APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 3
HCA/2018/355/XC

Lord Justice General
Lord Drummond Young
Lord Turnbull

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD JUSTICE GENERAL

in

NOTE OF APPEAL AGAINST SENTENCE

by

CAMERON LAURIE

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: O'Rourke QC, Vengoechea; Faculty Appeals Service (for George Mathers, Aberdeen)
Respondent: Gillespie AD; the Crown Agent

24 January 2019

General

[1] On 5 July 2018 at the High Court in Aberdeen the appellant, along with a co-accused, namely Ryan Gibb, were convicted of two charges, the first of which libelled that:

> "... on 31 August … and 1 September 2015 at 26e Holland Street, Aberdeen you … did assault James … Chadwick, residing there, strike him on the face, punch him on the head and body, struggle with him … repeatedly kick him on the head and body, repeatedly stamp on his head and body and murder him, and you Ryan … Gibb did previously evince malice and ill-will towards him …".

The jury deleted a part of the libel which read: "repeatedly strike him on the head and body with a dog lead". The second charge was an attempt to defeat the ends of justice by attempting to clean up the blood from the *locus* and providing the emergency services with a misleading address where an unknown assault victim might be found. Both charges were committed whilst the accused were on separate bail orders.

[2] The appellant and his co-accused had previously been convicted of the same crimes on 31 August 2017, but with the inclusion of the reference to the dog lead. A sentence of life imprisonment and a punishment part of 18 years had been imposed on charge (1), together with a sentence of one year concurrent on charge (2). The convictions were quashed on 8 November 2017 (2018 SCCR 261) on the ground that the previous trial judge ought to have left the issue of culpable homicide to the jury. The same sentence of life imprisonment with an 18 year punishment part was re-imposed on both accused after the re-trial, but a concurrent 5 years was selected in respect of charge (2).

Evidence

[3] The deceased was an alcoholic, aged 37, who lived at 26e Holland Street in Aberdeen. He was, or had been, in a relationship with Mr Gibb's mother; herself a vulnerable individual, although they did not live together. There was some history of friction between the Gibbs family and the deceased. The deceased was afraid of them and had expressed this shortly before he met his death. He had asked if he could go and stay with friends, but his requests had been turned down.

[4] On 31 August and 1 September 2015 the appellant and Mr Gibb were drinking at the deceased's house. A fight started. According to most of Mr Gibb's accounts, which were

given to various people afterwards, the appellant had struck the deceased with a dog lead. He had said that the deceased had been left by them, on a sofa, alive and talking. In one account, however, Mr Gibb admitted to being involved in the fight as well. The appellant's accounts to others were that he had no recollection of the fight, although he did recall the attempts to clean up the flat and leaving.

[5] Once they had left the flat, Mr Gibb phoned the emergency services and said that he had seen an unknown man being assaulted in the street. The man had gone into 63e Holland Street (not the correct address at 26e). The appellant did remember this telephone conversation. It appears to have been, according to the trial judge, a conscious effort to make it less likely that the deceased would be found in the immediate future.

[6] At a party on 9 September 2015 to celebrate Mr Gibb's birthday, his mother said that her son had told her, in the appellant's presence, that the appellant had assaulted the deceased with the dog lead. The appellant had not denied this. The appellant later spoke to another witness and admitted that he had killed the deceased. He had intended to hand himself in for murder. In due course, both he and Mr Gibb surrendered to the police.

[7] After efforts by Mr Gibb's mother to contact the deceased had failed, the police gained entry to the deceased's house only on 16 September 2015, when they found him dead on a sofa covered with a blanket. He had died of blunt force trauma, causing a subdural haematoma. He had 12 fractured ribs on both sides of the chest and a tearing of the mesentery; the membrane attaching the intestines to the wall of the abdomen. His injuries were consistent with the use of significant force, caused by kicking and stamping to the head and body. Some of the kicking had been done by Mr Gibb's trainers. There was another set of footprints found in blood, but none of the footwear recovered from the appellant was

connected with this. The blood pattern was consistent with the deceased being kicked and stamped on whilst he was on the floor.

[8] In a subsequent episode, when Mr Gibb was in a holding cell at Aberdeen Sheriff Court due to appear on petition, he had re-enacted the assault on the deceased; saying to a fellow prisoner that he had been demonstrating the appellant's actings in punching, kicking and stamping. This was recorded on CCTV.

[9] Neither the appellant nor Mr Gibb testified at the trial.

[10] The trial judge took the view that the deceased had been assaulted in his own house in a brutal fashion and left to his fate. There had been attempts at covering up the signs of blood and providing the authorities with a false address. The appellant had been aged 31 at the time. He had a number of previous convictions at summary level, including 5 assaults between 2005 and 2008, one of which was to severe injury and had attracted a community service order and another which had resulted in 2 months imprisonment.

Submissions

[11] It was maintained that there ought to have been a lower punishment part because of the deletion of the reference to the use of the dog lead in the second trial. The appellant's involvement had thereby become less serious than it had been after the first trial. There had been a qualitative basis for distinguishing between the two accused. There had been no direct evidence linking the appellant to the kicking or stamping, whereas the co-accused was in a different position.

[12] In relation to the cleaning up operation, this had been amateurish. It had been the co-accused who had called the emergency services. In terms of *Ferguson* v *HM Advocate* 2010

SCCR 399, the sentence on this charge should not have been higher than it had been after the first trial.

Decision

[13] The difficulty with the appellant's contention is that neither accused elected to provide any evidence on how or why this murder came to have been committed. Neither testified to his part in the attack. The jury accepted that they had both been involved in a concerted assault on the deceased. In that state of affairs there was no substantial basis upon which the trial judge could have distinguished between the involvement of the two accused. He was not asked to do so. The deletion of the use of the dog lead was not a significant part of the overall violence. There is therefore no substance in the grounds of appeal against the punishment part. As the judge reports, this was a very violent attack upon a vulnerable person in his own home. Given the appellant's record, the period selected cannot be regarded as excessive. To that extent the appeal is refused.

[14] The sentence on charge (2) will be reduced to one year, consistent with the principle in *Ferguson* v *HM Advocate* 2010 SCCR 399, that a sentence following a retrial should not normally be greater than that originally imposed.