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No. 2020/01188/A2 & 2020/01276/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 7th July 2020

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE FRASER

and

HIS HONOUR JUDGE MICHAEL CHAMBERS QC

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E G I N A

- v -

MICHAEL AYORINE TAIWO

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Miss D Heer on behalf of the Attorney General

Mr A Bajwa QC and Mr G Wasuna appeared on behalf of the Offender

J U D G M E N T

Tuesday 7th July 2020

LORD JUSTICE DAVIS:

Introduction

1. This is one of those cases where the Attorney General applies, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court a sentence on the ground that it was unduly lenient, and the offender seeks to challenge the same sentence on the ground that it was manifestly excessive.

2. The sentence in question is one of four years ten months' imprisonment following a guilty plea to the lesser offence of manslaughter on an indictment containing a count of murder. The plea was accepted by the Crown. The death in question had resulted from a single punch administered by the offender.

3. The offender is Michael Taiwo. He is 23 years of age. Having been charged with murder, the case was listed on 3rd September 2019 in the Crown Court at Northampton for a plea and trial preparation hearing. It appears that arraignment did not then take place. The defence informally indicated a plea of not guilty. The case was adjourned for a trial to take place on 23rd January 2020.

4. Unhappily, even a few days before trial, no Defence Statement had been provided, although it appears that at a prior stage it had been indicated that at least one of the issues would be causation. At all events, expert evidence having been obtained, on 17th January 2020 the offender indicated a willingness to plead guilty to manslaughter. On 23rd January 2020 the case was listed for a plea to be taken. The offender was then arraigned and pleaded guilty to the lesser offence. He put forward a limited basis of plea to the effect of no particular relevance for present purposes.

Background Facts

5. The background facts were these. On Saturday 24th August 2019 the offender spent the evening drinking in Northampton with work colleagues. One of those colleagues was his supervisor, Sean Steel. After visiting several public houses, at about 11pm they ended up in the Old Bank pub. A man called Glen Davis was drinking in the pub along with friends of his. There was CCTV footage of what happened thereafter, although not all of it is totally distinct.

6. In the beer garden of the pub, an argument broke out between Mr Davis and Steel. Mr Davis seemed angry. He was heard to say to Steel, "You mugged me off". He then punched Steel to the head. Almost immediately, the offender punched Mr Davis back, again to the head. He was later to say that at that stage he had been acting to protect his friend Steel. Something of a fracas ensued, in the course of which the offender gratuitously kicked or kneed Mr Davis to the face. Steel also punched Mr Davis to the head. During the scuffle, Mr Davis' T-shirt was ripped open. Door staff intervened. Steel was placed on the floor, where Mr Davis kicked him. There was a further scuffle, but eventually door staff managed to grab the offender who was ejected from the premises. Steel was also required to leave. Mr Davis remained with his friends.

7. The offender initially walked away from the pub, accompanied by a man called Franklin. However, he then asked Franklin if there was another way back into the pub. Franklin directed him to a side entrance. The offender then sprinted off towards it. As he approached the gate to the pub garden, he was heard to shout, "Come outside, come outside". He was

initially prevented from entering the garden. He retreated but then he returned, ran up to Mr Davis, who was standing near the gate, from behind and, whilst running, punched him to the back of the head with sufficient force to cause Mr Davis, who was a fit and powerfully-built young man, to stagger forwards. One witness, a Mr Bussey, described the punch as a "running punch" with a clenched fist delivered with "quite a lot of force". Afterwards, the offender, who seemed to have drawn back somewhat, continued to shout, "Come out, come and fight me…" He also said to Bussey, "He hit my mate, what was I supposed to do? What would you have done if it was your mate?"

8. As the CCTV footage shows, after he initially staggered forwards having been punched, Mr Davis turned around and squared up, seemingly aggressively, in the direction of the offender. However, after a delay of about 21 seconds, Mr Davis collapsed. A member of staff saw Mr Davis hit his head on a table as he fell. Mr Bussey described Mr Davis falling "quite slowly" to the ground, at which point, although he was told to wait for the police, the offender ran away in the company of another man. Later, he swapped his T-shirt with that other person. It is clear that he had been trying to avoid detection and to disassociate himself from any incriminating evidence.

9. Members of the staff attempted to help Mr Davis, who was in cardiac arrest. An ambulance attended. He was taken to hospital, where a scan showed that he had intracranial bleeding. All attempts to save him failed. Sadly, he died the following evening.

10. A post-mortem examination of the brain showed that Mr Davis had suffered subarachnoid haemorrhage at the base of the brain and axonal injury which is consistent with severe trauma to the back of the head and also with violent twisting of the head and neck resulting from impact. In the course of the statement which was before the court, under the heading "Cause of Death" Dr Hamilton said this:

> "The immediate cause of death in this case has been traumatic basal subarachnoid haemorrhage. This represents bleeding on the surface of the brain as the result of trauma. It is most commonly seen in cases where there is a blow causing a rapid twisting motion of the neck, but can also result from direct and forceful blows to the neck … Such basal haemorrhages usually cause almost instantaneous collapse and, most often, death. In my opinion the sequence of events in this case has been that he was struck towards the back of the head or neck. After this, he was unsteady and collapsed within a small number of seconds. Such a sequence is entirely consistent with the effects of traumatic subarachnoid haemorrhage."

Dr Hamilton also noted that there were no other significant injuries of any kind to the head or body.

11. On 28th August 2019, uniformed police officers attended an address in Northampton. There they detained the offender, albeit he first attempted to escape over the back garden fence. He was arrested upon suspicion of murder. When cautioned, he said that he was about to hand himself in that day.

12. He was taken to Northampton police station where he was interviewed. Initially, he did not admit punching Mr Davis during the initial confrontation, but when shown the CCTV footage he accepted that he had. However, he refused to accept that he had delivered the subsequent fatal blow. He claimed that the witnesses who stated otherwise were liars. That, as was subsequently demonstrated, was itself a lie on his part.

The Sentencing Proceedings

13. Moving Victim Personal Statements were provided by the deceased's mother, his sister and other close friends. They describe the traumatic effect of Mr Davis' death on them. It is not necessary for present purposes to set out in full what they say. Their grief and loss will be obvious. To them their pain and loss has felt like a life sentence.

14. The offender had no previous convictions or cautions of any kind recorded against him. Indeed, there was positive character evidence in his favour.

15. A pre-sentence report was broadly favourable. It was common ground that the offender was not to be assessed as dangerous. It was also stated that he was truly remorseful at that stage. That was accepted. He ought, of course, to be truly remorseful: look at what he has done. It was said, amongst other things, by his sister that what he did, nevertheless, was wholly out of character.

16. When the matter came before the sentencing Judge, Her Honour Judge Lucking QC, the position was fully addressed by counsel then appearing for the prosecution and by Mr Bajwa QC, then as now appearing for the offender. The judge was inevitably taken to the definitive guideline issued by the Sentencing Council relating to manslaughter. It is necessary for present purposes to set out some of the provisions of that guideline. In dealing with step one, with regard to culpability, the guideline makes clear, amongst other things, that the court should avoid an overly mechanistic application of the specified factors. It was, of course, common ground that his was not a case of very high culpability. It was also, of course, common ground that this was not a case of lower culpability. One important issue was whether this was a category B case, indicating high culpability; or a category C case, indicating medium culpability. The two potential candidates for this being a category B case was that death was caused in the course of an unlawful act, which involved an intention by the offender to cause harm falling just short of grievous bodily harm; or that death was caused in the course of an unlawful act which carried a high risk of death of grievous bodily harm which was, or ought to have been, obvious to the offender.

17. So far as category C is concerned, the guideline identifies such cases as those falling between high and lower culpability. They include, but are not limited to, cases where death was caused in the course of an unlawful act which had involved an intention by the offender to cause harm or recklessness as to whether harm would be caused.

18. At step two under the guideline, it is, amongst other things, stated:

> "**Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**"

So far as category B is concerned, the starting point set out in the guideline is one of 12 years' custody, with a category range of eight to 16 years' custody. The starting point for category C is

six years' custody, with a category range of three to nine years' custody. Aggravating factors, assessed by reference to the list set out in the guideline, include the fact that the offender was in drink at the time and, further, the fact that he had sought to escape detection after the offence. As against that, there was the strong mitigation in that he had no convictions or cautions of any kind and had positive character assessments; the fact that he was truly remorseful; and also, to some extent, the fact that he was relatively young at the time.

19. Having been addressed by counsel on various matters and having been taken to the guideline, the judge set out the background facts in some detail. She referred, rightly, to the Victim Personal Statements and the impact upon the friends and family of Mr Davis. The judge then said this:

> "This was a single but heavy punch to the back of the head of a man who was in drink and would not have seen the blow coming. It is not a case where there was no obvious risk of anything other than minor harm.
>
> The category is C, with a starting point of six years and a range of three to nine years.
>
> …
>
> The aggravating features are that you were under the influence of alcohol; that you failed to heed the warning of others who had removed you from the premises and you returned to continue the violence; your actions after the event in leaving the scene; and others, of course, had to administer CPR; and changing your top.
>
> The sentence, before taking the mitigation into account, would be one of eight years' imprisonment after trial. …"

The judge dealt with the mitigation and stated that, taking that into account, the term would be one of six years' imprisonment after trial. The judge then gave credit for the guilty plea of close to 20% and thereby reached the sentence we have already indicated.

Application for Leave to Appeal Against Sentence

20. It is convenient first to take the offender's application for leave to appeal against sentence. Mr Bajwa submitted that the judge had correctly assigned the offence to category C under the relevant guideline in terms of culpability, which gave a starting point of six years' custody and a range of three to nine years, before credit for plea He submits, however, that the judge was wrong to end up with a figure of six years, before credit for plea, after balancing the aggravating and mitigating factors. It was much stressed by Mr Bajwa that here there was but one single punch which had caused the death. No weapon of any kind had been involved; nor had the blow been such as to knock the deceased down to the ground immediately. He stressed that there was no significant external injury of any kind. He submitted that here, at most, the offender had been reckless, rather than having any specific intent. Further, he suggested that there was an element of provocation involved in the deceased's previous conduct towards Mr Steel. He further submitted that the aggravating factors were of no very great moment and that the mitigating factors "far outweighed" those aggravating factors.

21. Even accepting for these purposes that this case is properly to be placed within category C of the guideline – a point to which we will have to revert – we consider that these arguments are not tenable. The circumstances in which single punches can give rise to fatalities, with no actual intent to kill or to cause grievous bodily harm, vary from case to case. At all events, this case, most emphatically, was not the kind of case, for example, where there is a relatively light punch to the face causing a victim to stumble back and then to strike his head on the ground, with fatal consequences. Here the fatal punch had been preceded by the violent fracas in which the offender had played a full part and which included, as the judge found, a gratuitous kick by the offender to the deceased. That is in itself significant, even if the offender had initially been trying to assist his friend, Mr Steel. It is also important, of course, to bear in mind that, having been escorted away, the offender then deliberately returned to the scene, clearly intent on violent retaliation and then, whilst running, administered a forceful punch to the deceased from behind, causing him to stagger forwards and ultimately causing him a basal subarachnoid haemorrhage which manifested itself within 21 seconds. There were also the other identified aggravating factors involved in drink and his trying to conceal his involvement thereafter. Equally, we must bear in mind the personal mitigation. In all the circumstances, it is wholly unarguable that this sentence was manifestly excessive.

22. Mr Bajwa also complained that insufficient credit had been given for the guilty plea. In the court below he had accepted that the appropriate range would be 20 to 25%, but he told us that that was under a misapprehension, he not having realised that the offender had not even been arraigned at that stage. We find that somewhat surprising. At all events, the offender had denied in interview any involvement in the administering of the fateful punch. He had never in terms indicated that the only issue would be one of causation. The Crown would, therefore, have had to prepare for trial on a full basis. The guilty plea only eventuated a few days before the date listed for trial. Overall, we think that the judge was entitled in her discretion to accord, as she did, credit of 20% for the guilty plea.

23. Thus the offender's application is refused.

The Reference

24. We turn to the application made on behalf of the Attorney General: that this sentence was unduly lenient. Miss Heer, on behalf of the Attorney General, submitted that the judge was simply wrong to place this case within category C. She contended that this was a category B case, and in particular suggested that it comes within the second factor identified within the guideline relating to category B. She submitted that there is no principle that a single punch manslaughter is not capable of falling within category B. Indeed, she cited to us the recent decision of a constitution of this court in *R v Coyle* [2020] EWCA Crim 484 as an example of a single punch manslaughter case held to come within category B. She stressed that the sequence of events in this case shows that, after the initial violence, the offender had returned to the scene bent on violence, had administered the punch very forcefully from behind when the deceased was oblivious to what was about to happen, and that the punch had been of sufficient force as of itself to cause the subarachnoid haemorrhage manifested within 21 seconds: although she accepted that it could not be identified for sure whether it was by reason of the force of the blow itself or by reason of a twisting of the neck. But either way, she submitted, looking at the circumstances in the round, this was a case which did indeed fall within the second factor identified under category B within the guideline.

25. On behalf of the offender, Mr Bajwa, in effect, reprised his arguments raised in his application for leave to appeal against sentence. He submitted that the judge had been entirely justified in placing this case within category C and that there was no sufficient basis for this court to interfere with that evaluation: although he rightly accepted that it is a matter of factual

evaluation and not simply a mater of discretion. He stressed that what happened here was consistent with a twisting of the neck and asked us to note, as we do, that there was no sign of any external injury, such as a fracture or anything like that. He further submitted that at this stage there could be no criticism of the methodology which, in effect, resulted in the mitigating factors balancing out the aggravating factors. Accordingly, he submitted that the sentence of six years' custody taken by the judge, before credit for the guilty plea, was entirely justified. Indeed, consistently with his approach on the application for leave to appeal against sentence, he would say that this sentence was not even to be described as lenient, let alone unduly lenient.

Disposal

26. Single punch manslaughter cases can vary greatly as to their facts and circumstances. Certainly, we agree with Miss Heer that there is no principle that a single punch manslaughter can never come within the first two factors identified in the sentencing guideline relating to high culpability (category B). Indeed, Mr Bajwa fairly and rightly accepted that. Under the guideline, the use of a weapon is a specified aggravating factor: which connotes that the guideline is framed on the footing that it is capable, in terms of culpability, of applying across the range of categorisations where no weapon is used. It is, thus, correspondingly to be noted that lack of use of a weapon is not identified in the guideline as a mitigating factor reducing seriousness. Thus, whilst no doubt many single punch manslaughter cases will properly be assessed as falling within category C, it is by no means the case that all must be so categorised; although certainly it will always be relevant to consider whether or not a weapon has been involved.

27. We think that the decision of the court in *Coyle* provides a useful illustration of what a proper outcome can be in terms of categorisation, albeit we accept that that case was different on its facts from the present case. In *Coyle*, the offender, who had an antecedent history of some violence and who had been engaged for a while as a kick-boxer, forcefully and gratuitously punched the victim in the head when there was a dispute, in effect provoked by the offender, about a taxi booking. The force of the punch was such that the victim was rendered unconscious almost immediately, fell back into the taxi and then onto the road, where his head struck the ground. The offender then ran away. In the course of delivering the judgment of the court, Rafferty LJ, in effect, took it almost as a given that the case on its facts must fall within category B. She recorded, amongst other things, the submissions on behalf of the Solicitor General:

> "… This was an unprovoked attack, from behind, which permitted the deceased no opportunity to defend himself and the punch was of such force as to render him unconscious before or as he hit the ground. It was a punch delivered by a man who had been spoiling for a fight before the assault who blamed the deceased."

Rafferty LJ went on to accept the arguments of the Solicitor General as unanswerable and then said:

> "24. … This was a classic one-punch manslaughter for which the guideline is entirely apt within category 1B.
>
> 25. This was a man with previous convictions reflecting aggression. He punched someone who had no opportunity to guard himself. Shortly before the punch there had been ample

> demonstration of the aggression already featured in his previous convictions.
>
> 26. We struggle to see why the starting point of 12 years was reduced [by the sentencing judge] to ten. The Solicitor General is right, the starting point was 12 years. …"

The court in that case then went on to deal with the aggravating and mitigating factors and imposed a sentence of nine years and nine months' imprisonment.,

28. We think that *Coyle* is a useful illustration of how such matters may be approached, although we accept that there were distinguishing features from the present. But in this case, it must be remembered that the offender had already shown himself prepared to use violence, including a gratuitous kick. Having been shepherded away, he then deliberately returned and was plainly intent on more violence by way of retaliation. In particular, as supported by the evidence of eyewitnesses, and as consistent with what is revealed on the CCTV footage, he ran up at speed to the deceased from behind, when the deceased was wholly unaware of his presence, and then, whilst running, administered a punch with sufficient force to cause the powerfully built Mr Davis not only to stagger forward, but ultimately also to suffer a subarachnoid haemorrhage.

29. Taking all the circumstances of this case together, and having regard to the totality of the evidence, we think that this case falls within category B: in particular, by reference to the second factor set out in the guideline. This, in truth, was in its way a very bad case of manslaughter involving a single punch.

30. However, we think that there is a degree of force in Mr Bajwa's arguments. The guideline does, in an appropriate case, permit adjustment from the indicated starting point before further adjustment for aggravating and mitigating features. Certainly, we must bear in mind that there was but one punch involved and that no weapon was used. We think, overall, that it would be appropriate to take a starting point of eleven years (or thereabouts), before considering the aggravating and mitigating factors. We also agree with Mr Bajwa that, in this respect, one must then be careful not to double-count. Many of the factors which make this such a serious case are precisely those factors which make it appropriate to be allocated to category B. But, even so, over and above that, there were the identified factors of drink and the attempt thereafter to evade detection.

31. On the other hand, there was undoubtedly the powerful personal mitigation available to the offender, not least in his lack of any previous convictions, but also his genuine remorse, and also, to an extent, his age. The judge had clearly been inclined to give considerable weight to that mitigation. So do we.

32. We also bear in mind the enjoinder in the guideline: that the factors are not to be applied in an overly mechanistic way. But, equally, we must also bear in mind, as stated by a constitution of this court in *R v Bola* [2019] EWCA Crim 1507 (a case of manslaughter), and speaking generally, that it is always appropriate to treat the context in which the offence came to be committed as highly material.

33. In our judgment, placing this case within category B, as we do, and balancing the various factors altogether, the appropriate resulting figure, before credit for the guilty plea, should have

been one in the order of nine years' imprisonment on the particular facts of this case. With credit of 20%, that gives rise to a sentence of seven years and two months' imprisonment. In our judgment, that sentence is appropriate to the circumstances of this case.

Conclusion

34. We accordingly accede to this reference. We grant leave. We allow the appeal and increase the sentence to one of seven years and two months' imprisonment. The period of 64 days, by reference to time spent on a qualifying curfew, will continue to count towards the sentence.
