No: 201900293/C2-201900482/C2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2020] EWCA Crim 362

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 16 January 2020

B e f o r e:

LORD JUSTICE FLAUX

MR JUSTICE SOOLE

MRS JUSTICE EADY DBE

R E G I N A
v

IOAN CAMPEANU

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Mr M Bromley-Martin QC appeared on behalf of the **Applicant**

J U D G M E N T
(Approved)

LORD JUSTICE FLAUX:

1. On 21 December, in the Central Criminal Court, following a trial before Jacobs J and a jury, the applicant (now aged 45) was convicted unanimously of murder (count 1) and by a majority of 10:2 of child destruction, contrary to section 1(1) of the Infant Life (Preservation) Act 1929 (count 2). On 10 January 2019 he was sentenced by the same judge to life imprisonment on the count of murder with a minimum term of 26 years less 219 days spent on remand. On count 2, child destruction, he was sentenced to a concurrent term of 14 years' imprisonment.

2. He now renews his application for leave to appeal against conviction and sentence following refusal by the single judge.

3. The facts of the offence are as follows. At the material time the applicant (then aged 43) and his partner Andra Hilitanu (then aged 28) had been in a relationship for about 2 years. They were both Romanian nationals. Andra had left a violent husband to live with the applicant in 2016 and she had two children aged 6 and 9 who lived apart from her in Italy but whom she saw from time to time. The couple were both addicted to crack cocaine and financed their drug habits through stealing.

4. On 1 June 2018, at 2.24 am, the applicant telephoned the emergency services and said that he had killed his partner Andra with a pair of scissors. On the arrival of the emergency services her body was found in the bathroom of their shared flat in Neasden. She had been 7 months' pregnant (29-30 weeks) at the time of her death. Her unborn daughter was also dead at the scene. A post-mortem examination was carried out and the pathologist, Dr Chapman, found that 40 separate sharp injuries were inflicted on Andra using the scissors before she eventually bled to death. She died from heavy blood loss from four separate stab wounds to her neck but she might have been saved had the emergency services been contacted sooner. The pathologist also noted sharp injuries had been inflicted to her pelvic area and a further 40 blunt injuries from her body being struck or gripped.

5. A defence pathologist, Dr Rowse, also carried out a post-mortem examination. There was no dispute that the neck injuries were a substantial cause of her death. The cocaine may also have accelerated her death. The unborn child died from a shortage of oxygen caused by the death of her mother.

6. Prior to the killing both the applicant and Andra had consumed a large quantity of drugs, including crack cocaine, which was reflected in the toxicology reports. They had arrived home at the flat at 22.40 and the wounds were inflicted between 22.40 (when the couple

arrived) and 24.09 when the applicant telephoned his ex-wife in Romania. At 00.20 he then telephoned his daughter, Sabina, and said words in Romanian to the effect of "I got rid of her". Before calling the emergency services 2 hours later the applicant smoked more crack cocaine, watched some videos and drove around London.

7. The applicant accepted that he had been responsible for inflicting the fatal stab wounds and when the police arrived at the flat he was very relaxed and calm and told them that he had killed Andra and showed them her body. This was all captured on body worn footage of the police officers.

8. The prosecution case was that the applicant murdered Andra in a brutal and sustained attack and left her to bleed to death on the floor of the bathroom. By also targeting and stabbing her pelvic area with the scissors, alternatively killing the unborn child's mother, he further intended to kill the unborn child and was guilty of child destruction. The prosecution relied upon the evidence of the pathologist as to the location and number of injuries. The intent to kill was supported by his 2-hour delay in calling the emergency services, when evidence from a prior incident showed that he knew there was an ambulance station 5 minutes away. Had he called the emergency services sooner the baby might have survived notwithstanding the death of her mother. Evidence of bloodstaining throughout the flat showed it was a sustained attack which took place in several rooms. There was evidence from a neighbour of an argument and subsequent screaming showing the length of the attack and that the applicant was the aggressor.

9. The prosecution also relied on bad character evidence from Andra's family and friends of the appellant's propensity to commit domestic violence on her, including controlling behaviour such as preventing her from phoning her children and making threats against her. They relied upon his admission to his daughter Sabina on the telephone and then to the police at the scene of his being responsible for the killing and his failure to mention self-defence at those times, together with his subsequent silence in interview and failure to mention facts relied upon in his defence, namely self-defence to the police, from which the prosecution said that his guilt could be inferred. To show that the applicant could not have been acting in lawful self-defence, the prosecution also relied on his own evidence that at the time he stabbed Andra in the neck with scissors she was unarmed.

10. The defence case in relation to the count of murder was that the applicant acted in self-defence in stabbing Andra twice in the neck and that, given that he was under attack and they were both under the influence of crack cocaine, his response was proportionate. He gave evidence in his own defence that he had not intended to kill either Andra or the unborn child, but that she stabbed herself with the scissors and when he intervened she attacked him and grabbed his testicles in the bathroom which is when he stabbed her in the neck. He said that he had then watched a video of the State Opening of Parliament and he had then driven to Buckingham Palace to ask the Queen for medical help as he said he was in a state of paranoia because of the drugs he had taken.

11. It is to be noted that, despite the submissions of Mr Bromley-Martin QC on the applicant's behalf and the references which he gave us in his oral submissions to the evidence of the applicant, at no point in his evidence did the applicant give evidence that he did not know what he was doing or that he was incapable of forming the requisite intent for murder because of his consumption of crack cocaine.

12. The applicant relied on evidence of his injuries in the form of a body map, which the prosecution contended demonstrated the injuries were slight. He denied that he had a propensity for domestic violence and he relied on evidence from his daughter that she had not witnessed any violence against her mother (the applicant's ex-wife). He further had no convictions for serious violence apart from an old conviction for robbery. He relied upon bad character evidence against Andra to show that she was violent and often untruthful.

13. In relation to the count of child destruction the applicant further relied on the pathologist's evidence that there were external or internal traumatic injuries to the foetus and that the baby died as a result of lack of oxygen caused by the death of its mother, to show that there were no injuries directly inflicted on his unborn daughter and he had not intended to kill her. Any injuries inflicted in the pelvic area were inflicted by Andra on herself.

14. The issues for the jury were thus:
    (i) whether they could be sure that the applicant had not killed Andra in self-defence;
    (ii) whether the applicant had intended to kill Andra or cause her really serious arm and.
    (iii) whether the applicant had intended to kill the unborn child.

15. Following discussions before counsels' speeches the judge ruled against the defence, saying that he would not give the so-called *Sheehan* direction after the decision of this Court in *R v Sheehan and Moore* (1974) 60 Cr App R 308, on intoxication, because there had been no evidential basis for such a direction. The applicant's evidence was detailed and was that he acted in self-defence. He had given a detailed account of the various positions that he and Andra were in during the incident and the fatal wounds inflicted. The judge said that the applicant's evidence was not that he did not know what he was doing and could not have formed the intent to kill because of his voluntary intoxication by ingestion of crack cocaine.

16. The judge attached weight in his ruling to paragraph 9 in Section 9 "Intoxication", in the Crown Court Compendium, which provides: "A direction about the effect of intoxication by alcohol and/or drugs on D's state of mind will be necessary only if: (1) D claims not to have formed the required state of mind (mens rea) because he/she was intoxicated by

such substances; and (2) there is evidence that D may have consumed such substances in such a quantity that D may not have formed that state of mind."

17. Since the first of those matters, namely that the defendant claimed not to have formed the required state of mind because of intoxication, was not in evidence here, the judge rejected the submission by Mr Bromley-Martin QC that such a direction should be given. What happened thereafter is that notwithstanding that ruling, which Mr Bromley-Martin QC evidently did not like, he saw fit in his closing speech to suggest that the applicant had been so intoxicated as to be unable to form the requisite intention for murder notwithstanding that there had been no evidence to that effect from the applicant himself at trial.

18. In his detailed and scrupulously fair summing-up the judge reminded the jury of what the evidence at trial had been, specifically reminding them that the applicant had given a detailed account of how things had happened and had not suggested in his evidence that he did not know what he was doing to Andra because he was so out of his mind with drugs.

19. The sole ground of appeal in relation to conviction pursued but Mr Bromley-Martin QC is that the judge was wrong not to give the *Sheehan* direction since the applicant's severe intoxication by crack cocaine was relevant to whether he formed the relevant specific intention to kill or cause serious bodily harm to Andra and the separate intention to harm the unborn child. It was also relevant to the immediate aftermath of the incident when the applicant failed to call the emergency services for 2 hours. Particular emphasis was placed by Mr Bromley-Martin on the applicant's evidence that "It didn't come into my head then to summon help. I was in a state of paranoia of the drugs. I was afraid. I was terrified." He submitted that the facts of intoxication therefore went to the issue of intention.

20. In his written advice he relied upon what was said by Rose LJ giving the judgment of this Court in *R v Alden and Jones* [2001] EWCA Crim 3041, at paragraph 35:

> "In our judgment, so far as the question of alcohol and specific intent are concerned, we do not take the view that there are two divergent, inconsistent, lines of authority. The crucial question in every case where there is evidence that a defendant has taken a substantial quantity of drink, is whether there is an issue as to the defendant's formation of specific intent by reason of the alcohol which he has taken. As the passage in the judgment of Lane LJ in Sheehan & Moore, makes clear, the necessary prerequisite to a direction of the kind identified in that case is that there must be an issue as to t he effect of drunkenness upon the defendant's state of mind."

21. Mr Bromley-Martin QC submitted that there was an issue in this case as to whether the

applicant was too intoxicated to form the relevant intention so that a *Sheehan* direction was necessary. Not only had the judge failed to give such a direction but the position was compounded by the direction he actually gave which gave the impression that intoxication was of no relevance and effectively removed it from the case by emphasising that there was no evidence that the applicant did not have the capacity to form the specific intention. The question for the jury was whether the applicant did form the intent not whether he was capable of doing so.

22. Forcefully though these submissions were advanced we do not consider there is any merit in them. As is clear from the authorities and the Compendium which the judge relied upon and which accurately summarises the law, for a *Sheehan* direction to be necessary there must be a proper factual or evidential basis for it. As Mr O'Neill QC for the prosecution points out in his respondent's notice in *Alden and Jones*, after the passage relied upon by the defence, at paragraph 37 this Court went on to approve what Henry LJ said in *R v McKnight* (2000):

> "In our judgment, it follows from *Sooklal* that there must be a proper factual basis before the *Sheehan and Moore* direction is given. It certainly is not every case of drunkenness that would require it. There is no such factual basis here."

23. The court also said at paragraph 40 of *Alden and Jones*:

> "The consequence of these authorities, as it seems to us, is that they illustrate that the terms of a summing-up, in relation to alcohol as affecting intention, have to be addressed to the evidence in the particular case."

24. As Mr O'Neill QC put it, before such a direction is necessary, there must be sufficient evidence of the defendant claiming not to have formed the requisite intention due to his state of intoxication. The mere facts of intoxication is not sufficient of itself. There must be a causal connection between the two. The evidence relied upon by Mr Bromley-Martin QC about the applicant being in a state of paranoia because of the drugs was not evidence of his state of mind at the time of the stabbing and, as Mr O'Neill QC said, it does not create a causal connection between himself induced intoxication and killing her.

25. Reliance was also placed upon his evidence in re-examination when asked what was in his mind after he grabbed the scissors and stabbed Andra in the neck and said he was not himself and was not in control of his mind at that point. However, this is no more than a straw in the wind, since it is not evidence of lack of intention due to intoxication. As Mr O'Neill QC says, in his evidence the applicant never made a connection between his intoxication and his state of mind. As the judge said in his ruling, on the contrary, the applicant gave a detailed account in his evidence of exactly what happened at various

stages of the evening including as to their respective positions at various times. The judge's conclusion that no *Sheehan* direction was required cannot be seriously criticised.

26. In relation to Mr Bromley-Martin QC's criticism of the direction the judge did give in his summing-up, we agree with Mr O'Neill QC that the judge was not directing the jury that the question they had to answer was whether the applicant was capable of forming the requisite intention, he was merely reminding them of what evidence had been and had not been given. As Mr O'Neill QC says it was incumbent on the judge to do that given that, notwithstanding the ruling against the applicant Mr Bromley-Martin QC had chosen to address the jury on the topic of self-induced intoxication and intent in his closing speech. As the single judge said the criticism of the judge is unfounded and what he said to the jury was a correct representation of the evidence that had been given.

27. Accordingly, this renewed application for leave to appeal against conviction is dismissed.

28. Turning to the renewed application in relation to sentence, in his sentencing remarks the judge set out the circumstances of the offences and devastating impact on Andra's family and children. She had been the victim of a sustained and violent attack, with at least one break in the violence before the applicant resumed which had taken place in various parts of the flat. Forty sharp injuries were noted on her body inflicted by the applicant with a weapon (an ordinary pair of scissors) and there was no mercy shown. The murder was against a background of drug fuelled domestic violence and Andra and her unborn baby had been left to bleed to death on the bathroom floor when a prompt call to emergency services might have saved them. Instead the applicant made phone calls, smoked some crack cocaine, watched some videos and drove into London. The judge was satisfied that the applicant was the aggressor and this was not a case of excessive self-defence although he accepted it was not premeditated. There was a clear intent to kill a vulnerable and heavily pregnant woman evidenced by the four neck wounds and the jury found the applicant intended to kill the unborn child. The terror and agony experienced by Andra before her death were awful to contemplate and she suffered a horrible death a long way from her native home and family.

29. In mitigation the judge accepted that sometimes the relationship was a loving one and the applicant had experienced a very difficult and abusive upbringing in an orphanage in Romania, but this was not self-defence and the applicant had no mental disability or disorder which would lower his culpability. Drug taking played a significant part in the events which took place. Whilst it was not an aggravating factor which increased his sentence, the applicant was not of previous good character; he had been convicted of various offences in Romania and England and sentenced to terms for robbery, aggravated robbery, theft and criminal damage. The judge concluded that the aggravating factors sufficiently outweighed the mitigating factors to merit a substantial increase from the 15-year starting point. For the murder itself, without the aggravating feature of the child destruction, the minimum term would be 20 years. The offence of child destruction was

an extremely serious offence for which a lengthy sentence of imprisonment of 14 years would have been appropriate if it had stood alone. The judge bore in mind the principle of totality, so did not increase the sentence by the full 7 years the applicant would serve (if a 14-year sentence was imposed) but by 6 years so that the minimum term was 26 years.

30. The first ground of appeal against sentence is that the judge erred in treating as an additional aggravating factor the failure of the applicant to summon emergency services for 2 hours. Given the uncertainty on the evidence as to when Andra had died, Mr Bromley-Martin QC submits that the judge was not justified in any finding of fact that the applicant failing to summon assistance had contributed to her death and therefore was an aggravating factor. We agree with the single judge that there is nothing in this point. As she said:

> "The judge was entitled to find that your failure to obtain help for [Andra] after your attack was an aggravating factor. Although there was some doubt as to when precisely the victim died you were close to an ambulance station and could have done more to obtain assistance. Instead you left her in the room for over 2 hours while you took more crack cocaine, watched YouTube videos, spoke to your wife and daughter on the phone and drove into central London and back. There was virtually no mitigation."

31. In our judgment, it is no answer to say that Andra may have been dead by 00.07. The judge was entitled to conclude that the applicant's conduct, in failing to call the emergency services for over 2 hours, did amount to an aggravating factor and in any event, even if Mr Bromley-Martin QC were correct in relation to that matter, there were all the other aggravating factors which the judge identified in his sentencing remarks which fully justified his conclusion that the starting point for the minimum term in relation to the murder alone should be increased from 15 years to 20 years.

32. The second ground of appeal is that a far greater allowance for totality should have been given than the 1 year reduction that the judge gave. This would have been consistent with the approach of this court in *R v Wilson* [2017] EWCA Crim 1555; [2017] 1 Cr App R(S) 7. That case was one involving disguise and planning, where the appellant was convicted of section 18 grievous bodily harm of his partner and child destruction of his unborn child. The life sentence was imposed with a minimum term of 16 years, equating to a notional determinate sentence for the two offences of 32 years. That was reduced on appeal to 28 years on the basis that insufficient account had been taken of totality. Mr Bromley-Martin QC submitted that a similar reduction was appropriate here.

33. As the single judge pointed out, the real question for this court is not whether the individual sentences were manifestly excessive but whether the total sentence was. We agree with her conclusion that:

> "Given all of the aggravating factors of the murder together with the child destruction and in the commission of which you had an intent to destroy the life of your [own] unborn child it cannot properly be said that it was [manifestly excessive]." Accordingly, this renewed application for leave to appeal against sentence is 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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