WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2021] EWCA Crim 187

CASE NO 202003250/A4

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 5 February 2021

LORD JUSTICE DAVIS

MR JUSTICE WILLIAM DAVIS

HIS HONOUR JUDGE LODDER QC

(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REGINA

V

SHANE LEE MAYS

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR W EMLYN JONES appeared on behalf of the Solicitor General.

MR A LANGDON QC appeared on behalf of the Offender.

J U D G M E N T

1. LORD JUSTICE DAVIS: This is an application, brought on behalf of the Solicitor General, seeking to challenge a sentence on the ground that it is unduly lenient. The challenge is to a minimum term set by the trial judge of 25 years less time spent on remand, the offender having been convicted, after a trial, on a count of murder.
2. The offender is a man called Shane Mays. He is 30 years old having been born on 2 September 1990. His trial for murder took place in the Crown Court sitting at Winchester and he was convicted on 8 December 2020. He was sentenced on the following day by the trial judge (May J) necessarily to life imprisonment. The judge was also required by law to set a minimum term which she set at, as we have said, 25 years less time spent on remand.
3. On any view whatsoever the background facts are very distressing. The victim was a young woman, Louise Smith, a 16 year old teenager living near Havant, in Hampshire. She was a vulnerable teenager with a history of anxiety, depression and self-harm; and indeed she had been assigned a social worker to assist with her needs. It appears also that she regularly used cannabis. She was studying to be a veterinary nurse. It appears that her relationship with her own mother had broken down and she had left home. She then led a somewhat unsettled existence. For a time she and her boyfriend, Bradley, had been living with an aunt. But there was an argument and she left. Eventually the two moved to another of Louise's aunts (known as "CJ"). CJ lived in a one-bedroomed flat with the offender. They had been married for 5 years.
4. It seems that at the beginning Louise was happy to be living with CJ and the offender. However, things seemed quickly to have deteriorated: she was to complain to friends that living with CJ and the offender was most unpleasant. There was some seemingly somewhat inconclusive evidence that there might have been a degree of flirting with Louise on the part of the offender.
5. At all events, on 7 May 2020 Louise went missing for most of the day. She was spoken to on the phone and agreed to come home. Her boyfriend, Bradley, also then arrived. Before Bradley later left, he and Louise had agreed that they would meet the following afternoon at 3 o'clock. Louise then spent a considerable amount of time sending messages to friends proposing a sleepover and that she should go over and join them. The prosecution were to suggest that that indicated that she did not want to be in the house with CJ and the offender.
6. What in fact happened was that the offender bought a bottle of rum, a bottle of Schnapps and three bottles of lemonade. The three of them then spent the evening drinking. It is plain that Louise herself became very drunk. The following morning (8 May 2020) she was to post a message saying she had "the worst hangover going". Later that day, at around 1 o'clock, she was making plans to see some of her friends. In the event she never did meet up with them.
7. Rather, cell site data, later retrieved from her mobile phone, indicated that at around 1 o'clock in the afternoon she had travelled in the direction of Havant Thicket, a large and remote wooded area north of Havant. The offender himself knew the woods well, having grown up in the area. Between 1 o'clock and 3 o'clock there was no use of Louise's mobile phone, which was totally uncharacteristic for her. She failed to meet up either with friends or with Bradley. In consequence, the result frantic efforts were being made to find out what was happening to her and where she was.
8. CCTV, which had subsequently been retrieved, caught the offender at 3.11 pm walking

away from Havant Thicket towards his mother's address. He briefly visited his mother. His mother was, in due course, to tell the police that the offender was very hot and sweaty and that he had told her that he had just walked with Louise all the way to Emsworth, some 3 miles away, in a totally different direction from Havant Thicket. The offender was then to repeat this story to his wife, CJ, and to Louise's boyfriend later that afternoon. What he said about going with her to Emsworth was in due course shown to be untrue.

9. A major missing person's investigation commenced. On several occasions the police attended CJ's flat and spoke both to her and to the offender. CJ apparently would do most of the talking on those occasions. She told the police that Louise's last known whereabouts had been the Emsworth skate park, in accordance with what the appellant had previously said. The offender was present when this was said by CJ and listened in silence.
10. On 13 May 2020 the police asked to speak to the offender alone. During his discussions with them he told the police that he had walked with Louise on the afternoon of 8 May 2020, not to Emsworth or the skate park there, but rather to the local Tesco. He described a route which would have taken the two of them past a CCTV camera. When that camera was investigated and footage retrieved that showed that what he had said about going to Tesco was not true.
11. He was then arrested. In interview he reverted to his earlier story about walking with Louise to Emsworth and gave a detailed account of that journey. But this version too was discredited by CCTV footage subsequently obtained.
12. It was not until the morning of 21 May 2020 that Louise's body was found. It was found by a police search team in a remote clearing in the northern part of Havant Thicket. It became clear that an attempt had been made to destroy the body by setting fire to it (probably with the use of an accelerant) with branches and twigs placed over the body as if to aid the growth of the fire. There was expert evidence to the effect that the burning was mainly focused on the groin, torso and upper body. In addition, distressingly, the combination of the injuries, the fire, insect infestation and other animal interference meant that Louise's body was unrecognisable. It was subsequently ascertained by expert examination that her central facial skeleton had been shattered by repeated heavy blows, either with fists or with an object such as a large branch or small log. These blows had caused extensive fracturing to the face. The jaw itself had been completely fractured. The estimation of the pathologist was that the nature of the facial fractures would indicate that she was probably lying immobile and presenting as a fixed target.
13. The clothing from her upper body was also retrieved albeit badly damaged by fire. The only items of clothing present below her waist were her socks and her legs were apart. Shockingly, a branch had been thrust deep into her vagina, penetrating to a considerable depth as far as her liver or diaphragm. Investigation showed that the offender's DNA was present on the protruding section of this stick where it would have been gripped when being forced into Louise's body. The portion of the stick that had been inserted had been blackened by fire. There was no evidence of the offender’s DNA being found within Louise’s body.
14. It was accepted in the course of evidence by the pathological expert, that it could not be said whether the stick had been inserted whilst Louise was alive or after her death. There was also a large wound to the centre of her stomach but here too there was no

scientific basis for saying whether that had been inflicted during life or after death. Indeed the condition of the body was such that it was not possible to determine which, if any, of the injuries had been inflicted whilst Louise had still been alive. The blows to her face alone were such that they might have caused death. Even the first of them might have rendered her unconscious. One can only hope that was indeed the position.

15. Louise's mobile telephone was found some 180 metres from her body. The offender's fingerprint was found on the phone's case. That case was itself found separately in undergrowth close to the phone. Furthermore, a pair of trainers had been seized from the offender. Forensic examination revealed that small spots of blood attributable to Louise were found on the outer surface of the left shoe.
16. When arrested on suspicion of her murder on 27 May 2020 the offender denied involvement in her death. He thereafter made no comment in interview.
17. In a defence statement, served shortly before the trial, the offender then, for the first time, admitted that he had played a part in Louise's death. He said that he had punched her in the face after an argument in the woods. He said that he had then abandoned her while she was still alive. He denied placing the stick into her vagina or burning her body.
18. The first day of trial was 16 November 2020. The offender, at that stage, then tendered a plea of guilty to manslaughter, as we understand on the footing of lack of intent. Unsurprisingly, that was not acceptable to the prosecution and the trial proceeded.
19. The offender gave evidence at trial. He was to claim that Louise had led him into the woods because she wanted to go on a walk and discuss issues that she was having with her boyfriend and generally to bond with the offender. He said that while there they had argued about her use of drugs and that he had lost his temper. He accepted that he had punched her in the face and he conceded that he had in effect pounded her head repeatedly with his fists while she was on the ground. He was to accept that he had heard the crack of her facial bones breaking. Nevertheless he maintained that he was not the one who had been responsible for penetrating Louise's vagina with the branch, nor for setting the fire to her body. He claimed that someone else must have done those things. The jury by their verdict showed what they thought of the defence raised.
20. Before the trial judge, for the purposes of her passing sentence, the judge had three impact statements expressed in very moving terms from Louise's mother, her mother's partner and her father. The anguish that has been caused to them by virtue of her death and, furthermore, by virtue of her death in such circumstances is absolutely apparent and totally understandable, and anyone would have the greatest sympathy for them.
21. So far as the offender himself is concerned, he has no previous convictions of any kind. He had a previous reprimand and a caution dating back a number of years which, in truth, were irrelevant for sentencing purposes.
22. There were, however, other reports before the judge. A psychologist, Dr Beaton, had assessed the offender and, amongst other things, her report indicated that on an assessment of intellectual ability range, he achieved an overall score of 63. That placed him in the first percentile (meaning that 99% of people his age were functioning at a higher level than he was). It placed him in the learning disability range. Furthermore, Dr Beaton, amongst other things, considered that having assessed the offender it was shown "that he is significantly impaired in terms of intellectual reasoning and problem solving".

23. There was also a report from a consultant forensic psychiatrist, Dr Bacon. She indicated that the offender's learning disability contributed to his long-standing difficulties relating to emotional regulation and "interpersonal functioning". It was stated that his "patterns of thinking and behaviour since early adolescence indicate unstable personality traits". Those traits, amongst other things, included a tendency to act impulsively and an unpredictable and capricious mood and so on. She also indicated, and potentially importantly, that she had seen no evidence of a history of sexual violence on the part of the offender or of behaviours commonly associated with sexual violence. Nor had she identified any abnormal sexual ideations on the part of the offender. In fact, she observed that the offender's account of Louise's death bore similarities to previous outbursts of impulsive aggression on his part, which indicated a violent drive but not a sexually violent drive.
24. The judge was, of course, required by law to sentence by reference to the provisions of the Sentencing Code. For present purposes the relevant parts are to be found in Schedule 21 to that Code. These identify the starting points to be taken in cases of murder. By paragraph 2 the starting point where the seriousness of the offence is such as to be assessed as "exceptionally high" is set at whole life. Such murders are capable of including, amongst others, "the murder of a child [and Louise was a child] if involving the abduction of the child or sexual or sadistic motivation". Paragraph 3 of that Schedule then deals with murders where the seriousness of the offence is "particularly high". In such a situation the starting point for the minimum term is 30 years. Paragraph 3(2) of the schedule says that:

    i. "cases that (if not falling within paragraph 2(1)) would normally fall within sub-paragraph (1) (a) include:
    ii. ....
    iii. (e) a murder involving sexual or sadistic conduct
    iv. …."

25. We can pass over paragraph 4 of that schedule and turn to paragraph 5. That provides that where the offender is aged 18 or over, and where the offence of murder committed did not fall within the previous paragraphs, then the appropriate starting point in determining the minimum term is 15 years. We set out these provisions in a little detail because the principal submission made on behalf of the Solicitor General is that the judge was to select the wrong starting point.
26. There was discussion between counsel and the judge before she came to pass sentence. The judge had obviously considered the matter very carefully indeed; and, of course, it is to be borne in mind that she had been the trial judge and had heard all the evidence as it unfolded. The judge reviewed the evidence thoroughly. She was to say about the circumstances in which the attack first took place that the reasons for that assault "remain unknown". The judge then went on to deal with the evidence. She found as a fact, applying the criminal standard, that the offender had indeed been responsible for inflicting the damage to the body and for attempting to dispose of the body by burning. The judge also noted the evidence relating to the psychiatric makeup of the offender. She noted that there was no forensic evidence here suggestive of sexual activity, nor was

there anything in the offender's background to suggest a sexual or a sadistic motivation or sexual or sadistic conduct. The judge then said this:

> i. "Having considered all this material very carefully, I cannot be sure that Louise's murder was sexually motivated or that it was a murder involving sexual or sadistic conduct. I am sure that at least some of the damage to her face was inflicted during life but I am not sure that he caused the other damage to her body whilst she was alive, I think it more likely that he did not, that the defilement and burning took place after Louise was dead."

27. The judge went on to say this, and we think it is worth setting out what she said:

> i. "Every crime of murder not only ends one life but grievously harms so many others. Victim Personal Statements from Louise's mother and father, and from her stepfather, which were read out in court today, speak to the terrible impact on the family of her death. As her mother said, it is any parent's worst nightmare. Her parents have the great sympathy of the Court, no sentence can compensate for their loss and it should not be thought that the sentence I must shortly impose is in any sense an attempt to value Louise's life."

28. The judge then went on to refer to the relevant statutory provisions and to the relevant parts of Schedule 21 to the Code. She expressly considered whether the seriousness of the murder which had been committed properly fell within paragraph 2(1) or paragraph 3(1) of Schedule 21. She said:

> i. "As I have already explained, I cannot be sure that sexual or sadistic conduct or motivation was involved. I have considered whether the distressing features of this murder would otherwise engage either of these provisions but have decided that they cannot. Paragraph 5 of Schedule 1 therefore applies to give a starting point but that starting point is by no means the end point ..."

29. The judge then identified a number of aggravating features. First, Louise was particularly vulnerable because of her youth, her lack of any stable home and her anxiety and depression. Second, even if she had been rendered unconscious early on in the attack, she would in that time have experienced intense suffering at his hands. Third, the offender had been in a position of trust in relation to Louise and he was sentenced on the basis that there was a father-like-daughter relationship, as he himself had said at trial. The judge was to describe this as "the most gross abuse of trust". Finally, there was the "awful damage and destruction inflicted on Louise's body" to which the judge had already made reference. The judge was to take into account as mitigation his lack of previous convictions and also accepted that there was some degree of mitigation by reason of low-level intellectual functioning although the judge considered that to be of limited mitigation. In the result, having selected a starting point of 15 years, the judge,

balancing the aggravating and mitigating factors, increased the minimum term to one of 25 years, as we have said.

30. It is submitted by Mr Emlyn Jones, on behalf of the Solicitor General, that this sentence was unduly lenient. His principal point was that the judge had selected the wrong starting point. Mr Emlyn Jones did not seek to pursue any argument that the seriousness of this murder was to be categorised for the purposes of the schedule as "exceptionally high"; and he accepted that the judge had been entitled to conclude that this particular murder had not been “sexually motivated”. But what he submits is that this was a murder the seriousness of which was to be categorised "as particularly high". Accordingly it was one which should attract a starting point of 30 years for the minimum term. He submitted in particular that this was a murder which had indeed involved "sexual or sadistic conduct". He submitted, quite simply, that the judge had been disentitled from not so finding; and submitted that that is what she should have found and indeed was the only proper conclusion that could have been drawn from the evidence. He pointed out, in this regard, that even accepting that Louise may have been dead at the time when the branch was thrust into her vagina, still that was capable of amounting to sexual conduct. That may be so; but, of course, that is also, on another view, capable of not amounting to sexual conduct, in that there was at least some evidence which could suggest that the purpose of this appalling act of thrusting this branch so deeply into Louise's vagina was in fact designed to assist in the destruction of the body by burning.
31. If the judge was to find that this was "sexual or sadistic conduct", she had to be sure: that is to say, to the criminal standard. This judge, who had had the benefit of the trial, found that she could not be sure. Mr Emlyn Jones's submission comes down to in effect saying that the judge was fundamentally wrong in that conclusion.
32. But this was a matter for the trial judge. It was her obligation as a judge to assess the evidence objectively and fairly and it was her job to apply the criminal standard. Her assessment was that she could not be sure that this insertion of the branch (most probably after Louise had died) was sexual or sadistic. This appellate court is in no position to interfere with that conclusion of the trial judge.
33. Mr Emlyn Jones then said, even if that is so, still this murder was so shocking that in any event the judge still should have taken a starting point of 30 years; he, quite rightly, pointing out that the provisions of paragraph 3 of Schedule 21 set out what normally might be illustrative of a murder of particularly high seriousness but is not designed to be an exhaustive statement of the possibilities. But here too, as we see it, this was a matter for the trial judge. Once she had excluded sexual or serious conduct, in the sense that she could not be sure that there had been such, she was entitled to take a starting point of 15 years. Moreover, one of the statutory aggravating factors required to be taken into account in such murders is, amongst other things, the concealment, dismemberment or destruction of a body. That is treated as an aggravating factor; and regrettably there are appalling instances involving horrific circumstances where that may happen, for example, in cases of dismemberment of a body. In this particular case, what was done to Louise was horrific; it was grotesque. But that was capable of being treated as an aggravating factor under the statutory scheme and we do not see how the judge can be criticised for in effect following precisely the statutory scheme. She took this particular defilement of Louise's body as an aggravating factor and then clearly, and understandably, gave it very great weight indeed in deciding how far up in the sentencing

range she should go. Mr Emlyn Jones pressed that there were numerous other aggravating factors present. Indeed there were – and the judge duly referred to them.

34. In our view, the judge was entitled to end up at a figure of 25 years as she did. As Mr Langdon QC for the offender pointed out today, that is a very significant uplift of 10 years from the starting point taken by the judge.
35. We do fully understand the horrific circumstances of this death and we do fully understand the anguish this would have caused Louise's family and no doubt indeed any member of the public following this case. But the trial judge had her judicial functions and responsibilities, which included an objective assessment of the evidence and a requirement to apply the criminal standard if she was going to make findings of fact. As we see it, the judge conscientiously addressed her task in accordance with her judicial obligations; and she reached a conclusion which this Court is no position to say is unduly lenient. Accordingly, this application for permission is refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk