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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Newcastle Crown Court

Quayside

Newcastle upon Tyne

NE1 3LA

Tuesday 8 April 2008

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(Lord Phillips of Worth Matravers)

MR JUSTICE WILKIE

and

MR JUSTICE OPENSHAW

R E G I N A

- v -

BRIDIE JOANNA KEHOE

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(Official Shorthand Writers to the Court)

Mr P Cosgrove QC appeared on behalf of **the Appellant**

Mr D Atkinson appeared on behalf of **the Crown**

Judgment

THE LORD CHIEF JUSTICE: I will ask Mr Justice Openshaw to give the judgment of the court.

MR JUSTICE OPENSHAW:

1. On 8 November 2007, at the Central Criminal Court, before the Recorder of London (His Honour Judge Beaumont QC), on an indictment charging her with murder, the appellant, Bridie Kehoe, pleaded guilty on re-arraignment to the manslaughter of Edward Shaw. Her plea of not guilty to

murder was accepted by the prosecution on the grounds of diminished responsibility. On 4 December 2007 she was sentenced to life imprisonment; the period of four years six months was specified under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 as being the minimum term which she must serve before being considered for release by the Parole Board (less the 427 days she had spent in custody on remand). She now appeals against sentence by leave of the single judge.

2. The precise sequence of events leading up to the killing of Mr Shaw is not altogether clear. The background can be summarised as follows. 94 Lancaster Road, Ladbroke Grove, provided sheltered housing for those suffering from a variety of social problems. Edward Shaw lived there. He was aged 51. He was an alcoholic. From time to time he led a chaotic and unstructured life. At other times he maintained contact with his family. He always took seriously his duties to his young son to whom he was devoted.

3. The appellant is aged 43. She has a long history of alcohol abuse and mental illness with which we will deal later. She lived in a flat in the basement of the same house.

4. Another resident was John Waterman. Some months earlier the appellant alleged that Waterman had sexually assaulted her. She complained (although not to the police at the time) that she had awoken to find him penetrating her with his fingers. She referred to this as "rape". The appellant, understandably, deeply resented the commission of this offence upon her. She took her revenge on Waterman by cutting him with a knife which, fortunately, did not cause him serious injuries. The appellant was only cautioned for this offence.

5. We move on to Sunday 1 October 2006. A number of fellow alcoholics gathered together at the house to drink. A great deal was drunk. A sample taken from Mr Shaw's body gave a reading of not less than 326mg of alcohol per 100ml of blood, being four times the legal limit for driving. Others present in the house sensed that there was an awkward atmosphere between the appellant and Mr Shaw. One of them even saw the appellant hitting him around the head and so they all left. The only living witness to what passed between them is the appellant herself, who was drunk and, as we have said, is mentally ill. She has given a number of conflicting accounts.

6. At about 8.45pm the appellant rang a friend and said that she had done something bad. She said that she had stabbed Mr Shaw. She said that he had accused her of encouraging Waterman to the extent that the rape was her own fault and that she had "served herself on a plate". Plainly, she deeply resented and was provoked by this offensive suggestion. The neighbour whom she told that she had stabbed Mr Shaw did not believe her. The appellant therefore called round some other friends. They saw Mr Shaw's body lying in the garden. The appellant said that she had already destroyed the clothes that she had been wearing and had already disposed of the knife, but wanted help to remove the body. The friends refused and one of them called the police.

7. The police arrived at about 11pm. The appellant would not let them into the house. A police officer went into the back garden and saw Mr Shaw's body which had a number of obvious stab wounds to it. The pathologist later found a dozen wounds to the neck, chest and abdomen, some penetrating fully 14cm. There were also a number of scratches, bruises and abrasions to his head, indicating that he had been hit many times. There were a number of defensive injuries to his hands and arms.

8. The appellant was arrested. In interview she refused to answer questions but gave a prepared account in which she denied any knowledge of the killing.

9. The appellant is aged 44. She has a number of significant previous convictions. In June 1990 she was convicted of unlawful wounding at Nantwich Magistrates' Court, for which she was conditionally discharged. She had stabbed her husband twice in the abdomen, which fortunately required just one stitch to repair. In March 1993 she was convicted of an affray, having taken up a kitchen knife to brandish at police officers during the course of another domestic dispute. In July 2005 she was convicted of common assault, when she hit a man on the head with her shoe. In August 2006 she was cautioned for the attack with a knife on Mr Waterman, to which we have already referred.

10. There were two psychiatric reports. Dr Nayani, retained by the defence, detailed the appellant's "miserable and deprived childhood" marked by emotional, physical and sexual abuse. That background had distorted her psychological development in such a way as to render her prone to a variety of psychological disorders in adult life. She had suffered from an abusive relationship with her former husband. She had great difficulty adjusting to the loss of her children. Dr Nayani described her as a damaged and vulnerable woman who in recent years had extensive involvement with the clinical mental health team at her local hospital. She had become alcohol dependent. She was suffering from post-traumatic stress disorder after she was sexually assaulted by Mr Waterman a short time before the killing, as we have already set out. Accordingly, he thought that the defence of diminished responsibility was available to her.

11. Another report from Dr Joseph, retained by the prosecution, confirmed that the appellant had suffered considerable abuse and disruption during her childhood, as a result of which she felt victimised. Those feelings had persisted into her adulthood. She had a long history of contact with the psychiatric services, usually precipitated by episodes of self-harm. She found it extremely difficult to deal with her emotions. She had been consistently diagnosed as suffering from an emotionally unstable (borderline) personality disorder and in addition had suffered from alcohol dependence for a number of years. She had also been diagnosed as suffering from depressive symptoms. At the time of the killing, she was suffering from an abnormality of mind as a result of her personality disorder and alcohol dependence. He therefore agreed that a defence of diminished responsibility was available to her.

12. The pre-sentence report spoke of a medium risk of her re-offending and a high risk of harm to the public.

13. In his sentencing remarks the judge said that she had taken the life of a friend who posed no threat to her at all. He entirely accepted that her well-chronicled history of mental disorder founded a defence of diminished responsibility. He also accepted that she was provoked by what Mr Shaw had said and provoked in the legal sense, not just provoked in fact. The judge went on, as he was obliged to do, to consider whether the criteria of dangerousness were made out. He said that her record showed a pattern of violent offending and that the circumstances of this offence showed a clear and serious escalation in her offending behaviour which demonstrated that she lacked control over her actions in certain situations. He said that manslaughter carried a maximum sentence of life imprisonment and against her background of lack of control and anger in certain situations, even if she was not under the influence of drink or drugs, meant that such a sentence was justified, which sentence he then passed. He thought that the appropriate determinate sentence would have been 12 years, from which she would be allowed a deduction for her plea. He allowed one-quarter, which brought the notional determinate term down to nine years and the specified minimum term down to four and a half years, less the time served in custody on remand.

14. Mr Cosgrove QC on the appellant's behalf accepts that the finding of dangerousness was inevitable, but he argues that a life sentence was wrong and should be replaced by a sentence of imprisonment for public protection. He also argues that the specified term is manifestly excessive and applicable to cases of a wholly different nature to this and that it was out of line with the periods imposed in similar cases. Mr Cosgrove argues that, since the appellant was also provoked by the offensive remarks which Mr Shaw had made to her, a greater discount should have been given for the presence of two separate defences, namely diminished responsibility and provocation.

15. We deal first with the life sentence. Such statutory guidance as is available is to be found in section 225 of the Criminal Justice Act 2003 which provides as follows:

"(1) This section applies where --

(a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and

(b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

(2) If --

(a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and

(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life,

the court must impose a sentence of imprisonment for life.

(3) In a case not falling within subsection (2), the court must impose a sentence of imprisonment for public protection."

16. The only case under the 2003 Act where this section has been considered and which has been cited to us is R v Porter [2007] 1 Cr App R(S) 115. Giving the judgment of the court, David Clarke J said this:

"33. Returning then to the issue of section 225(2), the judge's approach in holding that this was a case for a life sentence was clearly coloured by his view that this was a case very close to murder in its gravity. There is as yet no guidance from this court as to the application of section 225(2)(b), and to the question whether the seriousness of the offence was such as to justify the imposition of life imprisonment. We can see that it may well be appropriate for cases, particularly where there is a high level of criminal intent, for example, in cases of attempted murder and no doubt in other types of case. But on the basis on which the jury concluded this case, in our judgment, there was not sufficient material to justify holding that this was a case for life imprisonment."

17. When, as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public are now properly protected by the imposition of the sentence of imprisonment for public protection. In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offer guidance on when a life sentence should be imposed. We think that now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave. It is

neither possible nor desirable to set out all those circumstances in which a life sentence might be appropriate, but we do not think that this unpremeditated killing of one drunk by another, at a time when her responsibility was diminished, and after she was provoked, can properly be said to be so grave that a life sentence is required or even justified. Accordingly, we quash the life sentence and substitute a sentence of imprisonment for public protection.

18. As to the minimum term, Mr Cosgrove has provided a number of comparable cases but necessarily none is precisely similar. We have helpfully been referred to the guidance of the Sentencing Guidelines Council on sentencing for manslaughter on the grounds of provocation which provided that, for a substantial degree of provocation over a short period, the starting point would have been eight years after a trial, with a range of four to nine years. This seems to us to be the right classification of this offence. In all the circumstances, taking account of the aggravating and mitigating circumstances to which we have referred, we consider that the proper determinate sentence for taking up a knife and killing this man would be somewhere in the region of eight years after a trial.

19. We turn briefly to the credit to be given for the plea. At an early stage of the proceedings, the defence indicated that the appellant admitted responsibility for the killing but that she was unable to enter a plea until the psychiatric report was available. The plea was not therefore entered until only a week or so before the trial. The appellant did not act unreasonably in not entering a plea at an earlier stage. On the other hand, the case had to be prepared for trial; court time had to be found to accommodate the trial, thereby displacing other important trials; and the family and the friends of the victim had a long wait for justice. Balancing these conflicting considerations, the Recorder of London allowed a discount of one-quarter from the notional determinate sentence, which Mr Cosgrove accepts. We endorse this approach.

20. The result is that the proper determinate sentence, after deducting one-quarter for the plea, would have been in the region of six years. The proper minimum term will therefore be three years (less the 427 days which the appellant has spent on remand).

21. This sentence must not be misunderstood or misreported. The sentence is, and remains, a sentence of indefinite imprisonment for public protection. The appellant will be detained unless and until the Parole Board is satisfied that she no longer presents a risk to the public. Even if the Parole Board decides then or at some time in the future to authorise her release, she will be upon licence which will extend for at least ten years and may extend for the rest of her life. Many prisoners are in fact detained for many years after their tariff has expired.

22. To the extent indicated, the appeal against sentence is allowed.
