

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.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

[2021] EWCA Crim 1660

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202002685/B1



Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 14 October 2021

LADY JUSTICE SIMLER DBE

MR JUSTICE SPENCER

RECORDER OF LIVERPOOL

(HIS HONOUR JUDGE MENARY QC)

(Sitting as a Judge of the CACD)

REGINA

V

NICOLA TOWNSEND

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)

NON-COUNSEL APPLICATION

J U D G M E N T

1. MR JUSTICE SPENCER: This is a renewed application for leave to appeal against conviction following refusal by the single judge. For the appeal to proceed, an extension of time of 390 days would also have to be granted.
2. After trial in the Crown Court at Bristol the applicant was convicted on 27 August 2019 of the manslaughter of her father, Terence Townsend (count 1), and witness intimidation in relation to her brother-in-law, Douglas Campbell (count 2). Sentence was adjourned and a restraining order was made in the interim.
3. On 20 September 2019 the applicant pleaded guilty to breaching the restraining order by contacting her sister, Deborah Makin (Douglas Campbell's wife). The applicant was then sentenced by the trial judge, HHJ Blair QC, the Recorder of Bristol, to a term of two-and-a-half years' imprisonment for manslaughter. That sentence was the subject of an application by Her Majesty Attorney-General to review the sentence as unduly lenient. On 19 November 2019 the Court of Appeal quashed the sentence of two-and-a-half years' imprisonment for manslaughter and substituted a sentence of four-and-a-half years. For the offences of witness intimidation and breach of the restraining order there were consecutive sentences totalling 3 months' imprisonment resulting in the final sentence of 4 years and 9 months' imprisonment: see [2019] EWCA Crim 2093. The applicant is still serving that sentence. The matter is listed before us today as a non-counsel application.
4. In grounds of appeal of her own composition the applicant's principal complaints are that she was poorly represented in the Crown Court, was not given the opportunity to explain herself properly and that the police failed properly to investigate the matter or to try to understand her defence.
5. The applicant has been provided with the Criminal Appeal Office summary of the facts of the offence. We need set out the facts only briefly and gratefully adopt the summary in the judgment of the Court of Appeal in the earlier sentence appeal.
6. The applicant at the time of the offences was living alone in a house which her parents had bought for her. Her mother died some years ago but she frequently spent time with her father at his home. Terence Townsend was aged 78 at the date of his death. He suffered from emphysema and osteoporosis. His breathing was laboured, his mobility was restricted and he had suffered a number of falls. He was light in weight and very frail. His daughter (the applicant) was of course well aware of his general condition and his frailty.
7. The applicant has had a number of health problems herself throughout her life including epilepsy which began in her childhood and worsened but which has not affected her since about 2004, following surgery. As a young adult she developed a skin condition and then severe acne.
8. The applicant has also shown herself over a number of years to be emotionally volatile. She has been aggressive and on occasions violent towards members of her family. In particular, she had on occasions lost her temper with her father and had sometimes scratched or bruised him. Such incidents were kept within the family and not reported.
9. On 27 December 2017 the applicant and her father had been out together during the day and were then in his house. The applicant lost her temper. She threw a television remote control at her father, which struck him on the back of the head causing a cut which immediately began to bleed. Mr Townsend went into the kitchen in order to clean the cut. The applicant followed him. In the kitchen she pushed him causing him to fall

to the floor. The result of that assault was that Mr Townsend, no doubt because of his osteoporosis, sustained fractures of six ribs on his right side and the right transverse processes of five of his thoracic vertebra. There was also some soft tissue bruising to the left side of his chest.

10. The fractured ribs damaged his right lung with the result that he suffered a pneumothorax. The applicant did not summon any medical assistance; it was Mr Townsend himself who dialled 999. When the ambulance arrived the applicant pointed to where her father was but then left the house saying: "No, I can't do this. I haven't got time. I've got to go".
11. Mr Townsend was taken to hospital, where the full extent of his injuries was established and he was admitted. Whilst he was an in-patient he told his son-in-law Douglas Campbell that he and the applicant had had what he described as "some fisticuffs" in the kitchen. She had pushed him and he had fallen over.
12. On 28 December, the following day, the applicant telephoned her sister Sally (the wife of Douglas Campbell) and said: "I pushed him yes, I admit that yes, I did push him out of the way because he was pissing me off and then he landed on the floor". She also said that she had "chucked" the remote control at their father because she was annoyed with him.
13. Mr Townsend's condition deteriorated while he was in hospital. He developed pneumonia and sadly died on 8 January 2018. The medical cause of his death was acute bronchopneumonia following chest trauma on a background of pre-existing chronic obstructive pulmonary disease.
14. The applicant was arrested and interviewed under caution both before and after her father's death but the prosecution, for unexplained reasons, did not commence until January 2019. From that point onwards the applicant repeatedly tried to contact Douglas Campbell who was obviously an important witness against her. She persisted in these attempts despite being told not to. Over a period of about 6 weeks she left 46 voicemail messages on his phone threatening that if he continued to give evidence against her she would tell the court that he had pushed her. She also made a veiled threat to take some unspecified action against his brother. She wrote similar letters or left similar messages to the officer in charge of the case.
15. The prosecution case on manslaughter was that the applicant had lost her temper and thrown the television remote control at her father causing a cut to the back of his head and had pushed him causing him to fall to the floor. The injuries he sustained led to his death. It was an agreed fact that but for the injuries he would not have died at the point he did. His death was the result of the effects of the interaction of trauma and his pre-existing natural disease.
16. The prosecution relied upon the evidence of the brother-in-law Douglas Campbell and the evidence of his wife, Sally Campbell (the applicant's sister). The medical evidence was agreed. The jury had the applicant's account in interview and her voicemail messages to Douglas Campbell.
17. The defence case was a denial that the applicant had deliberately thrown the remote control at her father or that she had deliberately pushed him over. She said that she simply and gently moved him out of the way, and he had lost his footing landing on the floor in a sitting position. She challenged the evidence of her sister and her brother-in-law that she had been violent towards her father previously.

18. The applicant gave evidence herself over a period of more than a day. The central issue for the jury was whether the applicant's contact with her father was deliberate rather than accidental, whether it gave rise to the risk of some bodily harm, and whether it substantially contributed towards causing his death. Those issues were set out for the jury accurately in the route to verdict.
19. The applicant was represented by very experienced and able counsel. She complains that she was poorly represented and that her counsel failed to adduce evidence which was important to her defence including her own neurological difficulties and the deceased's health issues which could have led to his fall. She complains that her counsel's presentation of the case was poor and that she was not given the opportunity to explain herself properly.
20. Following waiver of privilege her trial counsel responded very fully to these allegations. The applicant's complaints were also comprehensively addressed in the respondent's notice.
21. There was a very detailed and comprehensive defence statement, carefully drafted. It is clear to us that the potential issue of causation was properly considered. The jury were left in no doubt that the applicant disputed that she had pushed her father deliberately and in temper in circumstances where she must have known there was a risk of harm. She gave evidence over a period of two days with no time constraints.
22. The issue that the deceased's fall had been caused by his ill health was fully explored. The jury must have rejected the applicant's evidence that she had touched her father accidentally or that he had merely become tangled up in his own feet causing himself to fall.
23. The psychiatric report in relation to the applicant had been obtained but was not used in the trial. However, her own health problems were explored in her own evidence and in cross-examination of Douglas Campbell and Sally Campbell.
24. The jury were reminded that the relationship between the applicant and her father was generally a happy one. Despite the bad character material relating to her previous conduct towards her father, the judge gave a full good character direction in the summing-up.
25. We can see nothing in any of the complaints against her trial counsel. Indeed it seems to us from everything that we have read, including the summing-up, that trial counsel discharged his duty very ably.
26. There is also a complaint that the police failed properly to investigate the incident or to try to understand her defence. This we take it is a reference more to the offence of witness intimidation (count 2). In fact the police obtained statements and copies of letters and recordings of messages left by the applicant. She made no comment in interview about these allegations on the advice of her legal representative and the jury were directed not to hold that against her. She gave evidence about the matter. It was very clear to the jury what she was saying about the allegation of witness intimidation. The judge provided the jury with an impeccable route to verdict document for that offence as well.
27. We have read the judge's summing-up, which was full, accurate, balanced and fair. He reminded the jury in detail of the applicant's own evidence and of defence counsel's cross-examination of her brother-in-law and her sister, the key witnesses. The issues for the jury were clear and stark.

28. We have read and considered carefully all the voluminous correspondence from the applicant to the Registrar in support of her grounds of appeal, including further correspondence in support of the renewal of her application for leave following refusal by the single judge. The flavour of those observations can be gained, for example, from her assertion that juries should not exist and all decisions should be made by judges as they are qualified and juries are not. In another letter she says her sister and brother-in-law "got the wrong end of the stick" about what happened.
29. We understand the applicant's strength of feeling about what she believes to be the shortcomings in her trial, but we are quite unable to accept that she has demonstrated any arguable ground of appeal either in relation to the count of manslaughter or the count of witness intimidation.
30. For the reasons set out in detail by the single judge, we agree with her conclusion that the applicant unarguably received a fair trial within the law, that the jury were properly directed by the judge, who reminded them at length of the applicant's own evidence, and that the convictions returned by the jury were founded upon the evidence and are safe.
31. We also agree with the single judge that no good reason has been shown for the very long delay in lodging the appeal some 13 months out of time, even allowing for the difficulties flowing from the pandemic. Had there been any merit in the proposed appeal we would have had to consider whether to grant that extension.
32. In the circumstances, however, as there is no merit in the appeal, we refuse the renewed application for leave to appeal against conviction and we also refuse the extension of time.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk