Neutral Citation Number: [2017] EWCA Crim 445

Case Nos: 201601636/B1-201601637/B1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Date: Thursday, 23 March 2017

B e f o r e :

PRESIDENT OF THE QUEEN'S BENCH DIVISION

(SIR BRIAN LEVESON)

MR JUSTICE JAY

MR JUSTICE GARNHAM

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R E G I N A

v

MICHAEL DEAN MEANZA

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(Official Shorthand Writers to the Court)

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Mr B Richmond QC appeared on behalf of the **Applicant**

Mr W Emlyn Jones appeared on behalf of the **Crown**

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J U D G M E N T (Approved)

1. MR JUSTICE JAY: On 2nd March 2016, at the Central Criminal Court, the appellant was convicted of the murder of Ms Jenny Foote. On the same day he was sentenced by His Honour Judge Bevan QC to life imprisonment, with a minimum term of 24 years less time spent on remand. He appeals against his sentence with the leave of the single judge and renews his application for leave to appeal against conviction.

2. The appellant suffers from paranoid schizophrenia and anti-social personality disorder. He had been obliged to reside at Collette House following his discharge in April 2015 from a section 37 hospital order, with a section 41 restriction order imposed in 1996 for an offence of common assault. Ms Foote was employed as a care worker at Collette House.

3. At about 2.46 am on 26th July 2015 Ms Foote attended the appellant's room and asked him to turn his TV down following a complaint. At about 6.00 am the same morning the appellant was seen on CCTV attending the locked office where Ms Foote was based. She partially opened the door whereupon the appellant burst into her office. He punched and kicked her, beating her about the head with a fire extinguisher. The appellant left, returned to the office, hitting the deceased again. He then left the property.

4. The police arrived at 6.57 am and Ms Foote was pronounced dead by paramedics at 7.24 am.

5. The findings at post mortem were of multiple blunt impacts to the head with facial fractures and evidence of traumatic brain injury. There were other traumatic injuries including fractures to the left jaw and cheekbone.

6. The evidence was that the initial attack lasted about 8 minutes and then the appellant returned to the scene for about 2 minutes. The expert evidence was that the deceased would not have survived for more than any brief period of time.

7. The appellant's principal defence was one of manslaughter on the ground of diminished responsibility. This was ultimately rejected by the jury and no appeal point arises. The appellant also ran the defence of loss of control.

8. There were at least two evidential strands of potential relevance to that defence. First, after the appellant was asked to turn down his TV he feared for his future at Collette House. Previously he had received warnings and was anxious that he would be recalled to hospital and separated from his girlfriend. Secondly, the appellant's meetings and encounters with his girlfriend had to be on a supervised basis for a number of reasons, including her own psychological and learning difficulties. The appellant felt aggrieved that doctors made his girlfriend take contraception, denying him a child.

9. On 29th February 2016 His Honour Judge Bevan QC withdrew the defence of loss of control from the jury. He held that there was no doubt that the appellant did harbour a sense of grievance and that he may well have lost his control on this occasion. However, the judge ruled that a number of the qualifying triggers were not satisfied: in particular, the hospital order from which many of his grievances stemmed was lawfully imposed and entirely reasonable. The restrictions governing the appellant's relationship with his girlfriend were in the same category, and in any event an individual, with a normal degree of tolerance and self restraint, would not have lost his control in these circumstances.

10. When His Honour Judge Bevan QC came to sentence the appellant he took a starting point of 15 years' imprisonment for the minimum term. Further, he identified a number of aggravating factors. These included the appellant's previous convictions for offences of violence, the use of a weapon (the fire extinguisher), the appellant's "threatening and aggressive nature", the fact that the deceased was performing a quasi-public function and the degree of premeditation which must have been involved (a period of up to 3 hours). The judge was satisfied that the appellant represented an ongoing danger and would be "likely to do so for long as you have your physical faculties". Overall this was seen to be a grave example of its kind and justified a minimum term of 24 years' imprisonment.

11. Mr Bernard Richmond QC renews his application for leave to appeal against conviction. He submits that the judge should have left the issue of loss of control to the jury. Specifically, he submitted that the key point, or at least one of the key points here, is that the appellant was asserting that he

was being manipulated by the way in which he was allowed access to his girlfriend and have contact with her. There was psychiatric evidence to that effect. Essentially because of his psychiatric condition the jury were entitled to consider whether the relationship was being used as a "carrot on stick" control mechanism. Further, Mr Richmond submitted that the appellant had, or at least might have had, a mounting sense of grievance and that this was justifiable from his point of view. Of course Mr Richmond was entitled to submit that in terms of the defence loss of control, his client only bore an evidential burden.

12. We have carefully considered those submissions but we cannot accept them. We entirely agree with the single judge that there were here two insurmountable obstacles that the appellant faced: first, the combined effect of section 54(1)(b) and section 55(4) of the Coroners and Justice Act 2009, is that the appellant had to demonstrate an arguable case that the circumstances leading to his loss of control "caused [him] to have a justifiable sense of being seriously wronged". The emphasis must be on the adjective "justifiable". The appellant could have no justifiable grievance in relation to hospital and restriction orders that were lawfully imposed, nor in relation to the restrictions upon his relationship with his girlfriend. Further, as the judge refusing leave on the papers noted, playing a TV too loudly in the early hours of the morning constituted a breach of the hospital rules which the deceased was duty bound to report and further, the appellant could not have known what the consequences to him, in terms of rights of occupation, would or might have been.

13. The second insurmountable obstacle relates to section 54(1)(c), namely whether a person of the appellant's age and sex, with a normal degree of tolerance and self restraint in his circumstances, might have reacted in the same or a similar way. The appellant's mental illness is excluded from account for these purposes, as Mr Richmond was bound to accept. It is obvious, in our view, that the appellant just could not fulfil this condition. In our view, the single judge in his lengthy and precise written grounds was entirely correct in concluding that the defence of loss of control could not be made out.

14. For the avoidance of any doubt we have looked further and considered the issue of diminished responsibility but we are entirely satisfied that no appeal point arises in that regard.

15. The grounds of appeal against sentence are that this was an attack of short burst, as Mr Richmond put it, by a man with serious and complex psychiatric problems. Some of those problems (not all of them) were difficult to treat and in particular the anti-social personality disorder. The danger he presented to the public should not serve to enhance his minimum term because the Parole Board would be duty bound to consider that in any event. The point of the minimum term is to fix the "tariff" which is appropriate to deal with matters of punishment and deterrence. Matters of public safety arise subsequently for the consideration of the Parole Board. Further, Mr Richmond submitted that the judge exaggerated the extent and nature of the appellant's record for offences of serious violence. Overall, submitted Mr Richmond, this was not deliberate or wicked action.

16. We have carefully considered these grounds as amplified skilfully by Mr Richmond in oral argument. We should make clear that we do not accept all of his submissions. Given that His Honour Judge Bevan QC presided over the appellant's trial we should be slow in interfering with his sentence. There is no patent error of principle. The judge was entitled to conclude that the appellant is dangerous. However, as has already been pointed out, the issue of dangerousness is for the Parole Board in due course, taking into account all the available evidence at that time, including evidence of the appellant's conduct and mental state in prison over what will be many years.

17. In our view there is weight in the submission that the judge placed excessive emphasis on this factor and downplayed the salience of the appellant's psychiatric history being a matter which in general terms served to lessen his overall culpability or, at the very least, to diminish the force of the aggravating factors. We are therefore driven to conclude that His Honour Judge Bevan QC did impose a manifestly excessive sentence. The minimum term in this case should have been one of 21 years less time spent on remand, which we understand to be 217 days. To this extent the appeal must be allowed.