



JUDICIARY OF
ENGLAND AND WALES

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-v-

Denver Walton

Manchester Crown Court
Sentencing Remarks of Mr Justice Bryan
2 August 2019

1. Denver Walton, you have been found guilty of the manslaughter of Tyrelle Burke on 5 April 2019 and also possession of an offensive weapon, the kitchen knife with which you inflicted the fatal stab wound. I must now sentence you for those offences. You were 17 at the time of your offending but are now 18.
2. Tyrelle, who at 20 years of age was a little older than you, was a good friend of yours. On the night of the 3rd and into the 4th April you had slept over at Tyrelle's house together with a mutual friend of you both David Gamboa. You had all decided to spend the evening and night doing drugs and chilling out together. In this regard you had all taken the benzodiazepine alprazolam (Xanax) as well as a drug "lean" which contains both codeine and promethazine which comes in bottle form and which you mix with fruit juice or the like. It makes you (as you put it) "slumpy". Neither is available on prescription in this country but sadly each is readily available on the streets of this country.
3. By the early hours of 4th April you were all crashed out unconscious. It appears that within your circle of friends it is common to perform pranks on those who are unconscious which you video and then play back to them when they regain consciousness.
4. So it was that by 4am you were awake and you took up a kitchen knife that was apparently on Tyrelle's bed side chest of drawers and cut him 7 times or so across his leg. In fact your only recollection was "jabbing" him in the leg with the knife, hardly a wise thing to do, but it is clear enough that you in fact repeatedly cut him, which is no more comprehensible. You regarded this as a joke and were to show him and others the footage the next night – he too

regarded it as a joke. However your use of a knife even in jest shows an unhealthy familiarity and willingness to use a knife, and it is not difficult to envisage that with a mix of drink and drugs, your familiarity with that knife and knowledge of where it was in Tyrelle's room, might lead to an all too predictable, and tragic, outcome.

5. The following afternoon you, Denver and David Gamboa decided to have a party with a group of friends in a room that Tyrelle rented for you all at the Britannia Hotel Northernend. Before you got there at around 6pm you had all taken Xanax, and you had also purchased cocaine, cannabis and lean. Once there you all took cocaine and cannabis, and were drinking lean mixed with fizzy drinks as well as Ciroc vodka and Courvoisier brandy. Also present was another male friend Jayden Gibson, and you were later joined by another female friend in the group Olivia Stone. Very much later (around 4am) you were joined by another female Kerris Stone, who was known to Tyrelle. Before she had joined the party she had already consumed a very considerable quantity of vodka. Further alcohol was obtained by Kerris and Jayden from a nearby garage in the form of another bottle of Courvoisier brandy.
6. At around 05.50hrs you and Denver decided to go back to the house where Tyrelle lived with his mum and younger brother. Kerris went with you. Her evidence was that she wanted to finish off the bottle of Courvoisier and did not want to return home drunk in circumstances where she has an eleven month old daughter.
7. Tyrelle's mum was not best pleased with him for bringing people back, but she left for work and you and Kerris went with Tyrelle to his bedroom where initially at least, all was well, as you all sat on Tyrelle's bed chatting and drinking Courvoisier. At one point Tyrelle and Kerris went into the bedroom of Tyrell's mum, and you followed and the chatting continued. You all then returned to Tyrelle's bedroom.
8. A time came when Tyrelle and Kerris were lying, clothed, in the bed and you were sitting on the bed. For whatever reason a fight broke out between you and Tyrelle and he made clear that he wanted you to leave the house. In the course of that fight he undoubtedly punched you and you suffered a bloody nose. Your account that you then picked up the kitchen knife and then stabbed him in self-defence (you said to his arm though you also said you did not believe it connected) was clearly rejected by the jury. It was no part of

your evidence that you could have stabbed at him more than once. On any view you picked up the knife at this time.

9. What then happened was that you, Tyrelle and Kerris ended up on the front door step of the house. Tyrelle was telling you to leave but you were unwilling to leave. At one point Tyrelle was attempting to restrain you in a headlock as witnessed by one of the neighbours, and both Kerris and the neighbour saw you repeatedly punching or jabbing Tyrelle to his mid-rift with your right hand (albeit you are left-handed). Kerris was trying to get between you and telling you to stop. I have no doubt that you were the aggressor. A point in time came when Tyrelle's pressure upon you relaxed and you ran away with the knife concealed in your left pocket. After returning to your house and cleaning yourself up, you disguard the knife to the rear of your house, before running away from the police.
10. As immediately became apparent to Kerris on the door step, Tyrelle had in fact suffered a serious stab wound to the right of his abdomen inflicted by you. She managed to drag him upstairs onto his bed and called 999. Police and paramedics were soon on the scene, and her first account of events at the front door, as captured on the body worn footage, graphically shows the stabbing motions that you were making on the doorstep.
11. Tellingly, there are two complete cuts to Tyrelle's T-shirt and a third puncture mark consistent with contact with the tip of the kitchen knife. These are all to the right side of the T shirt in the vicinity of the stab wound. I am quite satisfied that you repeatedly stabbed at Tyrelle, with three such stabs penetrating his T-shirt but only one penetrating his body.
12. Whilst it is possible, from a medical perspective, that Tyrelle could have been stabbed upstairs by you, gone downstairs and been able to tussle with you on the doorstep for at least 5 minutes (or 10 minutes on one witness' account) before he collapsed I am sure, on the evidence that was before the jury, that he was stabbed by you outside using the knife that you had brought to the scene. First, both the near neighbour Louise Burnage and Kerris Stone see you making punching or jabbing motions at Tyrelle's body outside (at the time they thought you were punching him) – and in this regard your counsel established that a fight is a dynamic situation in terms of the location of bodies relative to each other (and so of the wound despite it being on the left side of the abdomen and the punching seemingly being to the right side). Secondly, you had undoubtedly taken the knife out with you, and you have

also been found guilty by the jury of possession of an offensive weapon in a public place. They accordingly concluded that you intended to have it with you for use for causing injury and you have not satisfied them that you had a reasonable excuse for having it with you there. Thirdly, the two or three separate cuts to the T-shirt are inconsistent with your account of one stab motion in the bedroom to his arm (or you holding out the knife and Tyrelle running onto the blade – a yet further (false) version of events only recounted when you gave oral evidence). Fourthly, Tyrelle was only wearing a T-shirt which would have rapidly absorbed and shown blood, and given the serious stab wound inflicted it is inherently improbable that substantial bleeding would not have been visible on Tyrelle's T-shirt soon after the stabbing (even though much of the bleeding was internal there were blood vessels close to the surface), yet no such bleeding or staining is mentioned by Kerris Stone or any other witness. Fifthly, there was blood staining at the bottom of the stairs consistent with arterial high pressure blood splatter from an inter-costal artery. This could only be on the return upstairs as if there had been arterial bleeding going downstairs this would surely have been readily apparent on Tyrelle's T-shirt and spreading rapidly, yet no such bleeding or staining is mentioned by Kerris or any other witness.

13. The wound that you inflicted was a fatal wound. It passed between two ribs (requiring mild to moderate force though severe force could not be excluded) went through intercostal muscles (which would have caused bleeding from the intercostal arteries and veins), through the blood-rich liver (leading to extensive bleeding) and damaging a vein through the liver, and continued horizontally towards the spine where (unbeknown to the attending surgeons at Manchester Royal Infirmary who twice operated on Tyrelle in an attempt to save his life) it had cut the aorta, the main artery of the body, in an inaccessible location, near the spine, as discovered on the post mortem examination. Sadly despite prompt and skilled medical intervention Tyrelle died from the injuries you had inflicted shortly after 5pm the same day.
14. Having inflicted what had proved to be fatal wound on Tyrelle you did not stay to assist your friend. On the contrary you ran from the scene, and discarded the knife with which you had inflicted that fatal injury after first visiting your house to clean yourself up. Whilst I cannot be sure (and so disregard the possibility), the knife lacked not only any visible trace of blood but also the fatty deposits that would be apparent under a microscope following a knife penetrating skin to the fatty layer beneath, so the knife could have been wiped clean by you in the bathroom at your house, though

the forensic scientist could not exclude the possibility that such material had rubbed off in your pocket.

15. Tyrelle was only 20. He had his life ahead of him and everything to live for. You took that life away. Your offending is yet another sad indictment of the fact that knives, drugs, alcohol and youths do not mix. I have had careful regard to the personal victim statement of his mum. It makes painful reading. For her, and her other children, life will never be the same again.
16. As for you, Denver Walton, you have been found guilty of manslaughter. I accordingly sentence you on the basis therefore that the jury were sure that you unlawfully stabbed Tyrelle Burke but that they could not be sure that you intended to cause at least really serious harm to Tyrelle Burke whilst being sure (as was obvious) that your stabbing him carried the risk of at least some injury to him.
17. Pursuant to section 143 of the Criminal Justice Act 2003 I am, required to pass a sentence commensurate with the seriousness of the offending and your culpability. You were born on 27th April 2001 and so were 17 years and 11 months old at the time of your commission of these offences, but are now 18 years of age at the date of conviction. Accordingly the Manslaughter Definitive Guideline 2018 (the “Manslaughter Guidelines”) applies to your offending. However given your age at the time of the commission of your offences I also take into account the Sentencing Children and Young People Overarching Principles, as well as the aim of the youth justice system (Section 37 of the Crime and Disorder Act 1998), and your welfare (Section 44 of the Children and Young Persons Act 1933).
18. Culpability has always been significantly influenced by the extent to which harm could have been foreseen. In the present case a weapon, in the form of a kitchen knife was used. It was entirely foreseeable that serious injury or death could result from the use of that knife to stab someone anywhere in their body – a main artery or vein could be cut whether on a limb such as an arm, or in the torso such as the chest or abdomen (indeed stabs to limbs all too often themselves result in death).
19. Prior to the Manslaughter Guidelines, the definitive case on manslaughter was *Appleby (A-G’s reference No 60 of 2010)* (2010) 2 Cr App R (S) 46. The use of a knife carried to the scene as a weapon was recognised as an

aggravating feature (see *R v Povey* (2009) 1 Cr. App. R. (S.) 42). The post-*Appleby* approach to sentencing in the case of manslaughter with a knife was reviewed in *R v Nicholles (A-Gs Ref No 36 of 2015)* (2015) EWCA Crim 1174, which rightly noted that there has also been upward movement in sentences to reflect the new focus on harm under section 143 of the Criminal Justice Act 2003, the sentencing regime for offences of murder contained in Schedule 21 to the Act, and the sterner approach to sentencing in cases involving the carrying of knives and other weapons – see also *R v Odegbune* (2013) EWCA Crim 711

20. However culpability is now addressed in the Manslaughter Guidelines, and I accordingly sentence you by reference to, and only by reference to, those Guidelines. Mr Littler QC submits that there is medium culpability on the basis that you used the kitchen knife in the way you suggested in interview namely upon your best friend during an argument/incident only intending to stab his arm and possibly using excessive self-defence or whilst being provoked so this is a medium culpability (Culpability C) case where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm (or reckless as to whether harm would be caused) that falls between higher and lower culpability.
21. I have had the benefit of hearing you giving evidence and it is apparent to me that you are an intelligent young man and it ought to have been obvious to you, as I am sure it was, that stabbing someone whether in his arm or in his torso carried a high risk of really serious harm or death – there are examples on a daily basis of people being stabbed in their limbs and dying – all it needs is to cut an artery or a vein and in the absence of prompt medical intervention the victim sadly all too often dies.
22. However, as we know, you stabbed Tyrelle not to his arm but to the right front of his torso and the knife penetrated 11 to 13cm into his body with you using at least mild to moderate force and the pathologist could not rule out that severe force was used. It is obvious that stabbing someone in such a location carries a high risk of really serious harm or death, as transpired in this case. Furthermore, to stab someone in his torso (as I am satisfied you in fact intended to do it being inherently implausible that you intended only to stab in the arm or held your knife out and looked away), on any view, shows an intention to cause harm (at its lowest) falling just short of grievous bodily harm. In this regard I also have regard to the fact that there were either 2 or 3 stab cuts to Tyrelle's T-shirt through one of which the fatal injury was

inflicted. This also sheds further light on your intention. To attempt to stab someone repeatedly in the torso shows, at the very lowest, an intention to cause harm falling just short of grievously harm.

23. When assessing culpability under the Manslaughter Guidelines I do not consider it necessary to consider whether you took the knife to the scene given the other factors in relation to culpability I have addressed above which shows that this was, on any view, high culpability offending even if it took place in the bedroom. However were it to be relevant I am sure for the reasons I have given that you stabbed Tyrelle outside. If relevant this could only increase your culpability.

24. The starting point under Category B for an adult is 12 years custody with a range of 8 to 16 years custody. There are potential aggravating factors to your offending:-

(1) This was an unlawful killing involving a weapon. If relevant it was also a weapon which I am sure was taken to the scene. This shows an element of premeditation. These are potential aggravating factors. However it is important to avoid double-counting and I have already taken into account the use of a weapon and your intention when assessing the category of culpability as high. Accordingly I do not increase the starting point in this regard.

(2) This was not a one-off stab – the knife damage to Tyrelle’s T-shirt show that there were at least 2 and possibly 3 stabs at Tyrelle that connected with Tyrelle’s clothing, one of which inflicted the fatal injury. Again, however, I have taken this into account when assessing culpability.

(3) The overwhelming likelihood is that you were under the influence of drink and drugs at the time (given your admitted consumption of drugs and alcohol in the lead up to the fatal stabbing).

(4) I have considered whether your previous convictions (including for violence) are an aggravating feature, but given the context of that previous offending I have not regarded that to be an aggravating factor.

25. In the circumstances I do not consider it appropriate to increase from the starting point. I then turn to the mitigating features:-

(1) I take into account your age. At 17 you were not an adult, but neither do I consider that you are naïve, impressionable or other than responsible for your actions. Your age will be taken into account when reducing the sentence having regard to the Sentencing Children and Young People Overarching Principles. In this regard you committed the offence very shortly before you turned 18.

(2) Whilst I do not consider that this is a case of an element of self-defence gone too far or provocation, I accept that you may not have the maturity to stand back rather than resort to lethal unlawful violence when presented with a confrontational situation.

(3) I take account that you will have to live with the fact that you killed your friend for the rest of your life and that you have shown remorse for what you have done.

(4) I have had regard to the mitigation offered on your behalf by Mr Littler QC.

26. The seriousness of the first offence of manslaughter also has to be seen in the context of the further offence of possession of an offensive weapon associated with it. In relation to the latter offence I have had regard to the Bladed Article Definitive Guidelines as well as the Sentencing Children and Young People Overarching Principles. I intend to pass a sentence under section 91 which will reflect the totality of your offending whilst ensuring that there is no double counting. In doing so I make quite clear that in doing so you are being punished for the offence of possession of an offensive weapon, but as part of the sentence I pass on count 1. If I had passed a sentence in respect of count 2 it would have been a 4 month Detention and Training Order.

27. For the offence of manslaughter, (Count 1), I am satisfied that neither a youth rehabilitation order nor a detention and training order is suitable in your case. I accordingly pass a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act. This will be the shortest which in my opinion matches the seriousness, and totality, of all of your offending and takes into account your age and the mitigating factors in your case and the period you will spend on licence following your release. The sentence I

pass is one of 7 years and 3 months detention under section 91. Time served on remand will be taken into account automatically. I impose no separate penalty in relation to count 2.

28. Unless you are released earlier under supervision you will serve one half of this sentence in custody. You will then be released on licence for the remainder of your sentence. While you are on licence, you must comply with all its conditions. At any time during your licence, the Secretary of State may withdraw it and order your return to custody.

29. I order the destruction of the knife. The surcharge provisions apply and I make a collection order in that regard.