

2019/01877/A1  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Neutral Citation Number: [2019] EWCA Crim 1595

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Wednesday 18<sup>th</sup> September 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE LAVENDER

and

MR JUSTICE NICKLIN

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**REGINA**

- v -

**CARL ELDRED**

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**Mr O Saxby QC** appeared on behalf of the Appellant

**Mr R Barraclough QC** appeared on behalf of the Crown

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**J U D G M E N T**  
**(Approved)**

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Wednesday 18<sup>th</sup> September 2019

**LADY JUSTICE NICOLA DAVIES:** I shall ask Mr Justice Nicklin to give the judgment of the court.

**MR JUSTICE NICKLIN:**

1. On 17 May 2019, in the Crown court at Maidstone, the appellant Carl Eldred was sentenced to four years' imprisonment for the manslaughter of his brother, Lee Eldred, on 28 December 2018. He had pleaded guilty on 5 April 2019 and was given full credit for his plea by the judge. He appeals against sentence by leave of the single judge.
2. On 28 December 2018, the appellant went out with his brother Lee Eldred, their father Trevor Eldred and three friends for a late Christmas meal and drink. On the way home, in a minibus, the group were laughing and joking. Lee Eldred sat behind the driver, with Trevor Eldred and a friend next to him. The appellant sat immediately behind his brother. The appellant started shouting and stood up. The driver described the two brothers as having been "eight out of ten" drunk. One of the appellant's friends told him to sit down and things calmed down for a while. The incident then started up again and the appellant punched his brother downwards towards the head repeatedly. One of the friends thought that the appellant struck Lee about five times, although it was difficult to see because of the headrest. Trevor Eldred stood up and spoke with the appellant. The appellant hit his father in the face, causing his nose to bleed. The appellant was pushed back down into his seat. CPR was administered to Lee Eldred as he was lying across the seat. The appellant was distressed, saying "Oh, my God, what have I done?" When the emergency services arrived, the appellant was sitting crying on the grass verge. He said, "I'm sorry, it was me". He was arrested.
3. The appellant was assessed as being very drunk and, such was his distress, an officer had to sit with him in the police van. In interview, the appellant fully accepted responsibility. He was deeply distressed and found it difficult to accept that his brother had died. He said that they had had a minor argument in the public house and when in the taxi, Lee was angry and he thought that he was "going to flip". He said that he hit him two or three times to the left side of the head to protect himself. He did not think that he had struck him hard, and did not intend to hurt him.
4. The pathologist reported that the death had resulted from a traumatic subarachnoid haemorrhage in which, following a blow or blows to the head, there was a rapid, if not immediate, collapse with bleeding into the subarachnoid space at the base of the brain. This was usually associated with intoxication of the victim. The deceased was significantly intoxicated, which may have allowed more extreme movement of the head or neck following impact, with a lack of anticipation of the blow or blows causing injury.
5. When passing sentence, the Judge recognised that this was a truly tragic case. No one suggested that the appellant had intended to kill his brother. The large quantity of alcohol that he had consumed had swept away his inhibitions and unleashed this violence, which was totally out of character. The appellant punched his brother not once, but several times while he was not in any position to defend himself. He was drunk and was sitting in front of the appellant in a moving vehicle.
6. The appellant's actions had devastating consequences. He had expressed considerable, immediate and sincere remorse and has continued to do so. The Judge had considered

the moving Victim Personal Statements, a letter from the appellant to the Court, and a substantial number of character references before passing sentence. All made plain that the appellant was an honest and decent family man. He had a partner and children and a happy home life. He ran his own business and was successful in that. He was described as kind, caring and sensible.

7. The appellant's family were supportive and forgiving. The appellant had been close to his brother and would have to live with the consequences of his actions for the rest of his life, which the Judge recognised would be considerable punishment in itself. It had affected him deeply and would continue to do so. The Judge said that she had taken fully into account the mitigation advanced on the appellant's behalf.
8. Applying the sentencing guidelines for offences of unlawful act manslaughter, the Judge considered that the case fell into category C. It was a death caused by an unlawful act which was reckless as to whether harm would be caused. The aggravating factor was the amount of alcohol that the appellant had consumed. The mitigating factors were his remorse, his guilty plea, his positive good character and the lack of any premeditation. Had he pleaded not guilty, the Judge felt that the sentence would have been six years' imprisonment. With the maximum credit for the guilty plea he had tendered, she imposed the sentence of four years' imprisonment.
9. Before us today, Mr Saxby QC accepts that the Judge was entitled to place the offence in category C but submits that, nevertheless, on the sentencing guidelines, recognising all of the mitigating circumstances, the sentence overall was manifestly excessive. He argues that the blows struck by the appellant were not hard and, in reality, carried no obvious risk of anything more than minor harm. He points to the statement in the guideline that "*the Court should ... reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence ... [and] should avoid an overly mechanistic application of these factors*". He submits that, on the facts of this case, a sentence before credit of six years' imprisonment was excessive and that the sentence should have been one of between four and five years. He supports this submission by pointing to the fact that there was only one aggravating factor (the consumption of alcohol) and that there was an abundance of mitigating factors.
10. In their Victim Impact Statements the parents of the appellant and the deceased had asked the Court to be compassionate when sentencing the appellant. They said:

"We are a very close family and are always there to support each other when needed. ...

We lost our eldest son Lee for ever that night, but we are worried that we are going to lose Carl from the consequences of that night – something he is going to suffer with for the rest of his life. We know Carl would have never meant to hurt his brother; they loved each other dearly and this was just a tragic [incident] that should never have ended this way. ...

We know he will be suffering greatly from the outcome of that night and we dread to think of him suffering through this on his own when we should be healing as a family."

11. In a separate letter to the judge, the appellant's mother added:

"I understand that justice needs to be served, but there are no winners in my family. I know that Lee would not want Carl to be punished – Carl will be punishing himself enough. I ask you to consider allowing my family the opportunity to help Carl rebuild his life and to help him focus on his mental wellbeing. I need him as much as he needs me."

12. This is indeed a tragic case. It presented the Judge with a very difficult sentencing exercise. Alcohol was a very significant factor in the incident. We are satisfied that it led to both the disagreement which escalated into violence and to an enhanced susceptibility to injury on the part of the deceased. As the Judge rightly found, alcohol is an aggravating factor. But, as the sentencing guidelines make clear, it is important to step back and to make an overall and fair assessment of the offender's culpability.
13. Whether this case is assessed as a borderline case between categories C and D, or approached on the basis of an assessment of overall culpability within category C, we are satisfied that a sentence, before credit, of six years' imprisonment was manifestly excessive. The aggravating element of intoxication was, we consider, outweighed by the particular circumstances of the offence and the substantial personal mitigation and genuine remorse on the part of the appellant. Lee Eldred's death was a tragedy.
14. We are satisfied that the appellant's culpability would be properly reflected by taking a starting point of four and a half years' imprisonment. Applying the same discount as the sentencing Judge for his guilty plea, the sentence will therefore be one of three years' imprisonment.
15. Accordingly, we will quash the sentence of four years' imprisonment and substitute for it a sentence of three years' imprisonment. To that extent the appeal against sentence is allowed.

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