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[2021] EWCA Crim 738

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202100752/A4

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 30 April 2021

Before:

LORD JUSTICE BEAN

MRS JUSTICE FARBEY

RECORDER OF NEWCASTLE (HIS HONOUR JUDGE SLOAN QC)

(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REGINA

V

ANTHONY WILLIAMS

Computer Aided Transcript of Epiq Europe Ltd,

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR T LITTLE QC appeared on behalf of the Attorney General.

MR J HIPKIN QC appeared on behalf of the Offender.

J U D G M E N T

(Approved)

LORD JUSTICE BEAN: On 28 March 2020 Anthony Williams killed his wife, Ruth. They

had been married for 47 years. He was then 69 and she was 67.

At about 6.30 am they were both in bed and awake. Mr Williams expressed concern about something to which Mrs Williams replied with words to the effect of "get over it". As a result he proceeded to attack her. He placed his hands around her neck and began to strangle her. She managed to escape and made her way downstairs in an attempt to get out of the property. She took a set of front door keys with her in order to try to escape. However, he followed her downstairs and strangled her again in the porch area. She again tried to defend herself but she was unable to do so and he killed her.

He returned upstairs, got dressed and left the property. He went next door and knocked at his neighbour's door. His neighbours were Mr and Mrs Stark. Mrs Stark called for her husband to come

downstairs. They opened the door. Mr Williams said: "Ruth is dead, call the police".

Mrs Stark dialled 999 asking for an ambulance but was interrupted by the offender who said: "No the police". On the 999 call the offender said: "I've killed her, I've killed her". He also said: "Sorry". Later in the call he said: "I think I've killed her, yeah. We had argument. I think she'd dead. You wanna come quick. I think she's dead, I strangled her. We were arguing and I just caught hold of her, she caught hold of me and I was, I was choking her and she just went down. I'm so sorry". The operator advised them to go to the house and attempt resuscitation. The offender said to Mrs Stark: "I don't think you should come, I don't want you to see this". It was not physically possible to enter the home as Mrs Williams's body was blocking the outer front door which was still locked but eventually access was obtained. Police and paramedics arrived within a short time. Mr Williams was arrested for murder. His reply to caution was: "I am sorry, I just snapped, I am sorry."

On his way to the police station he made a number of comments, including: "I've been depressed lately, I don't know what's the matter. It wasn't murder I didn't murder her, I just flipped. It wasn't me I wouldn't hurt a fly. It wasn't me, I'm not like that. I don't know what came

over me." During the book-in procedure he continued to make similar remarks.

Mrs Williams was pronounced dead at 8.00 am and the offender re-arrested for murder and

replied: "I'm so so sorry".

He was interviewed under caution on a total of three occasions on 28 and 29 March. He answered all questions put to him. When asked if he was responsible for the murder of his wife he replied: "I am". He stated that he had not been sleeping well for three nights and had been tossing and

turning in bed. He woke up with his wife in the morning. They were both in bed together. His wife told him to "get over it". Mr Williams said he just snapped and started screaming: "She tried to calm me down, I had my hands around her throat and I was actually choking the living daylights out of her, like I got all these scratches all over me, she was fighting me back and she managed to get away from me, and she went downstairs and I went after her, she went to unlock the door to go out and I tried to stop her, so I just had my hands on her throat and I was throttling her to death, then I was gonna commit suicide but I could not, what I am saying is I, I did mean to kill her but to kill myself after as well." When asked about the level of force used he said he was probably giving it all he had got. He said during the first attempt by him to strangle his wife: she managed to remove his hand from her neck, she kept asking what he was doing. She looked frightened. When they were both downstairs his wife was trying to open the front door. He had his hands by her throat, he just carried on and carried on. He estimated the incident downstairs lasted in the region of 5 minutes. He said he was probably pressing about as hard as he could squeezing her neck. It was only when she

slumped to the ground that he let go. He stated that he then realised what he had done.

The defendant tendered a plea of guilty to manslaughter by reason of diminished responsibility but that plea was not acceptable to the prosecution and the murder case proceeded to trial

before His Honour Judge Paul Thomas QC and a jury..

Reports were obtained from two consultant forensic psychiatrists who gave evidence before the jury, Dr Allyson Witts for the defence, and Dr Damian Gamble for the prosecution. As often occurs in a case of this type the defendant did not give evidence himself. Dr Witts supported the defence of diminished responsibility whereas Dr Gamble expressed the view that there was no substantial impairment of the defendant's ability to understand the nature

of his conduct, form a rational judgment or exercise control.

A striking feature of the case is that the couple's daughter Emma (their only child) gave evidence before the jury on behalf of the defence. She had sent an email on 30 March, that is only two days after the killing, detailing concerns about her father's behaviour over the fortnight

or so leading up to the killing.

Before the jury she said this about her parents:

"They're just like a typical couple in their late sixties, they just done everything together, you know, even going to the dentist together and, they just, like obviously they'd do, like my dad would go out with his friends on the weekend, just down the club, but pretty much they were together all the time, you know, they had their own caravan..."

She was asked:

"Did you ever see your dad be violent towards your mum?"

[She said]: Never, ever. He's just not that type of man... my dad and my mum are not argumentative people. I know it sounds a bit strange, but like my dad's really laid back, you know, he's just... there was no bickering or anything like that... I never even heard them raise their voice, there was no arguments, there was no rows or, I never heard anything."

She said she had never seen her father be violent to anyone, she described him as a gentle giant

who would not hurt a fly.

Dr Witts had expressed the view in a report on Mr Williams that he was experiencing a sense of overwhelming anxiety at the material time. Asked in the witness box what she meant by

that, she explained:

"What I mean is in my opinion he was suffering, as I've already stated, with anxiety and depression. It is my opinion, from all the information available to me, that the anxiety was heightened around the material time. Mr Williams described significant apprehension,

worries, feeling on edge, motor tension in his body, so a feeling of being very tense and what I would describe as kind of autonomic overactivity. So when people are feeling quite anxious and the anxiety is heightened, it can lead to an increase in the release of stress hormones, you know, adrenaline and noradrenaline and that can lead to heightened state of psychological and physiological responses really to things around that individual.

In my view it can also be described as emotional dysregulation where they're just very overwhelmed with their emotions and feeling a lot of physical symptoms."

She expressed the view that his ability to understand the nature of his conduct, form a rational

judgment and his ability to exercise self-control were impaired.

On the issue of ability to exercise self-control, it was put to her by counsel for the prosecution at trial that Mr Williams had enough self-control, at any rate, to stop himself from continuing

to strangle his wife. Dr Witts conceded that possibly at that point he had some self-control but said "one would speculate on the position prior to that". She confirmed that the fact that at some point he came to his senses would not necessarily mean that he had been able to exercise self-control previously to that. She adhered to the view that his state of mind at the time of the killing was one of overwhelming anxiety.

The jury acquitted Mr Williams of murder. He then had to be sentenced for manslaughter. The judge had sentencing notes from both the prosecution and the defence, each expressing the view that this case was one in which the level of responsibility retained by the offender within the terms of the Sentencing Council Definitive Guideline for manslaughter by

reason of diminished responsibility was low.

There was also a statement from Emma Williams which included the following:

"I don't know if I will ever come to terms with what has happened to my mum. She was my best friend, the kindness, happiest, most loving and caring person. The thought of her no longer being here is too painful to even imagine. Having to spend the rest of my life without her is heartbreaking. I just know that my main priority now is to take care of my dad as he is not well and I cannot lose him from my life too. Keeping him in prison will only worsen his mental state, he needs to be home with me where I can take care of him and get him the correct medical care and support he needs. He is the most caring, kind and gentle man and would do anything to help anyone. I am proud when people say I am like my dad as he truly is a good person. If you knew him the way we do you would know this is completely out of character. My dad is a good man and he loved me and mam dearly. We are his whole world. To have my dad taken from me as well would crush us both. For him to remain in prison would mean my only family member has been taken away, and I know I would not cope without him. I know he is truly broken and cannot cope with the realisation of what he has done. The only possible way for us to try and deal as a family is to have him home, where he can get the correct care and love that he needs. The whole family wholeheartedly knows this is not the man they have known for over 50 years and stands by me when I say we want him home."

In passing sentence the judge said:

"Over-used though the phrase is, this is a tragic case on several levels. The overwhelmingly greatest tragedy here is that lady of 67, in reasonable health and with so much to live for, had her life ended by an act of great violence at the hands, literally, of a man she had loved for very nearly 50 years." Addressing the defendant Judge Thomas said:

"There is also the tragedy that that act, lasting only a matter of minutes at most, and immediately repented by you will now be the defining one of the rest of your life. You will have to live with the knowledge that you killed your wife and that you have left your daughter without her beloved mother. That

it will be the heaviest burden for you, I have no doubt. The letter your daughter has written so movingly to the Court makes that abundantly clear.

Having heard the evidence of your state of mind in the year leading up to this awful event, and especially in the preceding few days, I am of the view that your mental state was severely affected at the time. That, of course, is in line with the verdict that the Jury returned in this case. I have formed the view that you were suffering from largely irrational anxiety, exacerbated by and in a vicious circle with depression and lack of sleep. You were obsessing about Covid, but you were also obsessing about matters which had no rational basis.

For example, you were very concerned that you would lose your home, it was a home you owned outright. You were concerned that you would not be able to afford shoes but you have the best of £150,000 in the bank. You worried greatly that your daughter's house insurance would be invalidated, despite the fact she repeatedly assured you to the contrary. In short, there is no logical explanation for why a placid, non-aggressive, inoffensive man of 69, happily married for 46 years and with an absolutely impeccable character, should, out of the blue, strangle his wife for such an innocuous comment as

'get over it'.

Again consistent with the Jury's verdict, I am left with the belief that something went severely wrong with your mental functioning due to an underlying and substantial impairment of your mental functioning. You were unable to maintain your self-control, you were unable to make rational decisions and you were unable, at that moment, to understand fully the nature of what you were doing. In short, I agree with the submissions of both Prosecution and Defence that you retained, at the time of the killing, only low responsibility for your actions.

I have read with care the letter that your mutual daughter has written to the Court. It is a very moving document, as I have already said. Despite her plea therein I am afraid that my wider public duty means that I have to send you to prison. In assessing the length of that I have regard, of course, to the

appropriate guideline and of the Sentencing Council Guideline for manslaughter. It is accepted by both the Prosecution and the Defence, here that the starting point is one of 7 years' imprisonment.

In my view, it is appropriate here to slightly increase the starting point, had there been a trial on manslaughter, to deal with the aggravating factor of the prolonged nature of the attack on her. You could have desisted in the bedroom, you continued at the front door. Had you pleaded not guilty to manslaughter the notional post-sentence level(sic) would have been 7½ years. I have, however, to discount that by one-third to reflect your guilty plea at the first opportunity and, accordingly, the sentence that I pass upon you, and would you now stand please, is one of 5 years' imprisonment."

The Attorney General seeks leave to refer this sentence as unduly lenient. The case is described as having two aggravating factors (a) death occurring in the victim's own home, at the hand of her husband who she loved and trusted and (b) a sustained incident involving strangulation in two different locations in the house, the second part of which

occurred as the victim was desperately trying to escape to save her own life.

The reference accepts that the mitigating features of the case include the defendant's previous

good character, the lack of premeditation and expressions of remorse.

The Final Reference sets out in detail four submissions on the basis of which it is said that the

sentence imposed was unduly lenient. It is said that the judge:

(a) wrongly concluded that the level of responsibility retained by the offender in this case was low. It is submitted that on a proper assessment of the expert evidence given at trial, the factual circumstances of the case and bearing in mind that all the diminished responsibility cases involve a substantial impairment of functioning, this case was one of a medium level of responsibility retained.

(b) wrongly concluded that the finding of a low level of retained responsibility flowed from the verdict of the jury. It did not for the following reasons: first, the verdict of the jury did not connote acceptance by them of every aspect of Dr Witts's evidence. The route to verdict only required them to be sure of one of three potential components of substantial impairment for the partial defence of diminished responsibility; second, in a case such as this, where there is a contested expert evidence, a judge is not bound to sentence on the most generous basis available to the offender unless there is a proper evidential foundation for doing so, and here there was not. Third, and in any event, Dr Witts' evidence was not that there was substantial impairment of the defendant's ability to exercise self-control, only that there was impairment of that aspect. This fact appears to have been ignored by all at trial. Fourth, the judge's apparent finding that the level of impairment was severe was not supported by the expert evidence overall. Dr Witts never gave such evidence; indeed she did not use that word once, either in her reports or in evidence when considering diminished responsibility. Fifth, overwhelming anxiety does not connote overwhelming impairment of responsibility. That error in approach impacted on the way the judge assessed the retained responsibility.

(c) the judge failed to consider the Definitive Guideline, Overarching Principles - Domestic Abuse at all. In particular, the judge failed to follow the clear approach to assessing seriousness of such offending as set out in paragraph 7 of that guideline. The fact that the killing occurred in the victim's own home, starting in her own bed and ending at the front door she desperately tried to escape and at the hands of a man she had loved and trusted for over 45 years is an aggravating feature, it is not mitigation. The fact that the killing was not preceded by earlier acts of violence is not mitigation; it just means that that potential additional aggravating feature was not present in this case. It is submitted that all concerned in the correct approach to sentence in this case were blinkered to the proper approach to take and that amounted to a fundamental error in approach. The inherent aggravating domestic nature of this killing was ignored by the judge and it should not have

been.

(d) the judge failed to give proper weight to the sustained nature of the offending here. It involved two separate incidents in which the victim fought for her life on both occasions,

the part of which the offender was to admit in interview, lasted for about 5 minutes.

As we have noted, the prosecution as well as the defence advocate who had conducted the trial before the jury submitted that this was a case where the level of retained responsibility was low. The judge who had presided at the trial and heard the evidence took the same view. That does not mean that this court is unable to intervene on a reference by the Attorney General but, in those circumstances, it requires a very clear case for this Court to say that

the view which the judge took was one which he was not entitled to reach.

The Sentencing Council Guideline for manslaughter on the grounds of diminished responsibility requires at step 1, that the judge should consider the extent to which the offender's responsibility was diminished by the mental disorder at the time of the offence, with reference to the medical evidence and all that relevant information available to the court. The degree to which the offender's mental disorder was undiagnosed and/or untreated may be a relevant consideration. (So in some cases may be the degree to which the offender has contributed to the seriousness of the mental disorder at the time of the offence himself, for example by abuse of drugs or alcohol or ignoring medical advice; but that is not

relevant in the present case.)

Subject to these general indications, the level of responsibility, as Mr Little accepts, is one for the overall assessment of the sentencing judge. Mr Little is right, of course, to say that the verdict of the jury that the defendant was not guilty of murder did not compel the judge to find that the level of retained responsibility was low. We do not think that his sentencing remarks on their proper construction indicate any such elementary error.

It is also correct to say that the verdict of the jury "did not connote acceptance by them of every aspect of Dr Witts's evidence". It was for the judge to make his own assessment of Dr Witts's evidence, so long as he did so in a way that was faithful to the verdict of the jury

which, in our view, he did.

It is likewise correct to say that in a case where there is contested expert evidence, indeed even where there is uncontested expert evidence, the judge is not bound to sentence on the most generous basis available to the offender unless there is a proper evidential foundation for

doing so.

We do not think that it is a useful exercise to attempt to atomise either the jury's verdict or the evidence of Dr Witts into three categories of (a) impairment of the ability to understand the nature of the conduct, (b) impairment of the ability to form a rational judgment and (c) impairment of the ability to exercise self-control. There is in many cases, including this one, significant overlap between these three alternative bases of the defence.

We also think that it is overcritical of the judge's sentencing remarks to say that he made an apparent finding that the level of impairment was "severe", in the sense that severe is

something different from substantial.

Mr Little submitted, forcefully, that this was a domestic abuse homicide. We have recorded the submission in the Reference that the judge failed to follow the clear approach set out in

paragraph 7 of the Sentencing Council Definitive Guideline: Overarching Principles - Domestic Abuse. This is not, in our view, properly classified as a case of domestic abuse. There was no history of controlling behaviour, or coercive behaviour or any previous incidents of threatening behaviour, violence or abuse on the part of the offender - quite the contrary. We do not consider that, on its proper construction, the Sentencing Council Guideline

on Domestic Abuse is authority for the proposition that in every case an act of violence, committed out of the blue, by an offender against his spouse or partner is to be sentenced more severely, simply because it is an offence of violence within the home. Certainly there is in our judgment no such principle applicable to a case of manslaughter by reason of diminished responsibility. It all depends on the facts of the case.

The fact that the killing took place in two stages would have been a seriously aggravating factor if this had been a case of murder or even a case of unlawful act manslaughter by a defendant whose mental state was unimpaired. But in the context of the defendant's substantial mental impairment the trial judge was entitled to take the view that it only aggravated the offence to a limited extent. He did take it into consideration as shown in his sentencing remarks.

This is a very atypical case of homicide. The defendant, aged nearly 70, did an act utterly out of keeping with how he had conducted himself throughout his life and throughout what had plainly been a long and happy marriage. The only explanation for his conduct on the day, as the jury accepted, was that he was seriously unwell. In other words, his actions were wholly explained by his illness. That illness was undiagnosed and entreated, even though he had sought treatment. He immediately raised the alarm, made immediate admissions and his overwhelming remorse was obvious.

The judge could not properly have acceded to Emma Williams's wish that her father should not be sent to prison at all but we are wholly unpersuaded that the sentence which he did impose was unduly lenient.

The application for leave to refer is accordingly dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the

proceedings or part thereof.

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