

AN INTERESTING SENTENCING EXERCISE
R V CLOWES
RICHARD BARRACLOUGH KC

On 2.2.24 CLOWES was sentenced to 2 years imprisonment suspended for 2 years for gross negligence manslaughter.

On 29th November a jury sitting at Stafford Crown Court (Calver J) acquitted the defendant of unlawful act manslaughter and convicted him of gross negligence manslaughter.

RICHARD BARRACLOUGH KC was instructed by West Midlands CPS and led ROBERT PRICE for the prosecution.

The defendant and the deceased lived together. It was a loving relationship. Both were alcoholics. The deceased binge drank. The Crown alleged that following a bout of drinking and after her soiling herself the defendant pushed her into a bath of scalding water. The immersion had been set at 82 degrees many years before. When paramedics arrived, they found the deceased with scald marks on her body and piles of skin on the floor.

The fact that the deceased was utterly incapable and vulnerable and entirely under his control placed a duty on him to take care at least when putting her into the bath and he did not do so. Pushing her into a scalding bath at a temperature equivalent to a kettle of boiling water created an obvious and serious risk of death. The opinion was that to immerse someone with BELL's vulnerabilities into a bath with water at a temperature of 82 degrees presents an obvious and serious risk of death. At 80 degrees the burning would start in under a second. Progression to a deep burn would happen very quickly.

Evidence was called from two pathologists, two toxicologists, a pharmacologist and a burns specialist.

Whilst the burns expert favoured brief immersion into scalding bath water he could not exclude the possibility that she had been left in bath water the temperature of which was in the region of 55 degrees and left for some 10 minutes. That fitted more with the defendant's own narrative and the evidence of a neighbour which heard conversation at a time when she was in the bath.

The primary cause of death was alcoholic ketoacidosis on a background of scald injury and alcoholic liver disease. The loss of the integrity of the skin by reason of the burns would increase the deceased's metabolic requirements. It added to her physiological burden. The scald would have played an important role in her death.

Following the decision in REBELO 2021 2Cr. App. R3, the indictment contained one count particularising the two limbs of manslaughter. Whilst it is possible to convict both of unlawful act and gross negligence manslaughter, the view was taken that the jury should first consider unlawful act manslaughter based on an allegation of assault when the defendant pushed her into the bath. If the jury convicted of unlawful act manslaughter, then they should proceed no further. If they acquitted of unlawful act manslaughter, they should go on to consider gross negligence manslaughter. Thus, the jury were able to acquit of the

one but convict of the other. This avoided having to take a special verdict although it deprived the jury of convicting on both limbs.

In the right case it would be possible to ask them to return a verdict on both unlawful act and gross negligence manslaughter within the one count.

The sentencing judge Calver J had a view of the evidence which permitted him to choose low culpability

“ I accept that there is a doubt as to whether Clare was immersed into scalding hot water at a temperature of 82 degrees by you or whether she was left in water of at least 50 degrees for a longer period of time in order to suffer the pattern of 3rd degree burns seen on her body. Whilst I consider it implausible that an intoxicated and semi-conscious Clare herself topped up the bath with the scalding hot water, I am willing to give you the benefit of the doubt, which I consider to be consistent with the jury’s verdict, that you left her in water of 50 degrees for a period of time whilst you went downstairs, and it was that which caused her burns, rather than your immersing her in water with a temperature of 82 degrees”.

In order for this to be a high culpability case the court would have to be satisfied that the offence was particularly serious because the defendant showed a blatant disregard for a very high risk of death resulting from the negligent conduct. That must mean something more than what is required for the ingredients of the offence.

Otherwise, the case would fall either within medium or low culpability. The balance would be between the extent of the disregard for the risk to life (high culpability) and whether there was a lapse in the defendant's otherwise satisfactory standard of care as witnessed by those who spoke of how he dealt with Clare Bell generally when she was incapacitated (low culpability).

Medium culpability has a starting point of 4 years custody with a range of 3-7 years. Low culpability has a starting point of 2 years custody with a range of 1-4 years custody.

Calver J determined that there was no element of high culpability viz “*blatant*” disregard of a “*very high risk*” of death to balance against the low culpability “*lapse*” in order to bring the case into the medium culpability category. The Crown did not argue to the contrary.

That being the case the judge was to sentence on the basis of low culpability. The judge put it this way: “*I consider this to be an exceptional case. Assessing the evidence in this exceptional case as a whole, I consider that your case falls within low culpability in the Sentencing Guidelines, the negligent conduct consisting of a lapse in your otherwise satisfactory standard of care*”.

As regards aggravating factors it was the judge’s view based on psychiatric opinion that the fact that D was intoxicated at the time was neither an aggravating nor a mitigating factor. A psychiatrist had opined “ *that*

D met criteria for an alcohol dependence syndrome, currently abstinent, clinical diagnosis of an alcoholic amnestic syndrome and depressive disorder, current episode moderate.... In other words, (he) is likely to have had limited ability to reduce or stop his alcohol consumption due to his genetic makeup and changes to his underlying brain circuits. Thus, in my view alcohol cannot be considered to be an aggravating factor in this case from a psychiatric viewpoint but rather a mental disorder”.

The judge accepted that Ds “...grossly negligent conductwas a lapse in an otherwise loving, caring relationship that (he) had with Clarethat (he was) under great stress at the time with Clare’s frequent binge drinking which caused (him) repeatedly to have to clean her up and it can have been no easy task to get Clare up the stairs and into the bath on the day of the incident. Indeed, Mr. Barraclough KC emphasises this feature of your case, namely the significant stress or pressure that you were under, in his Prosecution Sentencing Note. And..., (his) constant loving attention for Clare throughout (his) relationship is a notable feature of this case upon which many have remarked. I have read the character references of ..., Clare’s father, your former wife, (and others) which all attest to this.... That you were otherwise a person of good character who showed nothing but kindness towards Clare up until the events of 9 August which occurred in the context of your mutual intoxication. As I have said, this makes this a very sad case indeed”

The judge’s conclusion was that “on the exceptional facts of this case...having considered the matter anxiously and carefully, I do not consider that immediate custody would be appropriate punishment on the facts of your case, nor do I consider that appropriate punishment can only be achieved by immediate custody. Indeed, I consider that immediate custody would be inappropriate on the exceptional facts of your case and that it would not be in the public interest, despite the seriousness of your offence. Whilst by no means decisive, it is noteworthy that none of the professional people who have considered your case,consider immediate custody to be the appropriate punishment on the facts of your case”.

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