[1996] QCA 079

COURT OF APPEAL

DAVIES JA
PINCUS JA
AMBROSE J

CA No 503 of 1995

THE QUEEN

v.

NIGEL ERIN STAFFORD Applicant

BRISBANE

..DATE 13/03/96

JUDGMENT

PINCUS JA: This is an application for leave to appeal against a sentence of nine years imprisonment imposed for the manslaughter of one Stephen Mutter.

The applicant was indicted for murder but convicted of manslaughter. The primary Judge described the case as one of a savage stabbing of an unarmed victim and said that little could be said in the applicant's favour other than drawing attention to his youth. The Judge's description of the offence is in my view of importance, as His Honour had the advantage of observing the whole trial, which was one of considerable length.

The applicant is a young man, born on 21 January 1976, and he was 18 years of age when the offence was committed in 1994. Mr Cuthbert who led for the applicant suggested that this was an important factor to be taken into account in sentencing and that is a proposition with which I agree. His criminal record includes one offence and Mr Cuthbert said in effect that it was one of no significance and I also agree with that.

At the time of the offence the applicant was residing in a house with an elder brother and sister and the sister's daughter. On the night in question there were many people in the house celebrating the birthday of the sister's boyfriend. The deceased was one of the invitees.

During the evening the applicant and his elder sister quarrelled about the presence of some party guests in the house; saying the party was supposed to be in the back yard. As is pointed out in the applicant's submissions, there were two versions of the

events leading up to the death of the victim.

One Mark Fricker had come into the house to get some beer and went into the kitchen with that in mind. There were, he said, present in the room at that time, the applicant, Stephen Mutter and another person. Fricker said that he heard the applicant say, "Get the fuck out of my house," and then he said that the "other guy", meaning Mutter, stopped, paused for a second, walked round the bench and hit him in the shoulders.
Frickeer said, "Nigel [the applicant] went back into the oven and then came back and hit him [the victim Mutter] in the chest." That "hitting" in the chest was in fact a stabbing. Fricker described the applicant's tone in saying, "Get the fuck out of my house," as being very deep and angry and said that when the applicant was hit he "sort of bounced" off the stove. Fricker also said that after the incident the applicant looked shocked, went to the room of his sister and sat down and started crying and said, "I've killed him."

Another version was given by James Downes. He said that he and Stephen Mutter who had been drinking together with others in the back yard decided to go to phone a taxi. Stephen Mutter entered the kitchen before Downes. When Downes first came in he saw the applicant facing Mutter, very close to him and confronting him about something and then Mutter said "Leave me alone," and pushed the applicant away.

The applicant then fell back on a bench near the stove or sink and from there picked up a knife and approached Stephen Mutter,

who did not move towards him but just stayed where he was. Then, said Downes, the applicant stabbed Stephen near the collar bone. He had not heard the applicant say anything to Stephen before the stabbing except "just a bit of muttering, kind of cursing words or things".

On either version the stabbing, which of course caused Mutter's death, was at best for the applicant a response to what seems to have been a minor altercation, which it seems he started. It seems likely from the submissions which have been made to us by Mr Cuthbert that the applicant was irritated by the fact that people had come into the kitchen and Mr Cuthbert suggests that he was irritated because of other activities going on in the house. It seems to me, however, that that is speculative; what counts is what motivated the stabbing and we do not have any version of that from the only person who could know about it, the applicant.

There is in my view of the material nothing to constitute any excuse or mitigating factor other than the applicant's youth and a matter which His Honour did not mention but which seems to me to be relevant and that is the absence of any significant previous offence in the applicant's record.

It is necessary to say something about the cases which were discussed before us although I do not propose to mention all of them. The case of Couch CA No 37/92 delivered on 16 July 1992 decided in this Court, was one in which the sentence was 10 years but it was, in effect, longer because Couch had served 13 months prior imprisonment.

The case was similar in that the killing arose out of an argument and also similar in that there was an intentional act which caused the death; in Couch's case, it was firing a loaded shotgun from close range. Couch said that he intended to fire over the deceased's head. The Court upheld the 10 year sentence which as I have said was, in effect, a longer sentence than that. When considering the case it must be kept in mind that the applicant there had a criminal history although not one including violence and he was much older. This applicant I reiterate was only 18 when he committed the offence.

Another case with some similarity to the present but which produced a significantly lower penalty is Benstead CA No 9 of 1995, where there was a stabbing during an argument between friends and the Court held "the applicant probably lacked any intention when the blow was struck, so that her offence may be seen as a tragedy resulting from the criminally negligent absence of control of the knife." There the applicant was initially sentenced to 11 years imprisonment but on appeal that was reduced to 7 years with a recommendation for parole after two and a half years. On my reading of the facts of Benstead, as set out in the reasons of this Court, the present case seems significantly worse, given that on the view which the Judge took there was what is described as a "savage stabbing" which clearly implies deliberation.

We were also referred to Summers [1988] 1 QdR 92 where there was a penalty of 10 years imprisonment. The case does not seem to me to be closely comparable. Again, we were referred to Walsh,

CA No 85/86, a case of killing a young baby that had a similarity in that the sentence was the same, nine years, and the applicant was also a young man, although not so young as the present applicant. Nevertheless I do not find Walsh to be close enough on the facts to be of real assistance.

Mr Cuthbert has also referred to remarks which were made in the Court of Criminal Appeal in Green (1986) 2 QdR 406 at 409. I understood Mr Cuthbert's submission to be that, although Green seemed to be regarded as authority on cases of domestic violence, it in fact had a broader significance and should be regarded as authority for the view that ordinarily the sentencing range for manslaughter is five to six years.
I do not understand Green to be authority for that proposition. If it were, it seems not to be consistent with the pattern of sentencing which in fact is discernible.

The submissions which Mr Cuthbert made, as I understand them, included the suggestion that His Honour was not entitled to hold, as he did, that the offence had the character which he described. To reiterate, His Honour described it as being a savage stabbing of an unarmed victim. The offence is described by two people and I have read the descriptions of it in the record. I have given an account of some aspects of those descriptions. Mr Cuthbert has pointed to the fact that there was some marijuana about. He has referred to various events which took place on the night in question. None of them seem, with respect, to be of great significance for present purposes and the present purpose is whether or not we would be justified in departing from the factual view which the Judge took, and

which I have mentioned.

It is my opinion that nothing which has been said by Mr Cuthbert would justify our taking a less severe view of the facts than His Honour took. I have formed the conclusion that the sentence was, if anything, towards the high end of the range and by no means a light sentence, particularly having regard to the two matters which Mr Cuthbert rightly emphasised, the youth of the applicant and his previous good record.

Nevertheless it seems to me impossible to hold that the sentence is one which is manifestly excessive and I would dismiss the application.

DAVIES JA: I agree. I would only add that I do not think that the decision of the Court of Criminal Appeal in Green can be any longer considered an authority for the appropriate range of sentence in any kind of manslaughter, if it is possible to categorise crimes of manslaughter. I think the decision of this Court in Whiting CA No 364/94 has made that clear.

AMBROSE J: I agree.

DAVIES JA: The orders are as indicated by Mr Justice Pincus.
