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201800976 B5; 201801108 B5
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 29 March 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE TURNER

and

HER HONOUR JUDGE TAYTON QC

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

KARL PAUL KELLY
DARREN EMMANUEL COLECOZY

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Mr S G Driver appeared on behalf of the Appellant Karl Paul Kelly
Miss N Grahame QC appeared on behalf of the Appellant Darren Emmanuel Colecozy

Mr I Unsworth QC appeared on behalf of the Crown

J U D G M E N T

LORD JUSTICE SIMON:

1. On 14 February 2018, following a trial in the Crown Court at Liverpool before William Davis J and a jury, the appellants, Karl Kelly (now aged 33) and Darren Colecozy (now aged 24), were acquitted of murder (count 3) but convicted of manslaughter and false imprisonment (count 2).

2. On 15 February 2018 they were each sentenced on count 3 (manslaughter) to 22 years' imprisonment and on count 2 (false imprisonment) to a concurrent term of twelve years' imprisonment.

3. Two co-accused stood trial at the same time. Jamie Grimes was convicted on count 3 (murder) and count 2 (false imprisonment). He was sentenced on count 3 to life imprisonment, with a specified minimum term of 27 years, and to a concurrent term of nine years' imprisonment on count 2. Dylan Owen was convicted on count 5 (assisting an offender) and was sentenced to six years' imprisonment.

4. The prosecution case was that two other men were involved, namely Wales and Knox. Knox is still at large. Wales has now been arrested. He pleaded guilty on the third day of his trial in January 2019 and was sentenced for murder to life imprisonment, with a minimum term of 24 years and to a concurrent term of ten years' imprisonment for false imprisonment.

5. The appellants appeal against their sentences with the leave of the single judge.

6. The offences were committed in June 2017 when 54 year old Joseph McKeever was held against his will and subjected to brutal and extreme violence, before being strangled with a ligature. Following his death, attempts were made to destroy the most potent evidence of these

crimes. His charred body was found in a burning vehicle. He had been held and subjected to violence at two different places: a container in a yard connected to Grimes and at a flat occupied by Colecozy. The case for the prosecution was that the appellants, together with Grimes, Wales and Knox were parties to those acts.

7. The background to this fatal violence was a plan that had been devised at some point in early 2017 to import significant quantities of cannabis from Spain into the United Kingdom. Grimes was one of the importers and Joseph McKeever was involved in arranging the shipment of the cannabis.

8. On 11 June 2017, a lorry carrying the cannabis arrived at the port of Newhaven. It was stopped by customs officials and a search revealed over 145 kilograms of drugs hidden in a legitimate load. Joseph McKeever had arranged for the carriage of this consignment from Spain. Some, if not all, of the load was destined for Grimes and those with whom he was involved, one of whom was Knox.

9. Grimes and Knox were friends. For about a year before the importation they had been engaged in the wholesale supply of cannabis in the Merseyside area on a moderate scale. When the cannabis did not arrive as expected, they refused to accept that their consignment had been seized. They decided that Joseph McKeever had in some way taken the cannabis for his own purpose.

10. During the late afternoon of 14 June 2017, they lured him to a yard containing a garage and a converted container used by Grimes. Grimes, Knox, Wales and Joseph McKeever arrived at the garage and all four went into the container. From this point Joseph McKeever was detained against his will and was threatened in order to give information about the missing consignment.

Grimes, Knox and Wales moved quickly from threats to violence. When Joseph McKeever's body was eventually recovered, he was found to have had multiple injuries consistent with being severely beaten. He had fractured ribs, deep bruising on his back, multiple facial fractures and perhaps most significantly both of his kneecaps were fractured as a result of blows with a weapon of some description. He had been beaten in the hope that he would provide information. Grimes was directly involved in the beating. He eventually told Grimes and the others that they would be able to find drugs at an industrial unit in Burscough. Later that evening, Grimes and his associates went to Burscough. In fact, there was cannabis there and Joseph McKeever had some connection with the unit. About six weeks later, following a quite separate investigation, the police went to the unit and found 150 kilos of cannabis, which had not been discovered by Grimes and his associates.

11. Before the trip to Burscough and during the evening of 14 June, the appellant Kelly went to the garage and into the container. The purpose of this trip was to make arrangements for Joseph McKeever to be moved from the container to a flat occupied by Colecozy, who was a friend of his. Although Grimes, Knox and Wales wanted to go to Burscough, they did not want to leave their victim alone in the container. By the time Kelly left the garage (ten minutes after his arrival), he knew that Joseph McKeever was to be taken to the flat. He also knew that he was seriously injured and was being unlawfully detained. One of the injuries from which he was eventually to die was a blunt-force head injury which caused a major subdural bleed as a result of a blow or blows struck with substantial force.

12. Kelly went off to collect Colecozy so that Joseph McKeever could be taken to his flat. The judge found that it was an inevitable inference that Colecozy was told at that stage what was planned, what was involved, and that he was to be one of those guarding McKeever.

13. Subsequently, Joseph McKeever was put into a van owned by Grimes and driven to Colecozy's flat. At the flat, he was carried upstairs and put on the kitchen floor. Knox, Wales and Grimes then left to drive to Burscough. They were away for about three hours, during which Kelly and Colecozy were left with McKeever. When they returned from the trip to Burscough, Grimes went home. So it was that for about two and a half hours, between 2.30am and 5am, Kelly and Colecozy were at the flat with Knox and Wales and the grievously injured Joseph McKeever, who was by then lying on a mattress on the living room floor. Knox and Wales had at this point lost patience with Joseph McKeever. At 2.37am, Colecozy sent a series of WhatsApp messages to a young woman describing what was going on as being like an episode of the television series, Power, a series depicting the life of New York drug dealers and involving violence and torture.

14. The message reflected what was happening to Joseph McKeever at the hands of Knox and Wales. Bloodstaining, all from McKeever, was later found on the mattress and on the area around the mattress. It indicated that he had been assaulted whilst on the mattress. There were also footprints in blood on the mattress, consistent with stamps on the victim's wet blood. These blows were not struck by either Kelly or Colecozy, but they encouraged Knox and Wales in the attack; and that attack plainly caused further catastrophic brain injury, which was the cause of death. It was at some point during this period that he was strangled with sufficient force to cause fractures to the cartilage around the voice box, although this was not the only time that this had happened.

15. Colecozy and Kelly remained at the flat during and after this attack. At 5am Kelly left the flat while Colecozy remained. At around 6am Grimes returned. The judge concluded that the final episode of strangulation occurred at this time. Joseph McKeever's death was a result of a combination of fatal assaults, severe blunt force trauma and ligature strangulation.

16. Having left the flat, Grimes went immediately to the garage and carried out a clean-up of the container. Colecozy stayed at the flat with Knox and Wales. They were together for about four hours. McKeever was now dead. Grimes returned to the flat. He had with him a large plastic container of petrol which he poured over the mattress on which the body was lying. Grimes, Knox, Wales and Colecozy left in the same vehicle, leaving the body lying in the flat.

17. Grimes then went to see Owen, a friend of his, who had been at the garage for a short period the previous evening. He asked Owen to set fire to the van in which McKeever had been taken from the container to the flat, as well as a car which had earlier been used by Joseph McKeever. Owen agreed. Over the course of the next twelve hours he destroyed both the car and the van. Grimes then left the United Kingdom with Knox. They went to Spain. Knox disappeared. Grimes was arrested in Spain at the end of August 2017 and was extradited.

18. In the meantime, after Colecozy left the flat, he and Kelly met and spent the afternoon together. At around 5pm they returned to the flat where they met some men in a blue Ford Focus. Joseph McKeever's body was unceremoniously taken down the stairs and put into this vehicle which then took it away. Kelly spent some time trying to clean up the blood in the flat.

19. At approximately 10.55pm on 15 June, CCTV cameras recorded the Ford Focus being driven on to a field. Two minutes later it was on fire. The Fire Service was subsequently called and the body was found in the boot of the car. Further enquiries established that the vehicle had been recently stolen.

20. On 16 June 2017, Kelly was arrested on suspicion of murder. He was interviewed the following day. He denied any wrongdoing but provided significant amounts of information which suggested knowledge of the offence.

21. On 30 June 2017, Colecozy was arrested in the Nottingham area. He was taken back to Merseyside and interviewed on three separate occasions. He remained silent throughout all questioning.

22. Kelly was aged 32 at the date of sentence. He had two previous convictions for three offences between 2009 and 2011. They included an offence of possessing Class B drugs (cannabis). He also had a reprimand for possessing cannabis.

23. Colecozy was aged 23 at the time of sentence. He had three previous convictions for four offences between November 2011 and November 2014. These included convictions for possessing a blade or pointed article in a public place, and for disorderly behaviour or using threatening, abusive or insulting words or behaviour with intent to cause harassment, alarm or distress.

24. The judge had two victim personal statements from Joseph McKeever's parents. As the judge noted when passing sentence, the effect on those who loved and cared for him – his father, mother and people whose statements the judge had seen – was no less because of the fact that, completely unknown to them, he had been involved in drugs.

25. When it came to passing sentence, the judge set out the facts as we have described them. He concluded:

Mr McKeever died because he was involved in serious crime, but he did not do anything to provoke what happened to him. What happened to him was the result of criminals first torturing him to obtain information and then killing him when he did not provide them with what they wanted.

26. In relation to Kelly and Colecozy, the judge noted that, although the evidence did not show their involvement in the detention of, and violence towards, Joseph McKeever before 9.15pm on

14 June, their involvement during the time that he was still alive extended over nearly ten hours. While they may not have been directly involved in the serious criminal activity which formed the backdrop of the killing, they were present and were aware of it, and so became part of it. They may have become involved at short notice, but their involvement was not spontaneous.

27. A particularly serious aspect of the offence of manslaughter so far as they were concerned was that they were involved directly in the heartless disposal of the body, and both took steps to conceal their complicity in what had happened. There was also the further aggravating circumstance that, with their assistance, Joseph McKeever had been falsely imprisoned over a number of hours.

28. The judge did not order a consecutive sentence for the offence of false imprisonment, but he considered that the conviction on that count amounted to an aggravating factor which increased the appropriate sentence for manslaughter. He saw no reason to distinguish between Kelly and Colecozy. Although Kelly was involved before Colecozy, Colecozy had previous convictions for violence and, once both were involved, their participation was equal. He then passed the sentence to which we have referred.

29. In the grounds of appeal and today, Mr Driver for Kelly has accepted that there was high culpability. It was very serious offending. There was the long duration of the victim's suffering in which Kelly was involved. Nevertheless, he submits that, in imposing a sentence of 22 years' imprisonment, the judge failed to draw sufficient distinction between Kelly, who had been convicted of manslaughter, and Grimes, who had been convicted of murder and whose minimum term for the sentence of life imprisonment was set at 27 years. In any event, the sentence of 22 years was manifestly excessive.

30. Miss Grahame QC for Colecozy made a similar submission. She submitted that the sentence of 22 years' imprisonment on count 3 was manifestly excessive. However, she directed particular submissions to the individual sentences. So far as the sentence of twelve years' imprisonment for false imprisonment was concerned, she argued that the judge was right to impose concurrent terms, but was wrong in other respects. She recognised that the offence aggravated the overall offending, but she argued that the judge failed to give sufficient weight to the fact that Colecozy played no part in, and knew nothing of, the planning or the criminal activity which took place in the first few hours of the false imprisonment. He was enlisted as a guard in what was a pre-existing offence. He was not involved in the underlying criminal background of drug importation or distribution. He inflicted no direct violence on the victim, and the humiliating treatment of the victim was not carried out or encouraged by him.

31. There is a further complaint of the objectionable disparity between the sentence of nine years' imprisonment (twelve years, less 25 per cent credit for the guilty plea) passed on Grimes and the sentence of twelve years' imprisonment passed on Colecozy, whose involvement in the false imprisonment was significantly less.

32. So far as the sentence of 22 years' imprisonment for manslaughter is concerned, Miss Grahame accepted that the offence was aggravated by the false imprisonment of the victim, but she argued that the judge failed to give sufficient weight to a number of material factors: that Colecozy was not involved in the background criminality of drug dealing; he inflicted no violence himself; he came late to the incident; and he intended no serious bodily harm to the victim. He played a significant subordinate role, when compared to the involvement of Grimes, Knox and Wales. Colecozy's relative youth (23) and antecedent history were also prayed in his favour.

33. We have considered these submissions. The judge presided over a trial that had lasted for four weeks. This put him in a particularly strong position when it came to assessing the seriousness of these crimes, the roles played by the individual defendants and their relative levels of responsibility. This court does not have those advantages.

34. The judge identified a number of material factors which applied to both appellants. First, they had been convicted of the offence of false imprisonment of the victim over a period of ten hours. Although the judge was right to impose a concurrent sentence for this offence, it was plainly relevant to the overall seriousness of the offending and to the sentence imposed for the offence of manslaughter. The victim was trapped and could not escape, as he was subjected to the violence which caused his death. It was the appellants who were left with the injured McKeever when Grimes, Wales and Knox went to Burscough. When they returned, he was killed.

35. The second material matter was what occurred in their presence during the false imprisonment to which the appellants were party. Having referred to the attack by Knox and/or Wales on Joseph McKeever as he lay on the mattress in Colecozy's flat, the judge said this:

Those blows were not struck by Kelly and Colecozy. They did not share the intent to do Mr McKeever really serious harm, but they encouraged Knox and/or Wales in the attack. That attack plainly caused further catastrophic brain injury, which was a cause of Mr McKeever's death.

The judge added that their evidence that they were in fear, that they wanted nothing to do with what was going on, and that they did not intend to encourage any violence had been rejected by the jury. He said:

They did not intend themselves to do Mr McKeever really serious harm, but, given their circumstances, their encouragement of the violence was real and sustained.

Both appellants were willing to associate with and encourage an enterprise linked to serious crime in which a badly injured man was being held against his will. They did nothing to help him.

36. Furthermore, the appellants were involved in the heartless destruction of the victim's body. Destruction of the body is specifically identified in paragraph 10(g) of Schedule 21 to the Criminal Justice Act 2003 as an aggravating factor in determining minimum terms in relation to mandatory life sentences. As the court in *R v Appleby* [2009] EWCA Crim 2693 observed at [16], referring to *R v Wood (Clive)* [2009] EWCA Crim 651, [2009] 1 Cr App R(S) 2, a sentencing judge is entitled to look at Schedule 21 in assessing the seriousness of a manslaughter offence.

37. So far as the individual appellants were concerned, the judge found that Kelly had gone into the shipping container to make the arrangements to move Joseph McKeever and would at that point have seen how badly beaten he was. The judge made a specific finding that Colecozy was told before Joseph McKeever was taken to his flat what was planned and what was involved:

Grimes and the others would not have taken the risk of using the flat and of involving Colecozy were it otherwise.

38. The judge addressed the submission that the appellants had nothing to do with the men sent to dispose of the body. He specifically rejected that submission by reference to the evidence:

At the time of the removal of the body, Knox was well on his way to Folkestone ... Those with the interest then in removing the body were the people with the interest in the flat, namely, Kelly and Colecozy and they were the ones in Liverpool. CCTV showed the arrival outside the flat of the blue Focus. It showed Kelly and Colecozy speaking with apparent familiarity to those in the car. Whether it was Kelly or Colecozy who made the arrangements does not matter.

The judge's conclusion that they had been parties to the removal and disposal of the body was one that was plainly open to him.

39. In our view, the many aggravating circumstances justified the sentences that were passed on these appellants. The judge did not ignore the points made on behalf of the appellants and particularly those matters argued on this appeal. Indeed, he referred to them. We are not persuaded that he gave them insufficient weight.

40. It may be that Grimes was fortunate not to receive a longer sentence for the offence of false imprisonment, but in circumstances where that sentence was imposed concurrently to a sentence of life imprisonment, with a minimum term of 27 years, we do not consider that Grimes' sentence gives rise to an argument on objectionable disparity or any separate argument on the sentence for manslaughter.

41. For all these reasons, these appeals against sentence are dismissed.