



JUDICIARY OF
ENGLAND AND WALES

R v MARK WINT

STAFFORD CROWN COURT

5 JULY 2013

SENTENCING REMARKS OF HIS HONOUR JUDGE SIMON TONKING

I sentence you for two offences, both arising out of two incidents of violence, separated by about 40 minutes, which occurred in the very early hours of the morning of Friday 13th January of last year, in the street immediately outside the Newtown public house in City Road, Fenton.

The first incident gives rise to an offence of assault occasioning actual bodily harm, the second to an offence of manslaughter and, whilst it is the second offence which is the more serious, I will outline each offence in chronological order.

Assault occasioning actual bodily harm

It has never been in dispute that at about ten to one in the morning of Friday 13th January of last year, you followed Mr. David Heath as he left the Newtown public house in City Road, Fenton and, once outside, within moments you attacked him by knocking his baseball cap off, headbutting him, punching him to the ground and then kicking him a number of times.

Almost all of this you admitted when you were interviewed by the police later the same day – the exception being that you did not admit the full extent of the kicking which you gave to Mr. Heath, which is clear from the CCTV footage.

This was a brutal and vicious attack on a man who, once he was on the ground, was completely defenceless. As a result of your attack Mr. Heath did not suffer any serious injury, the medical evidence being inconclusive as to whether his broken nose occurred at this time or when he went to the ground in the incident which occurred 40 minutes later; and accordingly the only injuries attributable to this assault are a small cut to the top of the nose and swollen lips.

It is plain that this attack did not happen out of the blue and, as you have always maintained, I am prepared to accept that Mr. Heath had been taunting you

and, as he went to leave, turned to you and voiced some final insult. That however cannot possibly explain, let alone excuse, what you did.

Putting this assault in the context of the Sentencing Council Guideline, this was a sustained attack involving the use of both your head and your foot as weapons and, whilst the provocation does serve to reduce its seriousness, I am satisfied that it falls into the most serious category of assaults occasioning actual bodily harm.

I will deal with other aggravating and mitigating features, which are applicable to both offences, after I have outlined the factual basis on which I pass sentence for manslaughter, to which I now turn.

Manslaughter

You have been found guilty by the jury of the offence of manslaughter, which arises out of the fact that having assaulted Mr. David Heath in the second incident, he died on 5th February of last year from the injuries which you caused.

This offence was committed in very different circumstances from those which obtained in the first incident. On this occasion you did not go to Mr. Heath but he came to you. He did so having gone home by taxi, told his daughter and Mr. Rogers that he had been beaten up by three men, had his cut cleaned and telephoned Mr. Lee Platt, who was still at the Newtown, twice. He then returned to the Newtown, driven by Mr. Rogers, in Mr. Rogers' car.

His motive for doing so is far from clear. Mr. Rogers gave evidence that initially, angered by what he had seen and heard, he wanted to go to the Newtown alone in order to find out who was responsible and then call the police, but that Mr. Heath had said he would go with him. Mr. Rogers also gave evidence that when asked, after the second incident, by Miss Smith why he had brought Mr. Heath back he told her "for his friend Lee". He denied that he and Mr. Heath had been intent on revenge.

I am far from sure that these reasons are true:

- Firstly, as he conceded, Mr. Rogers did not have any information from which he could have identified anyone;
- Secondly, in the second phone call between Mr. Heath and Mr. Lee, Mr. Lee had made it clear that he was leaving the Newtown and would not be there if Mr. Heath returned – so they could not have been going back for him; and
- Thirdly, the evidence of the taxi driver who took Mr. Heath home, which was read by agreement, is that Mr. Heath told him that it wasn't the last of it and he was going to go back to the pub with a couple of friends.

Furthermore it is clear from the CCTV footage, despite the lack of clear focus and the fact that not everything is shown, that the second incident began with Mr. Rogers, followed by Mr. Heath, walking purposefully across the road, Mr. Heath

pointing you out and there then being some kind of altercation in which you moved backwards, towards a pillar, in what was a plain attempt to avoid Mr. Rogers and Mr. Heath. After that, Mr. Heath was involved in a scuffle with Miss Smith and then went (off camera) back to the place where you and Mr. Rogers were.

This shows, with sufficient clarity, that at the start of this incident it was Mr. Rogers and Mr. Heath were not simply asking you why you acted as you did in the first incident, but they were themselves acting with some aggression and your actions were in response to that. Your response, as the jury have decided, was not defensive but aggressive and, when Mr. Heath came back into the path of the camera, you and Miss Smith were facing up to him and it was at this point that you struck him the single blow which, as the jury have found, caused him to go to the ground and sustain the injuries from which he ultimately died. In short you met aggression with aggression, with consequences which turned out to be fatal.

As a result of this offence you have deprived a family of their son, brother, father and grandfather, and his many friends of their good friend – and the stress, anxiety and sheer desolation which this has caused cannot adequately be put into words, despite the very moving Victim Personal Statements that I have read. Their loss is indescribable – though several of them try to describe in terms of a massive void - and their lives have been changed for ever. .

That serves to underline the seriousness of your offence: you caused the death of another man by an unlawful act of aggression. Having said that this is to be mitigated by the fact that this was very far from being either an unprovoked attack or one of any intensity, such as the attack which you launched on him in the earlier incident. It amounted to a single blow, struck in the heat of the moment when you had been faced with unexpected aggression which included the use of some, albeit relatively minor, force.

Turning to the aggravating and mitigating factors of each offence:

Both offences, as your learned leading counsel has rightly accepted, stem from the fact that, you had been drinking and whilst you were not completely drunk alcohol played its part in what you did. You have previous convictions, latterly for relatively minor offences, which were also fuelled by alcohol and whilst I keep your convictions in perspective, the last serious conviction now being 14 years ago, they show that you tend to break the law, including by breaching public order and causing damage, when in drink.

So far as the assault offence is concerned you have the mitigation of your plea of guilty, for which I will give you full credit, and also your immediate admissions and expression of shame, to the police.

You have a degree of personal mitigation in that two witnesses speak of your qualities as a friend, giving details of the kindness which you have showed to each of them when they have needed it. Psychiatrists who have examined you in the course

of these proceedings have highlighted your depression as well as your alcoholism – and I am told that you have effectively stopped drinking as a result of what happened on that tragic night.

SENTENCE

I turn to the sentence which I am to pass. I bear in mind that I am sentencing you for two separate offences, arising from two separate incidents, which I am satisfied I must mark by passing consecutive sentences, although I must also do no more than pass the least sentence that I can to mark the total seriousness of your offending.

Both offences are offences to which the provisions relating to dangerous offenders apply but, given the relatively low level of your offending since 1999, the facts of each of these offences and what I have read about you in two psychiatric reports - I pause to make it clear I have not considered it necessary, given all the information I have, to direct the preparation of a pre-sentence report – I am satisfied that neither offence qualifies you for such a sentence.

In relation to the first assault I have already indicated the category into which this falls, albeit the sentence I pass will reflect the aggravating and mitigating features to which I have referred.

In relation to your offence of manslaughter, I have considered, with counsel, the case known as Appleby [the cases of R. v. Appleby and other defendants [2009] EWCA Crim 2693] in which the Lord Chief Justice gave guidance as to how offences of manslaughter committed without a weapon should be considered, including offences where death is caused by a single punch often, as in this case, resulting in the victim falling to the ground with such force and in such a way that a fatal head injury is sustained.

In that case the Lord Chief Justice stressed the seriousness of any offence which involves causing the death of another person – which, in terms of harm, is at the highest level. He also pointed to the aggravating feature of many cases in which such death occurs as a result of violence in the street, with the resulting impact which that has on public confidence.

In this case, whilst the harm which you did is at that level, your culpability – your wrongdoing – is mitigated by the fact that your act was not unprovoked but a response to aggression and, I am satisfied some level of physical force. Mr. Davis QC has invited me to put the level of sentence in your case into a similar bracket as that of the cases, within Appleby, of Bryan and Roberts, not least because the man who died in that case was not wholly without blame, although, there are a number of dissimilarities to your case, some better some worse.

In relation to the offence of Manslaughter, for which there is not credit to be given for plea, taking account of all of the aggravating and mitigating features and

also having in mind the level of sentences which are imposed for this type of offence, I sentence you to a term of 4 years' imprisonment.

In relation to the offence of Assault I must give you credit for your plea of guilty, entered on 23rd August of last year – 10 ½ months ago. Were I sentencing you after a trial for this offence on its own, taking account of all of the aggravating and mitigating factors, but not your plea of guilty, I would sentence you to a term of 2 years' imprisonment. I would reduce that to give you full credit for your plea of guilty to a term of 16 months – and since I am to impose this sentence to run consecutively to your sentence of 4 years, and mindful of the totality of your offending and of the sentence, I reduce that to a sentence of 12 months – to run consecutively – making a total of 5 years imprisonment.

Time served in custody will count towards your sentence automatically. I also certify that you have spent 506 days on remand on qualifying curfew and I direct that one half of that period – namely 253 days – will count towards your sentence.