated that he would however plead guilty to the offence of manslaughter, although he did not do so. He pleaded guilty in front of the jury after the conclusion of the evidence and the jury consequentially convicted him of that offence upon direction of the judge. At trial, TP and CB sought to rely upon BP's act as an overwhelming supervening event, which abrogated any of their responsibility for Mr Crawford's death. As indicated above, they were convicted of manslaughter; all three offenders were acquitted of murder by the jury.
16. When sentencing the offenders, the trial judge acknowledged the devastating loss caused by David Crawford's death; he had been *“utterly innocent in all this.”* The Judge was satisfied, to the criminal standard, that:
 - i) A telephone conversation took place between CB and BP, in the hearing of TP during which it was agreed that he would be stopped and told it was unacceptable for him to ride in his rival gang colours in Devon. He was to be given *“a slap, I mean a punch or the like, an assault that would cause him some relatively minor injury or pain”* to underline the point.
 - ii) BP's van, driven at a speed between 10 and 27 miles an hour, was driven directly into the back of the motorcycle with the consequences described above.
 - iii) BP did not stop at any stage, including when it became clear to him that Mr Crawford's body was 'released' from beneath the van.
 - iv) TP and CB saw what happened but *“did not intend [BP] to drive into Mr Crawford and ...were utterly appalled at what had been done.”* That is, there was a common enterprise between the three offenders to cause some harm to Mr Crawford, but not that he should be run down and seriously injured or killed.
 - v) TP and BP did not assist Mr Crawford, nor call for others to do so.
17. The judge considered that BP's case fell within Category B of the Sentencing Council Unlawful Act Manslaughter Guidelines. Driving the van into the motorcycle involved *“an intention...to cause harm falling only just short of GBH. Certainly, his death was caused in the course of an unlawful act which carried a high risk of death or grievous bodily harm, which was or ought to have been obvious to you.”* The judge found additional aggravating factors to be the use of the van as a weapon; the assumption of *“significant if not leading”* role; planning the infliction of lesser harm; the significant mental and physical suffering caused to the victim; leaving the scene and the body of Mr Crawford, not seeking assistance for him and exposing other road users to risk of injury. The Regulatory notice offence was also to be treated as aggravating the offence of manslaughter. The available mitigation was genuine and profound remorse; limited previous convictions and 'good behaviour' in prison. The judge considered the offence to be *“a moment of unaccountable and indefensible stupidity.”* A 25% reduction was

made from 16 years, the top of the Category B range, to reflect the indication of a willingness to plead to manslaughter at the Plea and Trial-Preparation hearing.

18. The judge considered TP and CB's cases to fall within Category C. They had participated in an unlawful act in which their intention was to cause 'some harm.' They had caused the motorcycle to stop. Culpability fell between the higher and lower categories, and the limited nature of the intention as found placed their cases towards the bottom of the relevant range. The aggravation included the fact that the van had been used as a weapon, albeit beyond their contemplation; the pain and suffering caused to Mr Crawford; the planning of the intended assault and driving away from the scene without helping the victim. TP's mitigation was his previous positive good character and lack of previous convictions. CB's mitigation was similar, albeit that he had some comparatively minor previous convictions.

Submissions

19. We have had regard to all the written submissions in the Final reference and the Respondent Notices, which Counsel have adeptly amplified orally before us.
20. Mr Little KC appears on behalf of His Majesty's Solicitor General. He submits that, whilst all due deference must be afforded to the trial judge's advantage over this Court in assessing the gravamen of the offence, the availability of the dash cam footage provides us with a similar insight against which to determine the application. Mr Little explicitly makes no challenge to the findings of fact made, including what had been the 'common intent' between the three offenders and explicitly concedes that TP and CB's culpability is less than that of BP. The central criticism is that the trial judge failed to weigh the objective risk and the subjective intent of each of the offenders. If he had done so, then the offenders would fall either within a higher category of culpability, or else at the top of the range that was selected, before increasing the sentences to reflect the aggravating features which he identified.
21. In BP's case, the judge was correct to find that the high risk of serious harm or death posed by the driving of the van into the motorcycle was, or ought to have been obvious to the offender, regardless that his intent was found to have been to cause harm "falling just short of GBH". Arguably, the nature of the act itself highlighted the 'extreme character' of the objective element of BP's offending. However, if the 'extreme' character of the objective risk is predicated upon the use of the van as a weapon, then Mr Little concedes that it must not be 'double counted' as an aggravating feature. If the judge was not unreasonable in determining that the objective element was not of an 'extreme' character, the combination of subjective and objective elements was indicative of very high, or Category A, culpability. Alternatively, if the judge had reached a categorization that was reasonably open to him on the facts, then the aggravating features deserved far greater weight and, regardless of the mitigation, the sentence should have been significantly longer.
22. In the case of TP and CB, whilst a distinction should be clearly drawn between them and BP, the offence would not have been committed if they had not been instrumental in bringing the motorcyclist to a halt. None of the factors indicating lower culpability, as identified in Category D, applied to them. They did intend some harm to befall Mr Crawford. The judge identified the relevant aggravating features and, although he was

entitled to place them in Category C, it was unreasonable for him to select a starting point at the bottom of the range before discount for mitigation.

23. Mr Brunton KC on behalf of BP reminds us that the dash cam footage is but one part of the judge's analysis of culpability. He had observed BP during trial and had heard his evidence, and that of his character witnesses, in determining his intent. The judge found that it was an "aberration" that BP had "bumped" Mr Crawford off his motorcycle. This was equally consistent with a finding of 'recklessness' as identified in Category C culpability as it was an obvious high risk in Category B. Just because the judge identified it as an 'obvious' risk did not "worsen" what BP actually did. The speed at which he drove was not fast, the time scale in which the intention was formed was short; the tragic consequences were not intended or envisaged. It is "mechanistic" to add the culpability B factors together to reach a higher category. The judge had adopted a pragmatic approach and, after reduction for mitigation, reached the very top of the range in Category B before giving credit for the indication of plea. BP was not in a 'leading' role overall. The judge had reached a fair-minded conclusion that was within the reasonable band. The sentence was not unduly lenient.
24. Mr Hughes KC on behalf of TP does not seek to defend his client's participation in the act which brought Mr Crawford to a halt. He concedes that the jury's rejection of an 'overwhelming supervening act' means that objectively they regarded TP's (and CB's) responsibility for the ultimate act not to have been abrogated by the unexpected action of BP. The judge was entitled to move outside the lowest category of culpability to reflect the aggravating features he identified. Thereafter, the judge plainly and correctly addressed the Sentencing Council Guidelines. He avoided an over mechanistic approach and reached an appropriate sentence which cannot be described as unduly lenient in TP's case.
25. Mr Stone KC on behalf of CB concedes that the sentence of 4 years is lenient but not that it is unduly so. He submits that the findings of fact made by the trial judge are critical and lead to a conclusion that a determination of culpability within Category C is clearly not incorrect or unreasonable. Since the findings of fact also admit Category D factors of culpability, it was reasonable for the judge to go to the bottom of the 'mid' range. The judge was clearly alive to the danger of 'double counting' the aggravating features he identified in BP's case when seen in the context of TP and CB's circumstances.

Discussion

26. We are in no doubt that we must accord great deference to the trial judge's analysis of the circumstances of the offence, and agree with counsel for the three offenders that the dash cam footage, which the judge in his sentencing remarks rightly described as making for "sickening viewing", is but one part of the sentencing exercise, particularly as regards an assessment of the offenders' intent. However, we agree with Mr Little that, in so far as it is necessary for us to do so, we are in as good a position as the trial judge to assess the 'objective' element of the fatal incident.
27. As it is, we do not disagree with the trial judge that the unlawful act which he described in accurate and measured terms, and which we witnessed on the video footage, "carried a high risk of death or GBH which was or ought to have been obvious to the offender."

It cannot realistically be argued that the judge's description of the act as momentary, unaccountable and indefensible equates to 'recklessness.'

28. Further, we are satisfied that the judge sufficiently well recognised the aspect of vigilantism and correctly identified all aggravating features for the purpose of sentencing the three offenders.
29. However, despite the measure of our agreement with the judge, we are persuaded that he failed to adequately reflect BP's subjective intent and the objective high risk he created of GBH or death into the assessment of overall culpability. There is an overlap between these factors in this case, but these are not two sides of the same coin. Although the judge was not unreasonable, and we find he was right, to 'temper' what would otherwise be arguably the 'extreme' character of the objective risk by reason of the comparatively lesser subjective intent, we consider that the combination elevated the offence into the category of very high culpability. We are persuaded that this error did lead the judge to pass an unduly lenient sentence in respect of BP, and that we should exercise our discretion to re-sentence him for the offence of manslaughter.
30. We keep well in mind the respective balance of objective risk, as against BP's subjective intent as the judge determined it to be. We caution ourselves to "*avoid an overly mechanistic application of*" factors used to inform categorisation of an offender's culpability but are clear that BP's culpability falls into Category A. The starting point is 18 years. The aggravating factors increase the sentence to 22 years. Previous positive good character and good behaviour in prison counts for little in the circumstances of such a case, but affording some discount we consider that the least possible sentence would be 20 years prior to reduction for indication of plea. Mr Little does not challenge the reduction made either in principle or extent and we agree with Mr Brunton that the judge was warranted to reduce the sentence by 25%. Consequently, we allow the application; we quash the sentence of 12 years in respect of manslaughter and substitute in its place a sentence of 15 years. There will be no separate penalty for the regulatory offence. The increase in the term of imprisonment impacts the order for disqualification. BP was disqualified from driving for 10 years (2 years discretionary period, 8 years extension). That part of the sentence will be quashed and substituted by an order that he be disqualified from driving for a period of 12 years (2 years discretionary, 10 years extension).
31. However, we disagree that this finding and consequent re-sentencing exercise impacts upon the judge's determination of the culpability of TP and CB. We do not accept Mr Little's written submission, that the jury's rejection of an "overwhelming supervening event", means that the guilty verdicts necessarily indicated that they knew or ought to have known of the risk of GBH or death. The judge was entitled to regard the jury's verdict as reflecting the continuation of the common intent to cause minor harm to Mr Crawford, as the judge found had been agreed upon between the three offenders, which was not eradicated by BP's action of mowing down Mr Crawford.
32. We consider the judge's determination as to TP and CB's respective culpability within Category C to be sufficiently articulated and to fall within the band of reasonable decisions open to him. Considering all circumstances, we tend towards the view that the sentence is lenient, but it is not unduly so. We refuse the application as regards TP and CB.