



JUDICIARY OF
ENGLAND AND WALES

R v Orrett Duncan

In the Crown Court at Sheffield

26 February 2014

Sentencing remarks of Mr Justice Males

Orrett Duncan, you have pleaded guilty to the manslaughter of Calvin Clarke on the basis of loss of control. That plea has been accepted by the prosecution.

You are now aged 40. Calvin Clarke was a man with whom you had an ongoing dispute concerning a woman who was his former partner and with whom you were having a sexual relationship. On 27 September 2013 he was standing outside a shop on the Haymarket in Sheffield. He had a knife in his jacket pocket. You saw him standing there and decided to confront him. You went into another shop, Wilkinson's, accompanied by two of your young children whom you had just collected from school. You bought a knife, a sharp vegetable knife, which you put into a plastic carrier bag. You sent your children into another shop across the road and were then seen to rummage in the carrier bag, removing from its packaging the knife which you had bought. Your counsel told me that there had been an incident a week or so before this when Calvin Clarke had confronted you when you were with your children and had threatened to use a knife on you if you had not been with them. So you bought the knife on this occasion, expecting and preparing for a confrontation, knowing that he might well be armed even if you did not know for sure that he was. You left the shop and walked towards where Calvin Clarke was standing. You shouted at him and he shouted back in an exchange of insults. As you advanced towards him, Calvin Clarke took his knife out of his pocket and ran towards you. When you saw his knife, you took out your own knife from the carrier bag.

There was a fight and you had the worst of it. You fell to the ground. A witness thought that you were being robbed. Calvin Clarke slashed at you and cut you across the face. I have seen a photograph of your injury and it was a vicious cut. You got up and moved towards Calvin Clarke, stabbing with your knife. You stabbed him three times in the chest. Two of those wounds penetrated his body and one of them, which proved fatal, cut an artery. He died from those injuries a few days later.

The basis on which you have pleaded guilty to manslaughter and on which the prosecution has accepted your plea is that you bought your knife for the purpose of having it with you in an altercation which you knew was likely to take place; you actively engaged Calvin Clarke in a verbal altercation; you produced your knife when you saw that he was armed and you had it in your hand when the incident began; you lost your self control after the injury to your face but you inflicted the fatal wounds intending to cause at least really serious bodily harm to Calvin Clarke; and you quickly regained your self control after doing so.

Thus, although I now have to sentence you for manslaughter on the basis of loss of control and not for murder, so that at the time of the killing you had lost your self control, your plea to manslaughter is advanced on the very narrow basis which I have described. It is relevant to note also that, as your counsel acknowledged, if you had been convicted of murder I would be obliged to pass a life sentence with a minimum term whose starting point would be 25 years.

As it is, and even though there are no victim statements in this case, the harm which you have caused, the death of Calvin Clarke, is no different from what it would have been if you had been convicted of murder, but the fact that you killed when suffering from a loss of control means that your culpability is less.

Your conduct in this case shows that although you were not armed when you came into town to shop and it was by chance that you came across Calvin Clarke, you were prepared deliberately and with a degree of forethought and preparation to engage in what you knew was likely to be a knife fight in broad daylight in a busy public

place with a man whom you regarded as an enemy. This involved an obvious risk of serious personal injury to your opponent and yourself, and potentially to other members of the public who would at the least be witnesses to a disturbing and distressing sight. Although you inflicted the fatal wounds at a time when you had lost your self control, you did so intending to cause at least really serious bodily harm and there was always a risk that such injury at least might be the result of the altercation for which you prepared yourself.

In deciding what sentence is appropriate I must have regard to the guidelines issued by the Sentencing Guidelines Council on manslaughter by reason of provocation, even though the old defence of provocation is in some respects different from the new defence of loss of control. Those guidelines emphasise that the sentence in such a case must not lose sight of the fact that the offence for which you are to be sentenced involves a loss of self control on your part and that your culpability is to be assessed in the light of that fact.

They indicate also that the degree of provocation as shown by its nature and duration is a critical factor or even the critical factor. In this case it may be said that in one sense the fact that you were slashed in the face with a knife by Calvin Clarke represents extreme provocation on his part, but I do not take that view. On the contrary, the important considerations in the present case are that you prepared yourself for a knife fight; and that you were at least complicit in the initiation of that fight by shouting to and approaching Calvin Clarke when you knew that he might well be armed and there was no reason to suppose that he had even seen you. The guidelines recognise that the carrying and use of a weapon which is brought to the scene in contemplation of possible use before the loss of self-control occurs is an aggravating factor. So too is the fact that this incident took place in a busy shopping area, with many members of the public present to witness it. It is not easy to fit a case such as this within the guidelines, but so far as it is possible to do so I would regard this as a case falling within and towards the top of the most serious category dealt with in the guidelines.

I would add that although you have a conviction for possession of a samurai sword in a public place, the circumstances of that offence were very different and it was almost eight years ago. I do not regard that as an important factor.

I have seen the material provided by way of mitigation, referring to the way in which you have worked hard in your job as a cleaner, and including a letter from one of your former partners who is the mother of two of your children and another former partner who is the mother of two of your other children. They speak of how you have been a caring and committed father and have provided a home for two of your four children, whose performance at school has improved since they came to live with you. That is to your credit, but it is also the case that you committed this offence when you had just collected two of your children for whom you were the sole carer from school, even though it appears that they did not have to witness this incident. The material speaks also of the way in which your children are suffering as a result of your conduct. Tragically, and as is so often the case, your children are the innocent victims of your criminal violence. That is to be regretted and deplored, but cannot significantly affect the sentence which it is my duty to pass.

Balancing the various considerations, if you had been convicted after a trial, I would have passed a sentence of 18 years. I will give you maximum credit for your guilty plea. Although you did not comment when first interviewed and claimed in a subsequent interview that you did not know Calvin Clarke and had merely defended yourself when attacked by a stranger, I accept that it was reasonable in a complex case such as this to obtain your counsel's advice before tendering your plea and that your plea was then offered at the first reasonable opportunity.

Orrett Duncan, for the manslaughter of Calvin Clarke, I sentence you to 12 years imprisonment. You will serve half of that period in prison and will then be released on licence.

The statutory surcharge provisions apply.

26 February 2014