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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202103996/A3
NCN [2022] EWCA Crim 539



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 13 April 2022

Before:

LORD JUSTICE HOLROYDE

MRS JUSTICE FARBEY DBE

SIR NIGEL DAVIS

REGINA

v

BRODIE ROBERT GROOME

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MR C RUSH appeared on behalf of the Appellant.

MS N MAY appeared on behalf of the Crown.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: This is an appeal by leave of the single judge against a sentence of 13 years' imprisonment for the unlawful killing of Mr Steven Warburton.
2. For the purposes of this appeal, the relevant facts can be summarised quite briefly. At around midnight on 18 August 2020 two groups, each comprising two men and two women, chanced to meet in or near a car park in Colchester. One group included the appellant. The other group were Steven Warburton, his wife, Caroline, his son, Brodie and his daughter-in-law, Olivia. That quartet had been celebrating the younger couple's first wedding anniversary. All members of both groups had been drinking. It appears that some in each group were using the car park as a place to urinate.
3. An argument began which quickly developed in to violence initially involving the female members of the groups. Caroline Warburton was on her knees on the ground. Her husband, who had not been involved in any violence, started to help her up. As he did so the appellant stepped forwards and punched him in the face. That punch caught Mr Warburton unawares. It was struck with sufficient force to cause him to fall backwards, striking his head on the ground and sustaining a serious head injury. It is relevant to note that the manner in which Mr Warburton fell has been described as being "poleaxed", as opposed to stumbling or crumpling and subsiding to the ground in a more gentle manner. The incident then came to an end. Police officers who arrived very shortly afterwards found Mr Warburton to be in a clearly reduced state of consciousness. He was taken to hospital, where investigations showed a skull fracture and contusion of the brain.
4. Over the course of the next three weeks Mr Warburton remained in hospital. His condition appeared to improve. Very sadly however he then suffered a cardiac arrest and died. Expert medical evidence established a clear causal link between the brain injury caused by the appellant's punch and the death.
5. The appellant had in the meantime informed his probation officer that he had been involved in an incident, having apparently heard on the local radio that the victim had been seriously injured. To his credit, the appellant surrendered himself to the police. From the outset he maintained that he had acted in self-defence. At his trial in September 2021, in the Crown Court at Ipswich, the jury rejected that defence and convicted him of manslaughter.
6. At the sentencing hearing on 2 December 2021 the judge had the assistance of a pre-sentence report. The appellant had given an account of the incident to the author of that report, in which he had said that he had punched the deceased on the mouth or cheek. He said that he had meant the punch "to put him on his arse" and that he was not deliberately trying to knock him out.
7. Crimes of homicide not only end one life but also blight many others. The judge was provided with victim personal statements from the deceased's widow, son and daughter which vividly and movingly described their anguish at his death and their enduring sense of loss. Their distress had been compounded by the fact that the lockdown restrictions had meant that they had not been able to visit the deceased in hospital in the weeks between the offence and his death. We must of course decide this appeal in accordance with the law, but we have the loss suffered by the bereaved very much in mind.
8. A number of testimonial letters have been provided by persons who know the appellant well, describing the better side of his character.
9. Now aged 27, the appellant had previously been sentenced on 18 occasions for a total of

24 offences, including four offences against the person and six offences involving public disorder. His most recent convictions were for offences of harassment and malicious communications, for which on 8 April 2020 he had been made subject to a community order for 2 years and ordered to perform unpaid work. He had been subject to that order for just over 4 months when he committed this offence.

10. The Sentencing Council's definitive guideline for offences of manslaughter by an unlawful act applied to this case. The prosecution submitted that the case fell into category B (higher culpability). Mr Rush, then as now representing the appellant, submitted that it fell into category D (lower culpability) because it was an unlawful act in self-defence although not amounting to a defence. Alternatively, he argued that it fell into category C (medium culpability).
11. The judge, having referred to the eyewitness evidence and the video recordings of the incident which had been played to the jury, said that the fatal punch could clearly be seen on the CCTV footage. He initially said that it had been delivered with at least moderate force because it had knocked the deceased backwards. Later in his sentencing remarks he said that the punch, "whether it's described as a haymaker or not", had caused Mr Warburton to fall backwards with full force onto his back, with the back of Mr Warburton's skull taking the brunt of the fall as his head struck the ground. The judge concluded that the appellant had thrown the punch in anger and had targeted the one person who was doing nothing during the melee, choosing an easy target for his violence. He noted that the appellant had done nothing to assist the deceased as he lay on the ground. He concluded that death had been caused by an unlawful act which carried a high risk of really serious harm which ought to have been obvious to the appellant, and therefore the offence fell into category B of the guideline, with a starting point of 12 years' custody and a range from 8 to 16 years.
12. The judge found that the offence was aggravated by the appellant's previous convictions; the fact that he was subject to a community order at the time; the fact that he was under the influence of alcohol; the fact that the fatal blow was struck during an incident of serious public disorder; and the public concern about incidents of late-night drunken violence in city and town centres. The judge then referred to the testimonials which he accepted as showing that, when not intoxicated, the appellant was not a troublemaker. He concluded that the aggravating features made it appropriate to move upwards from the starting point of 12 years to 14 years' imprisonment, which he then reduced to 13 years to reflect the mitigating factor of the appellant's early admission of involvement and surrendering himself to the police. He did not find the appellant to be a dangerous offender. Thus, he imposed the standard determinate sentence of 13 years' imprisonment to which we have referred.
13. On behalf of the appellant, Mr Rush submits that the judge was wrong to place the case into category B and was wrong to adjust the starting point upwards to 14 years, and that the final sentence of 13 years was manifestly excessive. He no longer seeks to argue that the case fell into category D, but he contends that the throwing of a single punch without more was not sufficient to bring the case within category B. He points out that the judge himself at one point described the punch as being of "at least moderate force" and that the injury directly caused by the blow was a comparatively small contusion near the mouth. He accepts that R v Coyle [2020] EWCA Crim 484 and R v Taiwo [2020] EWCA Crim 902, show that a single punch may bring a case within category B, but he submits that the

facts of each of those cases were very different from the present case and involved features going beyond and additional to the throwing of a single punch. In the alternative he submits that, if the judge was entitled to put the case into category B, the starting point of 12 years should have been adjusted downwards to reflect the circumstances of the case.

14. Ms May, who also appeared below, submits on behalf of the respondent that the judge was correct to identify this as a category B offence and that the sentence of 13 years' imprisonment reflected a correct balancing of the aggravating and mitigating factors. She draws attention to the fact that the appellant struck the deceased at a time when the attention of the deceased was focused on helping his wife, when he had done nothing to attract violence and was therefore not expecting any blow. She also points out that after the deceased had been felled and was lying on the ground the appellant said words to the effect: "You hit my boy so I banged yours. Simple". That remark, submits Ms May, is indicative of this punch having been struck in anger or in a desire for revenge. She acknowledges that the medical evidence was not able to establish whether the deceased had lost consciousness before his head struck the ground, but she emphasises the description of the fall given by the judge to which we have already referred.
15. We are grateful to both counsel for their submissions which, if we may say so, were admirably succinct and well focused.
16. The Sentencing Council's definitive guideline divides cases of manslaughter by an unlawful act into four categories of culpability. There is no separate categorisation of harm because, of course, in all cases of manslaughter the harm will inevitably be of the utmost seriousness. The rubric which precedes step 1 in the guideline, and therefore precedes the lists of the characteristics of the differing levels of culpability, is important. It says:

"The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence. The court should avoid an overly mechanistic application of these factors."

17. Category A, very high culpability, plainly does not apply to this case. The material factor in category B which the judge found to be applicable is that:

"Death was caused in the course of an unlawful act which carried a high risk of ...GBH which ... ought to have been obvious to the offender."

18. It is relevant to note that category C (medium culpability) applies to:

"Cases falling between high and lower **including but not limited to...**"

19. two situations, one of which is:

"• where death was caused in the course of an unlawful act which

involved an intention by the offender to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower culpability."

20. It is also relevant to note that the category D characteristics indicating lower culpability include:

"• where there was no intention by the offender to cause any harm **and** no obvious risk of anything more than minor harm... "

21. We respectfully agree with the decisions in Coyle and Taiwo to the effect that cases where death is caused by a single punch will often fall into category C but may fall into category B. Whether or not they do so will depend on a fact-specific assessment of all the relevant circumstances. Sometimes it will be clear that the case falls squarely into category B and outside category C. That was found to be the position in both Coyle and Taiwo. Other cases may be closer to the dividing line between the two categories. Where that is so, the sentencer must balance the characteristics to reach a fair assessment of culpability. That will involve identifying the appropriate category but making, so far as necessary, an initial adjustment to the category starting point, upwards or downwards, before considering aggravating and mitigating factors. Such an adjustment was recognised as permissible in an appropriate case by the court in Taiwo at paragraph 30. It avoids what may otherwise be an unfair impact of the very significant difference between the starting points of 12 years' custody in category B and 6 years' custody in category C. It is also consistent with the overlap which the guideline provides between the category ranges, with the category B range starting at 8 years' custody and the category C range going up to 9 years' custody.
22. Applying those principles to the present case, we are unable to say that the experienced judge, who had presided over the trial and knew all the details of the evidence, was not entitled to assess this single punch as carrying a high risk of really serious injury which ought to have been obvious to the appellant. Accordingly, whilst it may well be that some judges would have regarded this as a category C case, with a need to adjust the starting point upwards, the judge was, in our view, entitled to place the offence into category B. Having done so however, he should, in our view, have made an initial downwards adjustment to the guideline starting point, to reflect the fact that this single punch was not struck with very great force, or against a man who was much smaller and weaker than the appellant, or in circumstances which obviously increased the risk of really serious injury, and could therefore fairly be regarded as falling towards the lower end of the category B range. As we have already observed, that would be at or near the upper end of the category C range.
23. At step 2 of the sentencing, the judge correctly identified all relevant aggravating and mitigating factors. There can be no doubt that the former substantially outweighed the limited mitigation which was available to the appellant. It follows that after the initial downwards adjustment to which we have referred, the judge should then have made an upwards adjustment to reflect the balancing of aggravating and mitigating factors.
24. In our judgment, the result of that process should have been a sentence of 10 years' imprisonment. The sentence of 13 years' imprisonment was therefore manifestly excessive. We accordingly allow the appeal. We quash the sentence of 13 years' imprisonment and substitute for it a sentence of 10 years' imprisonment. As before, the

appellant will be required to serve two thirds of his sentence in custody before being released subject to licence conditions for the remaining part.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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