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IN THE COURT OF APPEAL

CRIMINAL DIVISION



Neutral Citation Number [2021] EWCA Crim 224

CASE NO 202003275/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 18 February 2021

LORD JUSTICE HOLROYDE
MR JUSTICE LAVENDER
MR JUSTICE CAVANAGH

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REGINA
v
DALE TARBOX

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)

MISS S WHITEHOUSE QC appeared on behalf of the Attorney-General

MISS K COLLEY appeared on behalf of the Offender

J U D G M E N T

(Approved)

1. LORD JUSTICE HOLROYDE: In February 2019 Dale Tarbox murdered Susan Howells. He was convicted of that crime in December 2020 after a trial in the Crown Court at Leeds before the learned Recorder of that City, His Honour Judge Kearsall QC and a jury. On 10 December 2020 he was sentenced to life imprisonment with a minimum term of 16 years, less the 427 days he had spent remanded in custody before trial. The judge imposed a concurrent sentence of two years' imprisonment for an offence, to which Tarbox had pleaded guilty at an earlier stage of the proceedings, of preventing the decent and lawful burial of the dead body of Susan Howells.
2. Her Majesty's Solicitor General believes the length of the minimum term to be unduly lenient. Application is accordingly made, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.
3. Susan Howells was 51 years old at the date of her death. She had moderate learning difficulties and was a vulnerable adult by reason of her mental health. She was also physically disabled as a result of an injury and walked with a Zimmer frame. She had known Tarbox for several years and would sometimes stay with him at his home. She continued to do this on occasions after he had begun to live with another woman, Joan Arnold. She had been staying with him for three or four weeks at the time of her death.
4. On 19 February 2019 Susan Howells is said to have urinated on the floor. An argument began between her and Joan Arnold. Tarbox took Susan Howells upstairs to the bathroom. There he strangled her to death, probably with his hands, although possibly with a ligature.
5. A police investigation into Miss Howells' whereabouts began in March 2019. Tarbox said he did not know where she was. It was not until September 2019 that her body was found. This was because Tarbox had gone to considerable lengths to conceal it. He had initially left the body of Miss Howells in the bath. He then put it in a wheelie bin in the basement of the property. He then tried to destroy the body by fire in an incinerator, crushing the corpse in order to fit it in, and using an accelerant. He was unsuccessful. The body was therefore returned to the wheelie bin in the basement, where it was to remain until June 2019.
6. Tarbox meanwhile had moved a considerable distance away to live in a caravan with Joan Arnold, but he took steps to ensure that the premises in which the body had been left remained secure. He then bullied and exploited a man called Keith Wadsworth to assist him to transport the dead body to the area of the caravan and to assist him to bury it in a shallow grave near the caravan site. It was there that the body was found.
7. Tarbox was arrested. At his trial he alleged that it was Joan Arnold who had killed Miss Howells. The jury disbelieved him and convicted him of murder.
8. Tarbox is now 40 years old. Between 2002 and his arrest in 2019 he had been sentenced on 15 occasions for a total of 34 offences, including 13 offences of common assault and two of assaulting a police officer. A psychiatric report was prepared for the assistance of the judge in sentencing.
9. In a victim personal statement, Miss Howells' younger sister spoke movingly of the sadness caused to the family by her death. She described the distress, pain and helplessness of not knowing for many months what had happened to her sister, and she described the impact on her and her parents of learning, on what would have been Miss Howells' 52nd birthday, that her body had been found. It is clear that in this case,

as in many others, the crime of murder has not only ended one life but has also blighted others.

10. In his sentencing remarks, the judge said that Tarbox had exercised control over both Miss Howells and Joan Arnold and also over Wadsworth. He knew Miss Howells to be vulnerable and frail. What had triggered the murder was not clear. The judge found the murder to have been opportunistic rather than planned. He said at page 3C:

"You have a quick temper and it is known ... that you can react aggressively and violently to the smallest disagreement. She was defenceless, you are younger by far, larger by far, more powerful by far and she stood no chance of resisting you and you showed her no mercy."

11. The judge went on to say that he found that the killing was "more likely to have been an intent to silence rather than to kill" and indicated that he would therefore sentence on the basis of an intent to cause grievous bodily harm.
12. After the murder, the judge said, Tarbox had acted in a heartless and brutal manner as he tried to cover his tracks, treating Miss Howells' dead body as though it were base and worthless. He had tried to deprive the family of the opportunity to learn of her fate and bury her body. He had shown no remorse. He had actively tried to promote the idea that Miss Howells was still alive. Although the judge found that the murder had not been motivated by financial gain, there was evidence that Tarbox had withdrawn sums of money from Miss Howells' Post Office account in the months after he murdered her.
13. The sentence of life imprisonment for the offence of murder is of course prescribed by law. The judge was required, in accordance with schedule 21 to the Criminal Justice Act 2003, to decide the minimum term which Tarbox must serve before he can even be considered for release on life licence. In doing so, he took into account the offence of preventing the burial, so that the minimum term would reflect the overall seriousness of both the offences. The judge took, in accordance with schedule 21, a starting point of 15 years. He identified as aggravating features the vulnerability of Miss Howells, which Tarbox exploited, and the determined attempt over a period of months to conceal and dispose of the body. The mitigating factors were that the murder was not planned or premeditated and that Tarbox' intention had been to cause grievous bodily harm, not to kill. The judge also accepted from the psychiatric report that Tarbox had been diagnosed as suffering from mixed anxiety depressive disorder and had been treated with anti-depressants for many years, which might cause him some problems in prison. Adjusting the starting point to reflect those aggravating and mitigating factors, the judge concluded that the appropriate minimum term was 16 years. For the offence of preventing the burial of Miss Howells' body, he took a notional sentence after trial of four years, which he reduced to two years to take account of totality and to give credit for the guilty plea to that offence.
14. In her submissions on behalf of the Solicitor General, Miss Whitehouse QC accepts that the appropriate starting point was 15 years and accepts that the judge correctly identified the aggravating and mitigating factors. She further acknowledges that the judge's notional sentence after trial for the offence of preventing the lawful burial of the body was in line with the limited case law for offences of that kind. She submits, however,

that overall the judge failed to give sufficient weight to the aggravating factors. In particular, she makes two points. First, that the prevention of the lawful burial of Miss Howells' body was not merely an offence committed in the course of seeking to avoid detection for murder: it also involved serious desecration of the corpse, as well as the exploitation and involvement of others in a planned enterprise which was sustained over a period of many months. Secondly, and pointing to the vulnerability of Miss Howells, Miss Whitehouse invites the court's attention to the Sentencing Council's overarching principles guideline on Domestic Abuse. She submits that the nature of the relationship between Miss Howells and Tarbox was such that Miss Howells was in effect in thrall to the man who was to kill her. She wished to be a part of his life and more than merely friends. Miss Whitehouse submits that these circumstances should have led the judge to give much more weight than he did to the domestic context of the murder. Overall, Miss Whitehouse submits that the aggravating factors substantially outweighed the mitigating factors, and the judge should therefore have moved upwards from the starting point by more than one year.

15. Miss Colley, representing Tarbox before this court as she did in the court below, submits that the judge adopted a correct approach in setting the minimum term, and that the sentence was not unduly lenient. She accepts that Miss Howells' dead body was successfully concealed for a period of months, but submits that the attempt to dispose of the body by burning was unsophisticated and most unlikely to succeed. She accepts that Tarbox had controlled and manipulated Miss Howells during her life, but submits that she was capable of making her own decisions as to whether to stay or to go and that it was not her physical disability, but rather Tarbox' much greater size and strength, which rendered her defenceless against his fatal attack. Miss Colley accordingly submits that the vulnerability of the victim was not as serious an aggravating feature as Miss Whitehouse suggests. She further submits that the Domestic Abuse guideline is inapplicable to the circumstances of this case, having regard to the fact that Miss Howells was merely staying with Tarbox and Joan Arnold as a friend. She notes that in that guideline, a definition is given of domestic abuse which speaks of those who "are or have been intimate partners or family members". She submits that in truth the relationship between the three persons in this case was a dysfunctional one and it could not fairly be said that Miss Howells was either an intimate partner or family member of Tarbox.
16. As to mitigation, Miss Colley relies on the psychiatric report and the fact that Tarbox will require support and treatment in prison, and submits that he will therefore find prison life more difficult than would many others. On a fair balance of the aggravating and mitigating factors, she submits, a sentence not much in excess of the statutory starting point was appropriate. She reminds us that the judge, having presided over the trial and thus having had ample opportunity to assess Tarbox, including when he was giving evidence, was in the best position to determine the appropriate minimum term. If the sentence was lenient at all, she submits, it was not unduly so.
17. We are grateful to both counsel for their very helpful and focused submissions.
18. In accordance with schedule 21, 15 years was clearly the appropriate starting point. In considering what adjustments fell to be made to that starting point, we think the following considerations are relevant.
19. First, the method by which Tarbox murdered Miss Howells was strangulation. Whether that was done manually or by ligature it was a particularly brutal way to end a life. The

terror which she must have experienced as she was choked to death, defenceless against a much larger man, is awful to contemplate.

20. Secondly, although none of Tarbox' previous convictions have involved serious violence, his record of repeated offences of common assault over a period of many years was an aggravating factor. We note that his most recent such convictions had resulted in a short sentence of imprisonment in October 2014.
21. Thirdly, we agree with Miss Colley that the circumstances of this case do not quite fit within the ambit of the Domestic Abuse guideline: although Miss Howells had stayed with Tarbox several times and for appreciable periods, and although there had been some sexual activity between them on at least two occasions, we do not think it can be said that they were or had been intimate partners or family members. It is nonetheless relevant that Miss Howells had for several times weeks been living in Tarbox' home. The Sentencing Council's guideline at paragraph 7 indicates that the domestic context of offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship. Although we have found that the relationship here did not quite fit within that description, nonetheless we are satisfied that the killing of Miss Howells did represent a violation of the trust and security which in the circumstances of this case she could reasonably have expected to exist between her and Tarbox. We should make clear that although we have had helpful submissions from Miss Whitehouse on the subject of the Domestic Abuse guideline and related considerations, that does not appear to have formed part of the submissions made to the learned judge by the prosecution at the sentencing hearing. The judge, accordingly, did not have the advantage which we have had of detailed submissions about it.
22. Fourthly, and additionally, Miss Howells' vulnerability, of which Tarbox was well aware and which he exploited, was a significant aggravating feature.
23. Fifthly, there is no sentencing guideline for the offence of preventing the lawful burial of a dead body. Case law shows that such conduct is sometimes the subject of different charges, including assisting an offender and doing acts tending and intended to pervert the course of justice. There is nonetheless a clear general principle, stated as follows by Lord Bingham CJ in R v Godward [1998] 1 Cr.App.R (S) 385 at page 388:

"Although it appears that different charges are preferred in different cases ... it appears to us that the most important factor when judging the appropriate level of sentence is the intention of the accused. If it appears that the intention of the accused was to obstruct the course of justice by disposing of or concealing a body, and so making it difficult or impossible for the prosecuting authority to bring home a charge against the defendant or another person, then that is in our judgment an offence which merits a sentence at the top of the appropriate scale. If, on the other hand, the intention of the defendant is not established or is an intention of a more venial kind, then a shorter sentence will be appropriate."

24. In the present case, given the jury's verdict on the charge of murder, it is clear that Tarbox' conduct in preventing the lawful burial of Miss Howells' body was done with a view to his avoiding detection, arrest and punishment for the most serious of crimes.

Moreover, by maintaining the pretence that Miss Howells was alive and that he did not know where she was, he added greatly to the anguish which he had already caused to Miss Howells' family by killing their loved one. He acted in that way over a period of months, whilst at the same time withdrawing sums of money from the account of the woman he had murdered. In the circumstances of this case, the offence of preventing the lawful burial was a very serious aggravating feature.

25. Sixthly, the judge's finding of an intention to cause grievous bodily harm in the context of an angry outburst intended to silence rather than to kill was a mitigating factor. However, killing by strangulation is a crime in which the seriousness of an intention to cause grievous bodily harm will often fall not far short of the seriousness of an intention to kill. In the circumstances of this case, we take the view that only a comparatively small reduction from the starting point was appropriate in this respect.
26. Seventhly, the lack of premeditation was a further mitigating factor, but in our view could carry only limited weight given the judge's findings as to the manner in which Tarbox had controlled and manipulated Miss Howells, and as to his propensity to violence.
27. Lastly, it seems to us that Tarbox' mental health difficulties could also carry only limited weight.
28. In our judgment, the balancing of those aggravating and mitigating factors necessitated a significant upward movement from the starting point established by schedule 21. We bear very much in mind that the judge had the advantage of having been able to assess Tarbox during the trial and we hesitate to differ from his assessment of the overall seriousness. We also bear in mind however that the judge was not as fully addressed as we have been about factors which are in our view significant.
29. We conclude, with all respect to the judge, that too much weight was given to the mitigating factors and/or insufficient weight to the aggravating factors, with the result that the minimum term imposed by the judge failed adequately to reflect the overall seriousness of the offending and was unduly lenient. In our judgment, the least minimum term which was appropriate in the circumstances of this case was one of 18 years.
30. For those reasons, we grant leave to refer. We quash the sentence of life imprisonment with a minimum term of 16 years imposed below as being unduly lenient, and substitute for it a sentence of life imprisonment with a minimum term of 18 years. The sentence for preventing the lawful burial of a body is not subject to this Reference and remains as before.

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

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