Neutral Citation Number: [2020] EWCA Crim 1376

Case No: 201902703/02704 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM WARWICK CROWN COURT
HHJ de BERTODANO
T20187302

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/10/2020

Before :

LORD JUSTICE FULFORD
MRS JUSTICE MCGOWAN
and
MR JUSTICE CHAMBERLAIN

- -

Between :

Jordan James Joseph BASSETT	**Appellant**
- and -	
Regina	**Respondent**

- -
- -

Timothy Raggatt QC (instructed by **Lexton Law**) for the **Appellant**
Kevin John Hegarty QC (instructed by **CPS**) for the **Respondent**

Hearing date : 21/07/2020

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Approved Judgment

Mrs Justice McGowan DBE :

Introduction

1. On 7th December 2018 Jordan Bassett shot and killed his friend Addison Packeer. He was tried by Her Honour Judge de Bertodano and a jury in the Crown Court sitting in Warwick on an indictment containing four counts. He entered guilty pleas to counts 3, manslaughter by gross negligence and count 4, the possession of a prohibited firearm. On 24th June 2019 he was acquitted by the jury of murder, count 2 and convicted of count 1, the possession of the firearm with intent to endanger life.

2. On 26th June 2019 he was sentenced on count 1 to an extended term of imprisonment of a total of 23 years, made up of a custodial term of 18 years and an extended licence period of five years. He received concurrent terms of eight years on count 3, manslaughter and five years on count 4, possession of a prohibited firearm. He was acquitted by the jury on count 2, murder.

3. He appeals against his sentence by leave of the Single Judge and renews his application for leave to appeal against his conviction on count 1 following refusal by the Single Judge. He also applies for an extension of time of 45 days to renew that application. We grant leave and the necessary extension of time.

Facts

4. Jordan Bassett was born on 26th November 1993. He and Addison Packeer were very good friends and were regularly involved in drug dealing. On 7th December 2018, the two men had gone together to a flat at Chepstow Close, Willenhall, Coventry. The occupier of that flat was Wayne Anglin; he runs a takeaway food business from the flat selling Caribbean food. Mr Anglin saw the two men arrive on a motor bike just after midnight. He knew them as Jordan and Uddy or Ody. He looked out of the window when he heard the motor bike pull up and saw the two men with a girl who lived nearby; he described her as a 'crack head'. He saw the girl apparently selling a bag of toys to Jordan in exchange for which he handed over some money; he was later to say it was crack cocaine.

5. The two men came into the flat and sat down in the living room waiting for the food they had ordered. Whilst he was preparing the food, he heard the men discussing selling drugs. He brought the food, left them again to get drinks from the kitchen, whilst in the kitchen he heard a "pop" sound. He thought it was a gun. He was right.

6. When Mr Anglin returned to the living room, he saw both men sitting on the settee. Jordan Bassett had his arms around Mr Packeer, he was panicking and saying, "Uddy, what's happening?".

7. Mr Packeer had been shot to the side of his neck, he was bleeding, his eyes were rolling, and he was making a moaning noise. A slim black handgun was on the seat between the two men. That was the first time Wayne Anglin had seen the gun. Jordan Bassett picked up the gun and put it on a glass topped table. He put Mr Packeer's feet up on the settee and placed a cushion under his head. He then got a towel and told Mr Anglin to hold it to the wound.

8. Jordan Bassett was running around panicking, he told Wayne Anglin to call an ambulance but that if he called the police, he would kill him. He moved the gun to the top of a fridge, and he washed his hands which had blood on them. He ran around looking for the key to the motor bike and searched the floor for the discharged 'shot' (he said he was looking for "something from the gun"). He took the gun, the 'shot' and the key to the bike and left. After he had left Wayne Anglin rang 999 and asked for the police and told them somebody had been shot. At this stage Mr Packeer was still alive and was moaning. Mr Anglin was given instructions by the operator and waited for the emergency services to arrive. The police arrived very soon afterwards. Mr Packeer was pronounced dead at the scene at 2.02.

9. On 10th December 2018 at 3.35am Jordan Bassett went to Little Park Street Police Station in Coventry and surrendered. He was arrested and during the process he told police they could find the gun in a quarry in Willenhall.

10. When he was interviewed, he told the police that the deceased had produced the gun for the first time in Mr. Anglin's flat. He said that he, Bassett, had taken it up to look at it and was playing about when it went off by accident and wounded Mr Packeer in the neck. He had panicked, collected the gun and shot and ran away. He threw the gun into a quarry but surrendered himself three days later to the police and told them where the gun was. It was recovered from the quarry.

The Trial

11. The Appellant pleaded guilty to count 3, manslaughter by gross negligence and count 4, possessing a prohibited firearm; that count represented his conduct in the taking and disposing of the gun after the shooting. He was acquitted by the jury on count 2, murder, and convicted on count 1, possessing a firearm with intent to endanger life; that count represented his possession of the firearm prior to the shooting. It was the Crown's case that he alone or jointly with the deceased was in possession of the firearm as part of the drug dealing in which they were engaged that evening.

12. At the close of the prosecution case the defence made a submission that there was no case to answer on count 1 and the jury should be discharged from returning a verdict on that count. Mr Raggatt QC submitted that there was no evidence of the Appellant's possession or knowledge of the gun before the shooting. He argued that the evidence of the Appellant's conduct after the shooting was equally consistent with panic, having shot his friend. He relied in support of his application, as he does today, on the case of ***R v Banfield [2013] EWCA Crim 1394.***

13. Mr Hegarty QC argued for the prosecution that the Appellant's conduct – threatening to shoot Wayne Anglin if he told the police what had happened, collecting the gun and shot, removing them and disposing of them – was evidence from which the jury could safely infer that the Appellant was either jointly in possession of the gun with the deceased or was solely responsible for bringing it to the flat.

14. The Judge gave her ruling on 18th June 2019. She dealt with the defence submission as follows,

> *"The fact that things happened afterwards does not meant that the jury cannot draw inferences from them about what the situation was before. They are invited*

to do that in many, many cases. It is clear on the evidence that one or both of the two defendants brought the gun to the scene. There is particularly compelling evidence in the fact that he was looking for the bullet casing as referred to when I was dealing with the prosecution submission. I cannot possibly say that that is not something a reasonable jury might consider as being important in reflecting on the defendant's knowledge and possession of the gun at the earlier stage.

Of course, the defence will make the point, and I am sure they will make it to the jury, that his actions after the event will have been in many ways influenced by the shooting but that does not mean that they are barred from considering it as circumstantial evidence as to who brought the weapon to the scene. The case is quite distinct from the R v Banfield case in which there was no evidence as to which defendant had been present when the deceased died. Here the defendant was clearly present when the gun was brought into the house. He either brought it himself or it was brought in the hands of the deceased, his friend.

The jury will have to draw inferences as to who had the gun, whether it was in his possession solely, in joint possession. If they are not sure of that then, of course, they would find him not guilty, but it is for them not me to consider the weight of that circumstantial evidence. Of course, it would be a stronger case if Anglin had seen the gun in his possession. It might be an unanswerable case that he had seen the gun in his possession, and he did not, but that does not mean that I can say that a reasonable jury would not be able to draw the inference that he had possession of the weapon wholly or jointly before he came into the house. Cross-admissibility is not in any way engaged by this. This is simply a question of evidence and a jury can consider that looking at all the evidence in the case. Given that would be a legitimate conclusion for a reasonable jury to reach the case on this count must consider to the jury."

The Appeal

15. In his grounds of appeal Mr Raggatt QC submits that it was "wholly inappropriate and unsafe to have left this count to the jury because the evidence was equally consistent with other possible explanations, none of which a reasonable jury properly directed could convict upon". He submits that this case was analogous to the case of ***Banfield*** and that in declining to follow that authority she fell into error.

16. Mr Hegarty QC submits that the Judge was right to leave the case to the jury as they could safely exclude the fact of the shooting as being the reason for the Appellant's removal and disposal of the gun and spent ammunition. He argues that the Appellant's behaviour after the shooting in combination with his threat to shoot Mr Anglin was sufficient to establish his guilt of possession before the shooting. The two men had been engaged in drug dealing and were discussing a plan to supply drugs in Stoke immediately before the gun was fired.

Discussion

17. A criminal case very often depends on a jury, safely, being able to draw logical inferences from a series of established facts. The ultimate question for the judge is, *"could a reasonable jury, properly directed, conclude so that it is sure that the defendant is guilty?"* In order to draw such an inference the jury must be able to

"exclude all realistic possibilities consistent with the defendant's innocence", per Pitchford LJ in ***R v Masih [2015] EWCA Crim 477*** ***at [3]***.

18. The test was formulated by Lord Normand in ***Teper v R [1952] AC 480*** ***at 489***: *"It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."*

19. Lord Simon expressed the test in a way which modern juries may find more accessible: "*Circumstantial evidence is evidence of facts from which, taken with all the other evidence, a reasonable inference is a fact directly in issue. It works by cumulatively, in geometrical progression, eliminating other possibilities."* in ***DPP v Kilbourne [1973] AC 729 at 758.***

20. ***R v Banfield [2013] EWCA Crim 1394***, as is made clear in the Judge's ruling, became a focus of attention in the submissions in this case. The facts in ***Banfield*** were extremely unusual and the judgment was based on those specific facts. Two defendants were charged with murder. No body was found, the fact of the death was an inference that the jury were asked to draw from a series of facts. The two accused had 'animus' and had pleaded guilty to fraud involving the 'deceased's' pension. However, this court accepted that, on the evidence, it was impossible for the jury to exclude scenarios in which one or other of the accused were uninvolved in the murder ([61] and [62]). We are unpersuaded that the analysis in ***Banfield*** is relevant to the question which the judge had to determine in this case, namely, whether on the facts, the jury could exclude all realistic possibilities consistent with the Appellant's innocence.

21. The question in this case was whether the possibility could be excluded that he washed his hands, panicked, threatened Wayne Anglin and told him not to call the police, and took the gun and ammunition (thereafter disposing of them) because he had just shot his friend and was frightened of the consequences of the shooting rather than because he had been in possession of the gun before he arrived at the flat. It appears to this court that when the question is postulated in that simple way, the possibility of panic as an explanation for his actions after the shooting cannot be eliminated. His actions were consistent with someone who had been unaware of the gun until after he arrived at the flat, but who reacted in shock after it accidentally discharged. If that possibility could not properly be excluded on the available evidence, then a jury could not have safely concluded that the only inference to be drawn from that conduct was his guilt of the count of possession of the weapon before arriving at the flat. The submission that the count should not be left to the jury should have been allowed and we allow the appeal against conviction on count 1 of the indictment.

Sentence

22. The Appellant has leave to appeal sentence on count 1. That falls away, given our conclusions above. However, if an Appellant has been convicted of a number of offences and the Court of Appeal quashes only some of the convictions, it is entitled to resentence on the surviving counts. In reconsidering the sentence, section 4(3) of the Criminal Appeals Act 1968 provides that, *"The Court shall not under this section pass any sentence such that the appellant's sentence (taken as a whole) for all the*

related offences of which he remains convicted will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial for all the related offences." Subject to that limitation, the court may increase the sentence on the counts of which the appellant remains convicted (***Hewgill [2011] EWCA Crim 1778***).

23. On count 1 the sentence was an extended sentence of 23 years, made up of a term of 18 years custody and an extended licence period of five years. The sentence on count 3 (manslaughter) was a concurrent term of eight years, with the statutory minimum term of five years on count 4 (the possession of a prohibited weapon). It is clear that the Learned Judge structured the total sentence around the conviction on count 1, reflecting the overall criminality in the term imposed on that count. As a result, the question of the total sentence for counts 3 and 4 must be revisited.

24. Given that the Appellant is now convicted of gross negligence manslaughter and the possession of the weapon in order to dispose of the evidence, the main basis for the judge's finding of dangerousness no longer applies ("anyone who goes around the community with a firearm ready for use must be dangerous"). There was nothing in his antecedent history, standing alone, to establish dangerousness.

25. The Sentencing Council Definitive Guideline on manslaughter provides four categories for gross negligence manslaughter. Very high culpability brings a case into category A. Very high culpability is established by a combination of factors that would individually indicate high culpability. In this case we find that two of those factors are present; "the negligent conduct was in the context of other serious criminality" and "the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct". We recognise that we have re-categorised this offence and that the Judge found it to be a category B offence. She had accounted for the "other serious criminality" in her sentence on count 1 and that way avoided double counting.

26. Having placed the offence of manslaughter in category A, there is an available range of 10 to 18 years with a starting point of 12 years imprisonment. The level of wider criminal behaviour and the exceptional level of his disregard for the safety of others in this case means that the sentence must move up from the starting point.

27. There are also a number of aggravating factors present; the most serious is the use of the weapon but there is also the disposal of the weapon. Further there was a failure personally to seek assistance for his friend, who was still alive at the time he fled the scene. We must also reflect the conviction on count 4 which attracts the statutory minimum sentence of five years.

28. In mitigation, the Appellant did not have relevant previous convictions, he eventually gave himself up and directed the police to the spot where he had concealed the gun. Balancing those factors, the least sentence, before credit for his guilty plea, is 15 years. Adjusting that term to reflect the guilty plea, the sentence on count 3 is 10 years. This count was specifically indicted as gross negligence manslaughter; had it been pleaded as 'unlawful act' manslaughter the range in category A would have been 11 to 24 years, with a starting point of 18 years custody.

29. On 18 December 2017 the Appellant was made the subject of a sentence of 13 months imprisonment suspended for two years for drugs offences, including possession of Class B drugs with the intention to supply to another. He was also made the subject of a Rehabilitation Activity Requirement for a period of up to 30 days. He failed to comply with the Rehabilitation Activity Requirement, but the suspended sentence continued to operate. His conviction on this matter was a breach of the suspended sentence. The learned Judge took the view that, given the length of the total term she was imposing it would not be just to activate any part of that term. She did not take any other action in respect of the breach. When dealing with the breach of a suspended sentence order the court may impose all or part of the suspended sentence unless it would be unjust to do so in all the circumstances. If the court takes that view it must impose a fine, impose more onerous community requirements or extend the operational or supervision periods. The powers of the court are set out in schedule 12, paragraph 8(2), (3) and (4) to the Criminal Justice Act 2003. The court cannot take no action on the breach.

30. The Appellant has a significant criminal record and has failed to comply with court orders in the past. We see no reason not to impose the suspended sentence in its entirely in this case. Although not indicted the Appellant was clearly involved in drug dealing at the time of the manslaughter and had continued in that activity notwithstanding the imposition of the suspended sentence only 12 months before.

31. The sentence on the manslaughter offence is 10 years, the suspended sentence of 13 months is ordered to run in full consecutively to that term. The sentence on count 4 remains unaffected at five years ordered to run concurrently making a total of 11 years and one month.

32. The ancillary orders remain unaltered. To that extent these appeals are allowed.