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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 895



No. 202201545 B4
202200381 B4

Royal Courts of Justice

Wednesday, 19 July 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE MARTIN SPENCER
HIS HONOUR JUDGE LICKLEY KC

REX
V
GEORGE HENRY KNIGHTS

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Mr. H. A. Godfrey KC appeared on behalf of the Appellant.
The Crown were not represented.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

- 1 The applicant, George Henry Knights, renews his applications for leave to appeal against his conviction for murder on 9 June 2021, following trial before His Honour Judge Statman and a jury in the Crown Court at Maidstone, and for an extension of time to do so. He also renews his application for leave to appeal against sentence.

Conviction

- 2 The single ground of appeal is that the conviction is unsafe because the partial defence to murder of loss of control was not placed before the jury for their consideration. Reliance is placed on the decision of this court in *R v Goodwin* [2018] 4 WLR 165, where the court stated that if there is sufficient evidence to raise an issue with respect to the defence of loss of control, then it is to be left to the jury whether or not the issue had been expressly advanced as part of the defence case at trial.
- 3 Whether there was sufficient evidence to raise an issue with respect to the defence of loss of control involves some brief consideration of the issues and evidence in this case, and in particular the applicant's own account. Although this account was not accepted by the prosecution, it represented the high point of the applicant's case.
- 4 It was the applicant's evidence that he had been buying cocaine from the deceased for several months in increasingly large quantities, which he would sell at a profit, thereby hoping to make enough money to stop being involved in drugs and become a day trader. However, it was the applicant's case that he was looking to disassociate himself from the deceased and find an alternative source of drugs, which angered the deceased.
- 5 On Friday, 23 October 2020 the deceased had come to the applicant's home to sell him drugs. The applicant weighed the cocaine using his scales. The atmosphere was such that he felt it was a good opportunity to raise again his desire to stop selling drugs and become a trader. At this point, the deceased switched moods, started shouting and became angry and intimidating. The deceased indicated that he was armed with a knife, which scared the applicant such that he felt in danger, so he calmed the deceased down. The applicant then went upstairs and armed himself with his father's commando knife, which he put down the inside of his jogging bottoms which he said he did in case he needed to defend himself. When he came downstairs, an argument broke out again with the deceased making threats against the applicant's family. A fight then broke out, starting with punches. They ended up in a struggle, grabbing each other, and the applicant was pushed, falling to the ground on his back. In doing so, the commando knife fell out of his jogging pants onto the floor. The deceased sat astride him punching him. The applicant pulled the deceased towards him, holding him against his body to stop him punching out. At that point, the deceased saw the knife and shouted, "You've got a knife. I'm going to kill you." The deceased suddenly had the knife in his hand and tried to stab the applicant. The applicant grabbed the deceased's arm, wrestled the knife from the deceased and lashed out with the knife once, thereby fatally stabbing the deceased in the head.
- 6 As the applicant's trial counsel had pointed out, it was never his case that he lost control. Nor was there any evidence that he did, say his counsel. On the contrary, it was his case that he did only that which was necessary in the circumstances that he faced. It was the applicant's case that he was in fact at all times in control of his actions, responding appropriately to the developing situation. It was an important part of the defence case at trial that there was a single blow by the applicant, having wrestled the knife from the deceased's grip. Tactically, to have suggested to the jury that the applicant had lost control (which was not in any event his case), would have entirely undermined his case

of self-defence, would have been contrary to his instructions, and indeed, the evidence. It was therefore for both evidential and tactical reasons that trial counsel did not seek a loss of control direction.

- 7 The trial judge correctly and properly raised with counsel the issue of loss of control at the outset of the trial and trial defence counsel confirmed that it was not the defence case that the applicant had lost control. That position did not change. The issues at the start of the trial and throughout were self-defence and intent, as set out in the defence statement. The applicant's clear instructions from as early as the time of his arrest were that this was not a case of loss of control. Rather, he had acted out of self-defence and had not intended to kill or cause grievous bodily harm to the deceased.
- 8 For the need to arise for the defence of loss of control to be put to the jury there must be sufficient evidence. That is not, self-evidently, the same as some evidence falling short of sufficient evidence. Furthermore, the court in *Goodwin* emphasised that an appellate court will give due weight to the evaluation of the trial judge, who will have had the considerable advantage of conducting the trial, hearing all the evidence and having the feel of the case. As has been said, the appellate court "will not readily interfere with that judgment."
- 9 In our judgment, far from there being sufficient evidence, there was in fact no evidence such as to give rise to the need for a "loss of control" direction to the jury, and we wholly endorse the learned judge's decision not to give the jury a direction on loss of control in view of the evidence in this case.
- 10 We do not agree with Mr Godfrey KC's submission that the sections of evidence set out in his advice on appeal amount to "sufficient evidence" to have given rise to the need for a loss of control direction. The fact that it was not a controlled situation does not mean that there was a loss of self-control.
- 11 Refusing leave to appeal, the single judge said:

"It is not arguable that the partial defence of loss of control should have been left to the jury. The most fundamental reason for this is that your evidence (contained in the transcripts) does not contain any assertions of fact indicative of a loss of control. Instead, you described reacting in a logical way to the various hostile and aggressive acts alleged against the deceased. You said that you tried to calm him down, that you armed yourself with the knife as a precaution, you did not attempt to use the knife until it was used against you and you lashed out with a single blow of the knife while in fear of your life, not intending to cause serious injury. Your evidence supported your case as set out in your Defence Case Statement, which was that you used only such force as was reasonable in the circumstances. The jury could not have been pointed to any evidence which realistically indicated a loss of control. Therefore, the question of whether there was a "qualifying trigger" did not arise. Also, whilst the judge is required to consider the defence of loss of control even if it is not raised on a defendant's behalf, it remains relevant that this defence was not advanced on your behalf at trial. Whilst there can be circumstances which amount to both self-defence and loss of control, the two defences are quite difficult. Your case was firmly put as a case of self-defence from day one. That appears to have been entirely consistent with your instructions to your representatives. There was also no failure by the judge to consider whether loss of control did arise. It is agreed that he raised it with counsel, who confirmed (on instructions from you), that it did not."

- 12 We fully agree with the single judge and for the same reasons refuse both leave to appeal against conviction and the application for an extension of time.

Sentence

- 13 In sentencing the applicant, his Honour Judge Statman considered that this was a murder done for financial gain, giving a starting point of 30 years for the minimum term to be served. However, he quoted from and applied the guidance provided by this court in *R v Cole* [2008] EWCA Crim 1060 where, giving the judgment of the court, Leveson LJ said:

"The factors set out in paragraph 5(2) are factors which will normally lead the court to conclude that the offence was one of particularly high seriousness. If it does, then the section lays down a starting point for arriving at the minimum term of 30 years. But whether the court starts at 15 or 30 years, the sentencing exercise requires an assessment of the seriousness, having regard to the facts of the particular case; and that can result, quite properly, in a sentence that is some distance from the starting point that has been taken. I must not approach this particular sentencing exercise with rigidity. I must look to the particular facts."

- 14 From his starting point, the learned judge considered a number of aggravating and mitigating factors, applying in favour of the applicant in relation to the aggravating factors the criminal standard of proof: the fact that he was sure that this was not a case of excessive self-defence; the applicant's actions after the killing in disposing of the deceased's body, including the use of sulphuric acid; his misleading phone calls with members of the deceased's family, and lack of remorse.
- 15 The mitigating factors he took into account were primarily the applicant's age; the support of his family, and in particular, his father, and the applicant's mental health problems.
- 16 He then said:

"Pursuant to section 275 of the Sentencing Act 2020, the sentence of the court, as it must be, is one of life imprisonment. I have to announce the starting point. In my judgment the starting point here is one of 30 years. I am required to determine the minimum term to be served in your case. Having regard to the aggravating and mitigating factors that I have already set out at length, I am satisfied in my only mind that the minimum term in this particular case should be one of 23 years."

- 17 For the applicant, it is submitted that this minimum term was manifestly excessive. This was the immediate view of defence counsel at trial, and their advice dated 2 February 2022 has been adopted by Mr Godfrey KC. The principal submission is that the learned judge was wrong to consider that this was a murder done for gain and was therefore wrong to take a starting point of 30 years. The starting point should, it is submitted, have been 15 years.
- 18 There are a number of matters to which it is submitted the learned judge had no or insufficient regard, as set out at paragraph 32 of that advice. It is submitted that there was, in fact, insufficient evidence on which the learned judge could be sure that this was a murder done for gain, and on that basis he should have taken a lower starting point, and indeed, he should have sentenced on the basis of excessive self-defence.
- 19 This submission is, it is said, supported by evidence from the applicant's father of a complaint he has made to the Independent Office for Police Conduct in respect

of DCI Greenidge, the officer leading the investigation, about a sum of £25,000 which the applicant was said to have had in his possession on 23 October 2020, but which went missing on 25 October 2020. In an email to the court dated 3 July 2023 from Mr Godfrey, it is said that this complaint made it clear that there was never any police investigation into the “theft” of that sum, and:

"It would have been plainer to the sentencing judge that there was a substantial amount of cash at the applicant's house at the time it was entered by the deceased (for the purpose of selling drugs to the applicant), and so, far less likely that the fatal stabbing of the victim by the applicant was ‘a murder committed for financial gain’. It is inherently unlikely that the applicant would in his own home commit a robbery of the visiting drug dealer when he was in no way short of funds."

- 20 In his submissions to us, Mr Godfrey has developed that argument, submitting that it defies logical analysis that an 18 year old, as this applicant was, should invite a man into his own home in order to rob him of a mere two ounces of drugs, and that this was clearly on the evidence a drug deal that went wrong, and he expands on the fact that the defendant was not short of evidence, referring to the evidence of the defendant's father Edward Knights, which was unchallenged, that not only did he have £25,000 in his, room but in addition, £10,000 in a joint account with his father and £6,950 in two fast access trading accounts. On that basis, Mr Godfrey submits that there was no motive for robbery, that the applicant did not need to rob Mr Chapman.
- 21 In a sentencing note provided by counsel for the Crown on 9 December 2021 for the purposes of the sentencing hearing which took place on 7 January 2022, the Crown set out its case as to why the court should find that this was a murder done for gain, and we refer to paragraph 16 onwards of that sentencing note. Those submissions are further reflected in the Respondent's Notice in response to the original grounds of appeal against sentence.
- 22 The Crown have also responded to the recent email from Mr Godfrey. It is clear that the Crown always disputed the father's claim that the £25,000 ever existed and the applicant himself never alleged that that sum had been stolen. He said that he removed the money from the house after the murder. As the defence Advice on Appeal Against Conviction stated:

“It was adduced before the jury, both through GK's father and GK himself, that they had been surprised when the police did not find the cash and had assumed that they had seized it. GK's instructions were that he had taken the cash out with him to the party which he attended following the killing, and could not recall whether the cash was in the bag when he returned. He was unable to say by whom or when it was taken, and they said that that remained a difficult part of GK's case.”

I understand that that part of the evidence is disputed by Mr Edward Knights.

- 23 Refusing leave to appeal against sentence, the single judge stated this:

"Your challenge to the judge's adoption of a starting point of 30 years depends on undermining the judge's analysis of the facts, and in particular, his finding that this offence was committed for financial gain. Having presided over the lengthy trial, the judge was well placed to reach conclusions about those facts. He correctly directed himself to apply the criminal standard of proof. It is not arguable that the evidence did not support the conclusions which he reached. The jury, having rejected your defence of self-defence, it was open to the judge to find that this was

not a case of excessive self-defence but was essentially a robbery which went wrong. The judge reached measured conclusions, for example, that there was not much premeditation, and gave sufficient reasons for his reasons, for example, as to your wish to make money.

The judge found that you had an 'interest in knives', not a 'fascination with knives'. There was ample evidence to support that conclusion, and the contrary is not arguable.

Your grounds rightly accept that the judge's approach to starting point was not rigid and that he accepted the need to calibrate this case on its particular facts. It is not arguable that the judge failed to do this. In your grounds it is rightly accepted that the use of a knife was an aggravating factor and that your actions after the murder considerably aggravated the case. It was for the judge to assess the weight to be given to aggravating and mitigating factors, and he was entitled to find that the aggravating factors other than age and immaturity (for which he made a substantial adjustment), carried greater weight. The evidence did not persuade the judge that much weight should be given to lack of previous convictions (in view of other bad character indications); remorse (of which the judge detected little); the extent to which you acted in self-defence (the jury having rejected that defence, and the judge not being persuaded that any such element was significant); lack of intent to kill (given the nature of the knife wound inflicted on the victim's head with great force; or your personal background and psychiatric history, on which the judge commented in significant detail, noting the limits on the conclusions that could be drawn from the psychiatric report.

The other key factor was age and immaturity. The judge correctly directed himself to the approach to be taken, quoting the relevant case law. Although he did not specify the number of years deducted to reflect this factor, given that the starting point was 30 years and there were significant aggravating factors, it is clear that he made a substantial adjustment to arrive at a minimum term of 23 years. It is not arguable that that sentence was manifestly excessive."

24 Again, we find ourselves in complete agreement with the single judge. Once it is accepted, as we do, that the learned sentencing judge was entitled to conclude that this was a murder done for gain – whether for money or for the cocaine which the deceased had brought with him to the house – and that the starting point for the minimum term to be served was 30 years, the minimum term in fact imposed as 23 years can be regarded as merciful, and it is not reasonably arguable that it was manifestly excessive.

25 Leave to appeal against sentence is, accordingly, also refused.

CERTIFICATE

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This transcript has been approved by the Judge.