NCN: [2019] EWCA (Crim) 1882
201803635 C1 & 201804030 C1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of
Justice
The Strand
London
WC2A 2LL

Tuesday 29 October 2019

B e f o r e:

LORD JUSTICE SIMON

MRS JUSTICE MOULDER DBE

and

HIS HONOUR JUDGE THOMAS QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

RICARDO WILSON

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

The Appellant was unrepresented

Mr J Butterfield QC appeared on behalf of the Crown

J U D G M E N T

LORD JUSTICE SIMON:

1. On 25 July 2018, in the Crown Court at Stafford, Ricardo Wilson was convicted of the manslaughter of Claire Harris. He was acquitted of her murder. On 14 September 2018, he was sentenced by the trial judge, His Honour Judge Challinor, to an extended sentence of twenty years, comprising a custodial term of fifteen years and an extended licence period of five years.

2. This is a renewed application for leave to appeal against conviction, following refusal by the single judge, and an appeal against sentence brought with the leave of the single judge. For the sake of convenience, we will refer to Ricardo Wilson as "the appellant".

3. On the evening of 24 January 2018, the body of Claire Harris was found at her former home by her son, Daniel Piddington, and his ex-partner, Courtney Mitchell. Her clothing had been disturbed and her pubic hair left partially exposed. It was not in dispute at trial that she had been killed and that the appellant had killed her.

4. The appellant was the deceased's ex-partner. He was aged 50 at the time, six feet tall and of large build. She was aged 44, five feet five inches tall and of slim to medium build. The two had met in 2014 and had moved in together at an address in Cinderbank, Netherton in 2015. Their relationship was volatile and to some extent dysfunctional. Both habitually drank to excess and one or other used violence such that the police were involved on several occasions.

5. By November 2017 they had separated. The appellant remained at Cinderbank, while Claire Harris went to live with her sons in Dudley.

6. About four days before her death, her son, Brady Piddington, was with her when he heard her arguing with the appellant on the telephone. About fifteen minutes later, the appellant came to

the house and spoke to her. They did not argue or shout, and everything appeared to be in order.

7. Text messages between Claire Harris and the appellant from 20 January 2018 onwards were placed before the jury. It was the prosecution case that these messages showed that the appellant was keener than she was for the relationship to continue.

8. On 23 January 2018 (the day before she was killed), she accepted an invitation from the appellant to have dinner with him at Cinderbank. During the course of the evening two friends contacted her by text messages and telephone calls. It was apparent to them that she and the appellant were arguing and that she wanted to return home. In one text message sent at 7.38pm she informed a friend that she was "ready to stab" him.

9. At around 8.30pm a neighbour, Justin Green, went to remonstrate with the appellant about loud music coming from his flat. The evidence about this was given in the form of a witness statement and oral evidence at trial by his partner, Joanne Evans. Justin Green did not himself provide a statement to the police. The intervention provoked verbal abuse directed at Justin Green.

10. Another neighbour, Julie King, said that she heard Claire Harris screaming that evening and saw her outside the flat being held in a headlock by the appellant. She was shouting at the appellant "You're going to kill me". This went on for several minutes.

11. On 24 January 2018, the appellant was captured on CCTV at about 1.30am and again at 3.30pm leaving the flat in order to purchase beer from local shops.

12. At around 8pm the deceased's body was discovered. Her son Daniel and Courtney Mitchell

had gone to the flat, having become concerned at her failure to return home. They both described her face as being swollen, and Courtney Mitchell described seeing bruising to her neck.

13. The police were called and the appellant was arrested. Police Constable Schacht also stated that the deceased's face appeared to be swollen and bruised.

14. A post-mortem examination revealed 86 injuries in total: half to her head and neck, and the remainder to her chest, abdomen and limbs. Of particular concern to the pathologist was the concentration of blunt-force injuries to the head and neck which, when considered in combination, were consistent with some form of assault, such as punching. An injury to her left ear, which included bruising and a laceration where the ear met the scalp, was consistent with a heavy blow to that area of a type often associated with kicking. There were also injuries consistent with a forceful neck hold. The cause of death could not be determined from the post-mortem examination alone, although it was clearly not due to natural causes. However, the pathological findings were that, taken with the evidence that the appellant had placed her in a firm neck hold, death was consistent with interference with the mechanics of respiration and, specifically, pressure applied to the neck.

15. The examination also revealed a laryngeal fracture that had occurred three to seven days before her death and which was consistent with either a blunt-force blow or forcible squeezing of the neck. While this injury could not have caused or contributed to the death, it was the prosecution case that it was so unlikely that the deceased had been strangled by someone else during that period as to be safely discounted and was therefore evidence of a propensity to strangle her.

16. The appellant was given a psychiatric assessment. Although not found to be suffering from any mental illness, the nurse who carried out the assessment and whose evidence was read, noted that he had injuries to his face and eye. He provided an account to the nurse that was broadly consistent with his account at trial, save that he indicated that his relationship with Claire Harris had deteriorated in recent weeks.

17. It appears from the judge's summing-up that while most of the statements in the case were read to the jury by agreement, the appellant disputed the contents of some of the statements when he came to give evidence. This is a matter to which we will come shortly.

18. The prosecution case was that the appellant had assaulted Claire Harris and then intentionally strangled her. However, as we have noted, he was acquitted of murder.

19. The defence case was one of self-defence. While he admitted causing her death by forceful compression of her neck, he contended that such force as he used was reasonable and therefore lawful. He had restrained her as she had picked up a bread knife in the course of an argument.

20. The appellant gave evidence to the jury that everything had been well between them in the days preceding her death. On 23 January she had become extremely aggressive and angry when a neighbour had complained about the music. It had been necessary for him to calm her down. After he had got her back into the flat, the two of them began to argue about the volume of the music. Without warning, she had punched him to the side of his face. She went into the kitchen, picked up a knife and approached him with it in her hand. He tried to grab it from her. They grappled and fell to the floor. He had not tried to hurt her, but had tried to take the knife from her. She was on top of him and he was still holding her neck when he realised that her eyes were closed. He initially thought that she had fainted, and so he left her where she was.

After about ten minutes he returned and realised that she was dead. He made attempts to perform CPR. He was thereafter in shock and intended to take his own life when her son arrived at the flat the following day.

21. The primary issue for the jury was the appellant's intent.

22. We turn to the renewed application for leave to appeal against conviction. The grounds of appeal were drafted by the appellant, primarily in the form of handwritten letters to the Court of Appeal Office. They include a number of criticisms made of trial counsel and solicitors, as a result of which the appellant was invited to, and did, waive legal professional privilege. We have taken the comments of counsel into account when considering the arguability of the grounds of appeal. The appellant took the opportunity before us to supplement those grounds with his own oral submissions.

23. The grounds are not numbered points, but various complaints are made. First, there is a general complaint relating to the conduct of his trial lawyers - leading and junior counsel and solicitors: that they failed to provide him with trial documents, specifically witness statements and a coroner's report. This appears to be similar to what he told the jury (page 35A of the summing-up): that the first he had known of some of the evidence against him was when he heard it in court. However, it is clear from the summing-up that he also told the jury that he knew months before the trial what the witnesses were saying against him. Furthermore, as Mr Bartfield QC (his trial lawyer) has made clear, he was taken through the statements in conference. This point is without substance.

24. There is a complaint that the defence trial team failed to contact witnesses, including the neighbour, Justin Green, in order to procure attendance at trial. It is said that the police failed to

take a statement from Justin Green, as they did not like what he had to say and instead used the evidence of his partner.

25. It is clear that what Justin Green might have had to say was not in issue. His partner, Joanne Evans, gave evidence about Claire Harris behaving aggressively towards Justin Green. This was consistent with the defence case, and the evidence was not challenged in cross-examination. We are quite satisfied that a statement from Justin Green would not have taken the matter any further, even if he had been willing to make it.

26. There is a complaint about a failure to obtain expert evidence from a pathologist. This point is addressed by Mr Bartfield in relation to a particular doctor. We will come later to a slightly different submission made in relation to the medical evidence. The complaint about a failure to obtain expert evidence from a pathologist has no merit. A report was obtained by the defence from a Dr Hamilton, to whom Mr Bartfield spoke. In Mr Bartfield's words, "his conclusions were extremely unfavourable to [the appellant's] case".

27. There is a further complaint that the defence failed to obtain and/or provide relevant text message evidence. It is said that the prosecution misled the jury in that they produced a small selection of text messages between the appellant and the deceased whilst failing to disclose others.

28. We have considered this point, too. It is founded on a misapprehension by the appellant. The police had not failed to provide the defence with the appellant's telephone records in good time. Discs were provided on 29 June (at least three weeks before trial), along with a report concerning the deceased's telephone. The report made clear that it was intended to be only a summary. On 15 July, in response to a specific defence request, a full schedule containing all

messages was provided and messages on 20 January were highlighted. The schedule did not contain any new material. It follows that the full thrust of the text messages was available. The defence had the complete download, as well as a schedule which constituted a fair and accurate summary of all relevant texts.

29. There is a complaint that, without the appellant's consent, his counsel agreed to there being no live witnesses. It is clear to this court that this is not so. It was a sound tactical decision to have much of the prosecution evidence read. It was "sanitised" by agreement and balanced by the agreed evidence in relation to Claire Harris' conduct directed towards the appellant. Apart from this, much of the evidence was of peripheral importance, as none of it went to what occurred at and just before the time of Claire Harris' death. We accept what Mr Bartfield says about this. There was no question of this course being taken, without proper advice being given to the appellant and his consent being obtained.

30. Apart from these criticisms of his defence trial team, there is a quite separate allegation that the judge demonstrated a bias from the outset of the trial by portraying the appellant as the violent partner in the relationship, when there was no basis for such a conclusion. It is, we acknowledge, not a comfortable experience for a defendant to listen to a prosecution speech outlining points of evidence which damage the defence, or to a summing-up which also refers to such evidence. However, we are not satisfied, not least in the light of the fact that Mr Bartfield did not detect it, that there was arguable bias. No such allegation has been made at any stage by experienced leading counsel, junior counsel, or solicitor. Nor has any complaint been made about the tone or content of the summing-up.

31. A further complaint is made about the improper editing of the appellant's interview. As is usual, the police interview was summarised. The electronic copy of the full interview was

available to the defence. There was an agreed fact as to the accuracy of the summary. We are quite satisfied that it was not improperly edited. If it had been, the point would have been taken by the defence.

32. A final point was made orally by the appellant today. It is a complaint that a neuropathologist was not called. This appears to be a reference to page 28 of the summing-up. Part of Dr Lockyer's report referred to input by a neuropathologist, Dr Al Suraj. This is perfectly normal. If a point is to be taken in relation to information derived from another expert, it is a matter which can and often will be made by the defence. No such point was taken here. We are quite satisfied that there is no merit in this additional point.

33. We have considered all these points and a number of more peripheral complaints. In our view, they do not amount to arguable grounds of appeal. Nor, taken individually or collectively, do they cast doubt on the safety of the conviction. Accordingly, the renewed application for leave to appeal against conviction is refused.

34. We turn to the appeal against sentence. The appellant had seventeen convictions involving 75 offences between 1983 and 2012. The judge referred to these, so far as material, in the course of his sentencing remarks.

35. No pre-sentence report was obtained prior to the sentencing, and we are satisfied that none was required.

36. In passing sentence the judge noted that on the night of the killing the appellant had been drinking heavily. At 8pm he had been seen holding Claire Harris in a headlock. Thereafter, violence had escalated. She had been struck at least three times to her head and face, but had 86

separate injuries, 43 of which were to her head and neck. Not all of those injuries were attributable to the appellant, but many must have been. The three blows had been forceful. One was at least consistent with a kick to the face. The appellant had also compressed her neck with his arm for a significant time, during which she had fought for her life. He had not summoned help. He had left her on the floor and watched television. He had made two trips to the off-licence the following day. Her clothing had been interfered with, and he had left her pubic hair exposed.

37. The judge noted that there were no current sentencing guidelines in force, other than the overarching guideline on seriousness, that required him to consider culpability and harm. In his view, the culpability was high. First, there had been a background of violence. The judge did not accept that this had been mutual. As he put it, "You were the one that was mainly violent". Secondly, the appellant had attacked her around an hour before her death, holding her around her throat. Thirdly, the fatal assault had been accompanied by serious violence, fuelled by the consumption of alcohol. Fourthly, "the compression of Claire's neck was persistent and evidently extremely dangerous. It was violence just short of causing grievous bodily harm". We will return to that observation later in this judgment. Finally, the appellant's callous disregard for her plight had been staggering. He had left her for hours in an undignified position while he went to buy beer and entertained himself.

38. The judge noted that he had caused incalculable harm. The victim's friends and family were devastated. A lengthy sentence of imprisonment had to be imposed. The appellant had relevant previous convictions, including for the possession of a knife in 2012, for which he had been sentenced to imprisonment. He had many other convictions, some for public disorder and drunkenness. He had abused both drugs and alcohol, and was heavily dependent on them in January 2018.

39. Having regard to these factors, the judge had no doubt that the appellant was dangerous and that he posed a significant risk of serious harm to members of the public, principally future partners. He had read with care the submissions of counsel. The new guideline was highly persuasive, but was not law and could not be followed. There was little mitigation. The judge did not accept that the violence was nothing more than excessive self-defence. The appellant had clearly attacked the victim; he had punched her, slapped her and had then strangled her while she struggled, until she was dead. Other than his own account, much of which must have been rejected by the jury, there was no evidence that she had been armed with a knife.

40. The judge referred to *Attorney General's Reference Nos 60, 62 and 63 of 2009 (R v Appleby and Others)* [2009] EWCA Crim 2693; [2010] Cr App R(S) 46, in arriving at the appropriate sentence.

41. The grounds of appeal were settled by Mr Bartfield. They make three broad submissions in support of an overarching argument that the sentence was manifestly excessive. Although Mr Bartfield has not advanced these points himself, his services having been dispensed with this morning, we take those grounds of appeal as the starting point for consideration of the sentence.

42. The first point is that, since the appellant had admitted the killing, the jury was faced with a stark choice as to whether it was a deliberate killing, triggered by Claire Harris' wish to end the relationship, in which case it was murder; or whether the appellant had killed her while he was defending himself from attack. If the latter, and the force was reasonable, he would have been acquitted of all charges. If the force used was more than reasonable, he would have been guilty of manslaughter. The complaint is that the judge approached the sentence on the basis that it was a deliberate killing, and that this was inconsistent with the verdict of the jury and therefore wrong in principle.

43. Second, it is said that the judge erred in ignoring the evidence that the emotional and physical abuse in the relationship was mutual. The effect of this was that he wrongly equated the case with those involving the violent death of victims of sustained abuse.

44. Third, it is said that the judge erred in finding the appellant to be dangerous. There was insufficient evidence upon which to make such a finding. The appellant had no previous convictions for offences of violence and no assessment of dangerousness had been made by a probation officer. It followed that the judge was wrong to impose an extended sentence.

45. The fourth point, which was one made in oral submissions by the appellant, is that the prosecution had accepted that Claire Harris had a knife at the start of the incident.

46. We have considered these submissions.

47. In *Attorney General's Reference Nos 60, 62 and 63 of 2009 (Appleby and Others)*, this court gave guidance in sentencing this type of offence. At [3] of the judgment of the court, Lord Judge CJ said this:

> … Taken together, these three cases provide the court with an opportunity to reconsider the approach to sentencing in cases of manslaughter when, notwithstanding that the defendant intended neither to kill nor to cause the deceased grievous bodily harm, he is convicted of manslaughter on the basis that the death was consequent on an act of unlawful violence. They are, of course, always tragic in their consequences, but they do not constitute murder, and they cannot be sentenced as if they were. If the defendant is convicted of manslaughter the consequences must be treated as if they were unintentional and unintended. The court must honour the verdict of the jury (if the jury convicts of manslaughter) … yet, whether the case falls to be sentenced as murder or manslaughter, the catastrophic result for the deceased and his or her family is the same: the loss of a precious life. In each of these cases we have been made aware of the poignant, lamentable impact of the deaths of each victim on the families who are left behind to grieve.

These observations are, of course, of general materiality.

48. We start with the appellant's last point. The prosecution did not accept that Claire Harris had a knife. That was an issue for the jury to resolve in the context of the defence of self-defence.

49. *R v Bertram* [2003] EWCA Crim 2026 makes clear that a trial judge is not bound to accept the most favourable version of the defence. The judge should carefully apply the criminal burden of proof and give the defendant the benefit of the doubt.

50. This was not a case where the judge had to accept that, if the verdict was guilty of manslaughter, the sentence was to be passed on the basis of the use of excessive force in legitimate self-defence. He was fully entitled to sentence on the basis that the victim died in the course of a violent struggle in which the appellant used violence, with an intent to cause harm and injury falling just short of grievous bodily harm. Although imperfectly phrased in the sentencing remarks to which we have referred, it is clear that this was his approach. The judge was at least entitled to form a view about the relationship between the appellant and his victim. The evidence was not straightforward or one-sided. The judge's view of where the balance lay in the relationship was properly based on the background material in the evidence given at trial; but also on the fact that the fatal strangulation had been preceded by violence against the victim: both earlier, up to seven days before, and later as described by Julie King. The killing had been accompanied by extreme violence; and the fact that it had been fuelled by alcohol was an aggravating circumstance. Furthermore, there was, as we have noted, an element of ill-treatment of the body, part of which had been left exposed as the appellant drank alcohol for the best part of a day.

51. In our view, the custodial term of fifteen years for this crime of manslaughter might be described as being at the upper end of the bracket of appropriate sentences, but it cannot properly be characterised as manifestly excessive.

52. The judge had presided over the trial and had seen the appellant give evidence. He was, therefore, in a good position to assess the extent to which he posed a significant risk to members of the public, principally future partners, of serious harm by the commission of further specified offences. The judge was entitled to the view that there had been a history of domestic violence, albeit, as is common in such cases, there were no convictions; and albeit that the blame may not have always been on one side. The violence used to kill Claire Harris involved a very large number of injuries. It had included a kick, or a punch delivered with such force that it had the equivalent force of a kick. There was also the troubling feature of the interference with her clothing, some of which at least could not be attributed to an attempt to see if she was still alive.

53. The fact that the appellant was dangerous did not automatically mean that an extended sentence was appropriate. However, in the present case we can see no proper basis for concluding either that the finding of dangerousness was wrong in principle or that the extended sentence resulted in a manifestly excessive sentence.

54. Accordingly, the appeal against sentence is dismissed.

55. Although the single judge ticked the appropriate box, in circumstances where the sentence is an extended sentence of twenty years, comprising a custodial term of fifteen years and an extended licence period of five years, we do not consider that a loss of time order is something we need to address.