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[2023] EWCA Crim 544
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/03401/A1



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 12th May 2023

B e f o r e:

LADY JUSTICE CARR DBE

MR JUSTICE HOLGATE

HIS HONOUR JUDGE BATE

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

R E X

- v -

TONY RUSSEL BROOKS

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Mr A Iqbal KC appeared on behalf of the Appellant

Mr C Moran appeared on behalf of the Crown

J U D G M E N T

Friday 12th May 2023

LADY JUSTICE CARR:

Introduction

1. This is an appeal against a sentence of life imprisonment with a minimum term of 24 years and nine months (less time spent on remand) imposed on the appellant, who is now aged 36, for the murder of Kirstie Ellis. It is brought with the leave of the single judge.
2. The appellant was sentenced by His Honour Judge Bayliss KC in the Crown Court at Leeds on 3rd November 2022 following his earlier guilty plea.
3. The basis of the appeal is that the judge is said to have been wrong to elevate the starting point for the minimum term of 15 years, as set out in paragraph 5 of Schedule 21 to the Sentencing Act 2020, to 27 years before applying credit for the appellant's guilty plea. The resulting sentence is argued to be manifestly excessive.

The Facts

4. In the course of a police interview on 25th March 2022 for unrelated matters, the appellant asked to speak to officers about an unconnected incident. He stated that a woman named Kirstie had been killed by an ex-boyfriend called "Jake" or "Jack", against whom there had been a restraining order, and that her body could be found at her home, 3 Stanhall Mews in Leeds. The appellant claimed not to know Kirstie himself and said that he had been given this information by his drug dealer.
5. Police checks confirmed that a 35 year old woman named Kirstie Ellis did indeed live at that address. Officers forced entry to the property, a small, terraced house. No electricity was running and the blinds were drawn. It was clear that there had been a violent struggle in the living room and kitchen. There were numerous areas of blood staining, as well as broken glass and furniture. Miss Ellis' blood was found on both the underside of a table rim and on one of the table's detached legs. A packaged chicken with an expiry date of end January 2022 was found on the kitchen counter. Blood staining continued up the stairs and into the bathroom, where Miss Ellis' body was found in the bath. She was naked, apart from a black blanket that had been draped over her. Her head was covered in blood and decomposition had commenced. Two ligatures were entwined around her neck and the handle of a lint roller was protruding from her mouth. Two socks were found in her throat. There was blood staining on the bath and walls around her head, and blood on the floor, windowsill and sink. Bloodstained clothing and a towel were on the floor. There was also a bloodied tide mark in the bath, demonstrating that at one point the bath had had water in it which had become diluted by her blood.
6. A post-mortem examination concluded that the cause of death was a combination of ligature compressions of the neck and the obstruction of her airway. The pathologist identified two blunt force splitting injuries to the right side of her head, one to the temple and one above and behind the right ear, as well as deep ligature injuries to the

neck and internal bruising of the throat. There was also a large bruise to the right side of her abdomen.

7. The appellant's DNA and fingerprints were found throughout the property. It was the prosecution case that the appellant had murdered Miss Ellis on the morning of 1st February 2022 and that her body had remained in the bath until its discovery later by the police. The appellant's DNA was found under a fingernail of Miss Ellis' left hand, and his mobile telephone had a photograph of blood staining on the wall from the address. More evidence from the mobile telephone showed that Miss Ellis had been in a relationship with the appellant since around late 2021.
8. Police spoke to another woman who had also been involved with the appellant, Bethany Wood. The police were able to corroborate her account, which was as follows. She stated that she had dropped the appellant off at Miss Ellis' address between 10 and 10.15 am on 1st February 2022. She had collected him approximately an hour later. He brought with him a flat screen television which he carried out of Miss Ellis' house. When Miss Wood asked him what he was doing, he told her that he was "skint" and needed the money. He had blood all over his hands and on his trainers. He told her that he had beaten up a man who owed him money. There were scratches on his neck which he attributed at the time to the man's long nails. He also showed Miss Wood the photograph on his mobile telephone of the blood staining on the wall.
9. The appellant and Miss Wood went to a Cash Converters store in the Pramley area of Leeds and, with the assistance of another, sold the television for the sum of £220. At this stage the appellant tried to clean himself up and to change his trainers. Miss Wood then drove him back to Miss Ellis' house. He took a suitcase from the property containing a sound bar for the television he had just sold. He sold the sound bar at another Cash Converters in Wakefield.
10. When Miss Ellis' home was examined by the police, white goods including a washing machine and a fridge freezer were missing. On 16th February 2022 the appellant sent a message to an associate offering to sell him a washing machine and a fridge freezer. During this period he also posed as Miss Ellis on Facebook and sent messages to various people, including other women, asking if they wanted to meet up with her partner, with images of the appellant attached. He also sent messages to a friend of Miss Ellis asking for money to be transferred into her bank account.
11. On 21st March 2022, many weeks after Miss Ellis' death, the appellant returned to her house and obtained her bank card, which was later found in a suitcase in his possession. He used the card on that day and again on 24th March 2022. Between 2nd February and 24th March the appellant made cash withdrawals or transferred money from Miss Ellis' account, sums totalling £1,554.50.
12. In the month before her murder, Miss Ellis had told a friend that the appellant was using her house as his own, was violent towards her, and had taken control of her finances to such an extent that she had needed to borrow money. She had transferred just over £890 to the appellant. The last known communication from Miss Ellis' mobile telephone was on 1st February 2022. This included a message to her father in which she told him that she was having money issues. Her last outward call was to her bank that morning. Cell site evidence showed that her telephone moved from her address to Wakefield at the same time as the appellant. It was then either switched off or ran out of battery. It has never been recovered.

13. Following his arrest, the appellant gave a completely different account from his initial claim that "Jake" or "Jack" had killed Miss Ellis. He now said that he had assisted another female in the killing after an argument between the two women. He said that he had fetched a HDMI cable from the bedroom and applied it to Miss Ellis' throat. He admitted taking a CCTV hard drive and television from the house and burning his clothing.
14. The prosecution, however, maintained that this was a sustained attack by the appellant alone, firstly by hitting Miss Ellis repeatedly with a blunt instrument, most likely a table leg, and then strangling her with a ligature before forcing items into her throat.
15. By way of antecedents, the appellant had 27 convictions for 81 offences spanning between May 2001 and December 2021. They included offences of robbery, attempted robbery, assault occasioning actual bodily harm, battery, theft, aggravated vehicle taking, sexual activity with a child, dwelling house burglary, assault with intent to resist arrest, and disclosing private sexual photographs with intent to cause distress.
16. Before the judge at the sentencing hearing there were two Victim Personal Statements, one from Miss Ellis' sister and one from a lifelong friend of Miss Ellis. Miss Ellis was described as a loving and caring person with a heart of gold who would light up the darkest of rooms. She had great dreams for her future as a counsellor. The statements describe how the family will spend the rest of their lives questioning the appellant's actions and thinking of how Miss Ellis died and in what circumstances. They are inevitably weakened both physically and mentally.

The Sentence

17. The judge rehearsed the facts. He described the appellant as controlling and manipulating Miss Ellis both emotionally and financially during the course of their relationship, as well as physically abusing her. The attack started in the sitting room. It may have been spontaneous, but it involved repeated hitting with a blunt instrument. That assault was not fatal, and Miss Ellis went upstairs probably to bathe. The appellant then armed himself with a ligature and attacked her for a second time. It was a terrible death, said the judge. The second attack was premeditated. The appellant intended to kill. He took no steps to obtain assistance. Afterwards, he helped himself to Miss Ellis' possessions and impersonated her on social media in an effort to persuade others that she was still alive.
18. The judge rejected the appellant's expressions of remorse as disingenuous. His actions after the event of death belied that. The judge said that he could not be sure that the murder was carried out for gain, or involved sexual or sadistic conduct. He therefore took a starting point of 15 years for the minimum term. He stated that that term fell to be substantially increased by the manner in which Miss Ellis had been murdered in her own home by a man whom she had welcomed in and to whom she was entitled to look for support, love and protection. She had endured significant mental and physical suffering during the course of the successive attacks upon her, with objects being forced into her mouth as she was being strangled. He stated that the events after death were a serious aggravating feature. The impersonation on social media in particular caused additional grief. Whilst not a murder for gain, the stealing of her possessions and money were a third serious aggravating feature. The appellant also wrongly sought to blame others. Finally, there was the background of manipulative and

controlling behaviour and domestic violence, alongside the appellant's previous convictions.

19. The judge considered there to be no meaningful mitigation, apart from the appellant's guilty plea.
20. Balancing all these features out, he concluded that the minimum term, before credit for the guilty plea, had to be 27 years. He then allowed one-twelfth credit for the guilty plea, that plea having been tendered two weeks before trial and having been intimated two weeks before that.

Grounds of Appeal

21. On behalf of the appellant Mr Iqbal KC submits that the judge erred in law and fact in elevating the starting point of 15 years to 27 years when considering the relevant aggravating and mitigating features. The ultimate resulting sentence was manifestly excessive. He realistically accepts that some uplift from the term of 15 years was warranted, but not one as high as 12 years. Cumulatively, the aggravating factors were simply not enough. The appellant's thoughts and conduct after Miss Ellis' death lacked coherence. So, for example, this was not a simple case of the appellant blaming others; it was not a straightforward case of seeking exculpation, when in due course the appellant went on to admit to the police having applied the ligature to Miss Ellis' neck.
22. Mr Iqbal points out that the appellant had no previous convictions for serious violence. There had been no intention or even negligent infliction of physical or mentally painful suffering at the time of death. Miss Ellis' body had indeed been left for seven weeks, but this was not a case of someone hiding her body in order to avoid detection.
23. In his oral submissions, Mr Iqbal urged upon us that the judge had given undue weight to the question of premeditation. There had only been limited, short-lived premeditation throughout the offending in question.
24. On behalf of the respondent, Mr Moran submits that, whilst the uplift was significant, given the multiplicity and significance of the relevant aggravating features, this was callous offending that more than justified the term arrived at by the judge.

Discussion

25. The judge sentenced the appellant without a pre-sentence report. We agree that one was unnecessary, and the contrary has not been suggested.
26. The judge identified the relevant starting point as being that in paragraph 5 of Schedule 21, namely 15 years' imprisonment. There is no limitation on the degree of adjustment that a court can make in consideration of aggravating and mitigating factors. The lists of aggravating and mitigating factors in Schedule 21 are themselves not exhaustive. The judge retains the ultimate discretion, paying full regard to the features of the individual case, so that the sentence truly reflects the seriousness of the particular offence. The exercise is a balancing, not a mathematical, one.
27. On any view a very significant uplift from 15 years was required to reflect the gravity of the overall offending. It is not suggested that the judge made an error of fact or principle in approach. Can it be said, we ask ourselves, that appellate interference is

justified on the basis that an increase of 12 years was so high as to be manifestly excessive?

28. We have concluded that that cannot be said, given the multiplicity of aggravating features which we identify as follows:
- i) The background of coercive and controlling behaviour and physical abuse.
 - ii) The fact that this offence occurred within Miss Ellis' own home and involved a gross abuse of trust.
 - iii) The significant mental and physical suffering before death, on which we consider the judge was entitled to lay significant weight. The offending involved repeated, sustained beating in the sitting room and then terrifying strangulation, followed by the pushing of objects down Miss Ellis' throat later upstairs in the bathroom. Miss Ellis was alive at the time of strangling. It is clear from her arm bruises that she tried to defend herself. The fact that the suffering may not have been intentional, or even caused negligently, in no way deprives this factor of significance. In any event, the suffering in question must have been obvious to the appellant at the time and yet he did not cease.
 - iv) The failure to report death, leaving the body to decompose, despite repeat return visits to the property over the course of seven weeks, together with the impersonation of the deceased online after her death, with the inevitable impact that this would have caused to Miss Ellis' family. These were attempts to conceal her death. They were also consistent with the appellant's previous controlling and manipulative behaviour.
 - v) The appellant's theft of Miss Ellis' possessions and money, again consistent with his previous financial exploitation of her.
 - vi) The fact that the appellant blamed two identifiable, innocent other people, the destruction of his clothes and the removal of the CCTV hard drive.
 - vii) The appellant's previous convictions. Those convictions, whilst not for serious violence of this magnitude, remained relevant nevertheless.
29. By way of mitigation, there was precious little. Whilst there may have been a lack of premeditation before the first attack, this would be balanced out by the premeditation before the second.
30. In our judgment an uplift of 12 years was fully justified, resulting in a minimum term of 27 years, before credit for the guilty plea. We would add that we consider that the combination of aggravating features makes this case one close to being a case of particularly high seriousness of the type identified in paragraph 3 of Schedule 21 to the Sentencing Act 2020, which carries a 30 year starting point.

Conclusion

31. For these reasons we dismiss the appeal. We thank both counsel for their written and oral submissions.

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

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