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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 2021 01654 B5



Royal Courts of Justice
Strand
London
WC2A 2LL

[2022] EWCA Crim 134

8th February 2022

Before:

THE VICE PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
LORD JUSTICE FULFORD

MRS JUSTICE JEFFORD

MR JUSTICE LAVENDER

REGINA

v

ANDREW CLAYDON

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)

MR DAVID TEMKIN QC appeared on behalf of the Appellant
MR GORDAN COLE QC appeared on behalf of the Crown

J U D G M E N T

1. THE VICE PRESIDENT: On 27 April 2021, in the Crown Court at Preston, the appellant pleaded guilty to manslaughter (count 2) which was an alternative to count 1, murder. On 5 May 2021, in the same court, before Judge Medland QC and a jury, the appellant (then aged 45) was convicted by a majority of 10 to 2 of murder (count 1). On 21 May 2021, again before the same court, the appellant was sentenced to imprisonment for life and the period of 14 years was specified as the minimum term under section 322 of the Sentencing Act 2020, less 323 days spent on remand. Before this court he appeals against conviction with the leave of the single judge.
2. On 18 July 2020 at around 6.45 pm the deceased, Matthew Pearson, left his flat and walked across the road towards the nearby shops. The appellant lived nearby and was known to Matthew Pearson. It is common ground that he approached the victim and punched him to the face, before forcefully pulling him/slamming him to the ground. His head hit the kerb stone. This was summarised by the judge as follows during the course of the summing-up:

"As you have seen on the rather blurry CCTV, the defendant as it has been described punched or swiped or sidewinded Matthew Pearson, then ran into the road a few steps towards him, pulled him back to the pavement, forcefully threw him to the ground and then stamped on him. Andrew Claydon admits doing these things."

Thereafter, as the prosecution alleged, the appellant violently and forcefully stamped on Matthew Pearson's head whilst he was on the floor. The appellant's case was that he stamped on the victim's arm which was in a plaster cast.

3. Matthew Pearson was rendered unconscious for about 2 minutes as a result of the attack, before he regained consciousness and staggered home. An ambulance was called and he was taken to Blackpool Victoria Hospital. He was subsequently transferred to the Royal Preston Hospital, by which stage he was again unconscious. He was operated on to relieve the pressure which had developed in his skull, but his condition never improved. On 2 August 2020 he died as a result of the injuries he had sustained on 18 July 2020. He was 42 years old.
4. The medical description of the cause of death was traumatic brain injury arising from blunt force trauma to the head. He had suffered a basal skull fracture with bleeding on to his brain. The Crown relied on the evidence of Dr Alison Armour and Dr Daniel du Plessis in this regard. The former opined that the skull fracture could have been the result of the side of the victim's head hitting the pavement or a stamp to the head, or a combination of the two. Dr Armour testified that the injuries sustained by Matthew Pearson in the assault on him was a very serious and severe head injury which was ultimately responsible for his death.
5. On 21 July 2020 the appellant was interviewed by the police. He made no comment to all questions asked.
6. Against that briefly described background the prosecution case was that the appellant murdered the deceased. The prosecution accepted that the appellant did not intend to kill the deceased and the case was put on the basis that at the time of the assault the appellant intended instead to cause the deceased really serious injury. It was suggested that the short assault, which lasted around 4 or 5 seconds, was one continuing outburst in which the appellant completely lost his temper. His violent actions, which included the stamp to the deceased's head whilst he lay defenceless on the ground, demonstrated his intent to cause the deceased really serious injury. The prosecution argued in the alternative that if the jury could not be sure that the appellant stamped on the deceased's head but accepted that he stamped on his already broken arm which was in a plaster cast then this sufficiently demonstrated his intention to cause really serious injury.
7. The building blocks of the Crown's case can be described as follows.

- First, they relied on the agreed expert evidence as to the cause of death, namely that the deceased died as a result of the injuries he sustained during the assault.
 - Second, it was argued that the appellant's guilty plea to manslaughter unequivocally demonstrated that he unlawfully caused the death of the deceased.
 - Third, CCTV footage showed the appellant's stamp on the deceased's head.
 - Fourth, a witness called David Fleming saw the appellant stamp on the deceased's head and simultaneously heard a crack.
 - Fifth, other witnesses heard the appellant shouting aggressively at the deceased at the time of the assault.
 - Sixth, the expert evidence was to the effect that a considerable degree of force would have been required to cause the hinge fracture to the skull. This was said to demonstrate the appellant's intent.
 - Finally, the prosecution relied on the adverse inferences to be drawn from the appellant's failure to mention facts in his police interview on which he relied at trial.
8. The appellant agreed that he had been angry about the theft of some vodka and money. He denied he had been shouting aggressively at the deceased at the time of the assault. He accepted wanting to cause the deceased "some pain", but he denied any intention to cause really serious harm. A central element of his defence was that he denied stamping on the deceased's head; instead he suggested he had aimed for the deceased's broken arm. He accepted lying to the police out of panic.
 9. The central issue in the trial, therefore, related to the defence contention that whilst the appellant was responsible for the death of Matthew Pearson, he had not intended to cause him really serious injury. In summary in this regard the appellant denied that he stamped on the deceased's head, and he suggested that the skull fracture which caused the fatal bleed could have been caused by Mr Pearson falling/being slammed to the ground. He accepted stamping on the deceased's arm which was in a plaster cast.
 10. He relied on the evidence we have already rehearsed from Dr Armour that the skull fracture could have been caused by the forceful throw to the ground. There was additionally an absence of any bruising to the deceased's face consistent with a stamp to the head. The appellant suggested that Dennis Fleming was an unreliable witness, having given inconsistent accounts. The CCTV was of poor quality, in that it was "blurry" and did not clearly show a stamping motion to the head.
 11. The judge summed this up to the jury as follows:

"The defence argue that you cannot and should not be sure on the evidence in this trial that the allegation of murder is proved. They argue that Andrew Claydon's precise actions and movements in the moments when he used unlawful violence against Matthew Pearson are really open to question on the blurry CCTV.

Mr Temkin QC relies on the agreement of Dr Armour that the basal skull fracture is equally consistent with the forceful pull to the ground as a stamp on the skull. Thus Mr Temkin puts to you that if you agree with Dr Armour's conclusion, the skull fracture could have been caused by the forceful throw to the ground and he asks rhetorically, is a throw to the ground, even a forceful one, consistent with an intention to cause really serious injury?

Mr Temkin argues that as to the direct evidence of a stamp to the head, this essentially comes from Dennis Fleming. Mr Temkin asserts that Dennis Fleming is an unwholly satisfactory witness in any case let alone one as serious as this. Fleming is, they argue imprecise, variable as to detail and frankly shifty. Even if he is trying

to tell the truth, the defence argue, his evidence is so flawed and moveable as to be unimpressive and fundamentally unreliable.

Although Mr Temkin put it more elegantly than this, he was really arguing to you that you should not rely on Dennis Fleming to tell you what day of the week it is let alone to give what might be critical evidence in a murder trial."

12. We emphasise, therefore, that the central – in reality, the sole question in the case – was whether the appellant intended to inflict really serious harm when he assaulted the victim. In this regard there was the important difference, which we have already outlined, between the prosecution and the defence as to whether there had been a stamp to the head of the victim, which was potentially an important issue when considering the appellant's intention.
13. The relevant directions to the jury were first before counsels' speeches:

"The defendant is indicted on two counts in this trial – murder of Matthew Pearson on 2nd August 2020 and the alternative count of manslaughter. The defendant has pleaded guilty to manslaughter. The assault which caused Matthew Pearson's death was on 18th July but he although gravely ill from that moment and never improving in health did not die until 2nd August and so that is why the offences of murder and manslaughter are stated to be on that date and not 18th July.

For murder, each of the following legal elements must be proved so that you are sure before you could find the defendant guilty of murder. That Andrew Claydon unlawfully assaulted Matthew Pearson, that the unlawful assault was a substantial cause of Matthew Pearson's death and that when he unlawfully assaulted Matthew Pearson, Andrew Claydon either intended to kill Matthew Pearson or intended to cause Matthew Pearson really serious harm.

I have then sought to provide some working definitions of some of the phrases that have cropped up in those points.

Unlawfully assaulted – this means that you must be sure that Andrew Claydon deliberately used unlawful force against Matthew Pearson. Andrew Claydon has pleaded guilty to manslaughter and does not dispute that the force he used against Matthew Pearson was unlawful and therefore element A above is proved already. The unlawful assault must be a substantial cause of death. There is no dispute in this case that the totality of the violence in this case was a substantial cause of the death of Matthew Pearson. Andrew Claydon admits as much by his plea of guilty to manslaughter though he denies kicking or stamping on Matthew Pearson's head. Then an intention to kill or intention to cause really serious harm. You will decide whether the defendant intended to cause really serious harm or intended to kill by considering all the evidence in the case including what the defendant did, what he said, what mood he was in, how he was behaving and so on. From all this evidence you can infer what his intention was.

The process must be that you decide first what you are sure happened and then from those sure conclusions of fact decide what you are sure

the defendant's intention was an intention to do something is not necessarily the same as pre-meditation. An intention may be formed and held for hours, days, weeks or years or it may be formed in an instant and note the offence of murder is proved as to the intention of the defendant if you are sure he either intended to kill or that he intended to cause really serious injury. The prosecution in this case accepts that Andrew Claydon did not intend to kill. They allege that he intended to cause really serious injury.

Then that phrase really serious harm. That simply means really serious injury. Please give the words their natural meaning as ordinary English words. The really serious injury which was intended does not have to be life-threatening harm.

So from all of that I crystallise the principal issue in this case for you and that is whether you are sure the defendant intended to cause at least really serious injury when he unlawfully assaulted Matthew Pearson.

I then endeavour very briefly to summarise the principal arguments of the prosecution and the defence.

The prosecution argue that this is a clear case of murder, not manslaughter. They argue that the evidence shows that the assault was done in a matter of four or five seconds, that it was really one continuing outburst in which gross violence was used including a stamp they say to Matthew Pearson's head whilst he was defenceless on the ground.

The prosecution accept that Andrew Claydon did not intend to kill Matthew Pearson but they argue that Claydon completely lost his temper and must have intended to cause really serious injury as shown by the CCTV when combined with the other evidence of what was said and done by him.

The prosecution argues that his violent actions at the scene are the clearest proof that he must have intended really serious injury. The defence argue that you cannot be sure that Andrew Claydon intended really serious injury. They argue that his plea of guilty to manslaughter is a realistic acceptance of what he did at the time – violence but with no intention of causing really serious injury.

They argue that you cannot be sure he stamped on Matthew Pearson's head and that the fractured skull which caused the fatal bleed on the brain may have resulted not from a stamp to the head but from a forceful pull by Andrew Claydon thus causing Pearson to lose his footing and go to the ground which is not consistent with an intention to cause really serious injury. The defence argue that the stamp was not directed to Matthew Pearson's head but rather to his arm which was in a plaster cast."

Then, following speeches:

"[The prosecution] argue that even if you accept Claydon's account that he stamped not on Pearson's head but deliberately on his already broken arm and its plaster cast then this too must be clear proof of an intention to cause really serious injury and thus proves that Andrew Claydon is guilty of murder and not manslaughter."

And a little later:

"If you are sure that when Andrew Claydon assaulted Matthew Pearson, whether that included a stamp to the head or a stamp to the arm, he intended at least to cause Matthew Pearson really serious injury, if you are sure of that then the oaths and affirmations you all took to return the true verdict on the evidence would lead you to return a verdict of guilty of murder."

14. Against that background it is submitted that the judge erred in directing the jury that if they found that the appellant stamped on the deceased's arm intending to cause really serious harm, they could convict him of murder. It is emphasised that the injury to the deceased's arm was not a substantial cause of death; instead the sole cause of death was the traumatic brain injury arising from blunt force head trauma. Therefore the legal directions permitted the jury to convict the appellant of murder on the basis that he stamped on the deceased's arm when "this was the only act carried out with the requisite intent". Mr Temkin QC frankly accepts that he did not raise this issue with the judge at the time and that it was only on reflection after the jury's verdicts that the point occurred to him.
15. The respondent submits that the judge's observations as to the stamp on the victim's arm needs to be viewed in the context of the summing-up as a whole. It is suggested that the directions to the jury on the offence of murder were clear and accurate. It is emphasised that it was uncontested that the deceased died from the injury to his head and there was no suggestion that an injury to his arm contributed to his death.
16. We can deal with these arguments shortly. With respect to Mr Temkin, for whose concise and focused submissions we are grateful, he has inappropriately elided the separate considerations that are relevant to the *actus reus* of this offence, on the one hand, and the *mens rea*, on the other. There was no dispute at trial as to the *actus reus*, in that it was accepted that by whichever of the two alternative mechanisms the victim's death was caused (*viz.* being thrown forcefully to the ground or being stamped on the head) the appellant was responsible for this unlawful killing. Put otherwise, it was uncontested that his assault on the victim had been a substantial cause of the victim's death. We repeat in this context the judge's direction in this regard:

"The unlawful assault must be a substantial cause of death. There is no dispute in this case that the totality of the violence in this case was a substantial cause of the death of Matthew Pearson. Andrew Claydon admits as much by his plea of guilty to manslaughter though he denies kicking or stamping on Matthew Pearson's head."

Therefore there was no suggestion that the *actus reus* of the offence would not have been established if the jury were unsure of the stamp to the victim's head. Instead the dispute in the trial, as we have already extensively rehearsed, concerned the appellant's *mens rea* - the appellant's intention. The judge made this clear throughout his directions to the jury.

17. In this context it was undoubtedly relevant for them to consider the manner in which the appellant stamped on the victim's body whilst lying on the ground during an altercation which lasted a few seconds only. It is to be highlighted, therefore, that the judge's direction to the jury concerning the suggested stamp to the plaster cast was solely in the context of the appellant's *mens rea*. As the judge reminded the jury, one of the appellant's arguments was

that "*the stamp was not directed to Matthew Pearson's head but rather to his arm which was in a plaster cast*"; whilst the respondent's case was that if the appellant "*deliberately stamped on his already broken arm and its plaster cast then this too must be clear proof of an intention to cause really serious injury*".

18. In conclusion, therefore, given the appellant accepted at trial that his assault on the victim had been a substantial cause of the latter's death, the jury were correctly directed as to the competing arguments concerning the stamp to the victim's prone body, particularly since the directions were focused solely on the issue of the appellant's intention. Notwithstanding the appellant's plea to manslaughter, Mr Temkin has based his submissions before us on an issue that was uncontested at trial, namely whether the appellant was responsible for the assault that was a substantial cause of death. We repeat, the appellant accepted that the sole cause of the victim's demise was the traumatic brain injury arising from blunt force head trauma **which he had inflicted**. There was, therefore, no risk of the jury reaching an impermissible conclusion as to the (agreed) *actus reus* of the offence based on the judge's directions as to the stamp, particularly given those directions were delivered solely in the context of the appellant's intention. This verdict therefore is safe and the appeal is dismissed.

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