*Rosamund Smith Mooting Competition 2021, Semi Final (1)*

*Moot problem*

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**

**REGINA**

Appellant

**v.**

**Alexander Trout**

Respondent

1. The Respondent, Alexander Trout, is charged on an indictment containing two counts:
2. Murder of Bertie Greaves on 3 June 2019 (**Count 1**)
3. Unlawfully wounding Bertie Greaves on 1 July 2017, with intent to do him grievous bodily harm, contrary to section 18 of the Offences Against the Person Act 1861 (**Count 2**)

At the conclusion of the Crown’s case the trial judge ruled that there was no case to answer in respect of either count.

1. The Appellant Crown has served notice of appeal under section 58 of the Criminal Justice Act 2003 against the terminating ruling of the trial judge. The grounds of appeal are as follows:

**Ground 1 (Count 1)**

The Learned Judge erred in principle in his approach to the law of causation; the count of murder (Count 1) should have been left to the jury for their determination at the conclusion of the evidence. The judge was not entitled to substitute his own view of the evidence on the issue of causation for that of the jury. There was sufficient evidence for the case on Count 1 to proceed beyond the conclusion of the prosecution case.

**Ground 2 (Count 2)**

The Learned Judge erred in his approach to the principles of law which govern intention, consent and the wounds which are inflicted on their customers by licensed tattoo artists. There was sufficient evidence which would have entitled a jury to conclude that the defendant in wounding the deceased had acted both unlawfully and with intent to cause grievous bodily harm. There was sufficient evidence for the case on Count 2 to proceed beyond the conclusion of the prosecution case.

**Factual background**

1. The Prosecution case at trial was that in the summer of 2017, Bertie Greaves, a fanatical Tottenham Hotspur supporter (date of birth 1 August 1999) had visited Alexander Trout at Trout’s licensed tattoo parlour in Archway, London, N19. He told Trout that he had just turned 19 and that in order properly to cheer himself up and to celebrate his birthday he would like an image of Harry Kane’s face tattooed on the back of his right shoulder blade. Mr Kane had just finished the Premier League season as its top scorer for the second year running. Mr Greaves provided Mr Trout with a photograph of Mr Kane. Trout indicated that it would cost £750, the full price being payable in advance. Greaves signed a ‘consent and disclaimer’ document in advance of the work in which he accepted that he understood that the quality of the workmanship could not be guaranteed and that he consented to the process nonetheless.
2. The Prosecution alleged that during the course of completing the work during the following day, 1 July 2017, it appeared that Trout (a season ticket holder at Arsenal) had developed an increasingly intense dislike of Greaves - largely as a result of the fact that the young man talked incessantly about his favourite team, Spurs. Meanwhile, Trout produced a tattoo which depicted a high quality image of Mr Kane.
3. However, when Bertie Greaves got home and was able to inspect his back in the bathroom mirror, he discovered that an equally high-quality image of the face of the then Arsenal manager, Arsene Wenger had also been depicted in an additional tattoo located just alongside the tattoo of Mr Kane.
4. Bertie Greaves reported the matter to the police in the summer of 2017 – the investigating officer, at that time, had indicated that he intended to take no further action since Greaves had signed a non-specific disclaimer as to the quality of the tattooing image before the process had started and had consented to the process.
5. Over the following two years Greaves became increasingly unwell. In January 2018 Greaves was diagnosed as suffering with both severe depression and Post Traumatic Stress Disorder by a Dr Smith, a psychiatrist (registered under section 12 of the Mental Health Act 1983) to whom Greaves had been referred by his general practitioner and who first saw Greaves in September 2017. Thereafter, until his death, Greaves was under the care of Dr Smith.
6. On 15 May 2019 Greaves received an e-mail from his general practitioner in London informing him that had been diagnosed with terminal liver cancer, that available treatments had about a 50% success rate and that a consultant oncologist estimated that, if left untreated, his life expectancy was in the region of 2-3 years.
7. On 1 June 2019 Tottenham Hotspur were defeated 2-0 by Liverpool in the final of the Champions League.
8. On 3 June 2019 Bertie Greaves took an overdose of paracetamol tablets. He died at the Whittington Hospital on the following day. A letter was found by his bedside in his flat in which he had written to his family, *“Life has finally become unbearable for me – what with the cancer and everything. I just can’t face the radiology given the way I feel. Ever since that tattoo was placed on my shoulder in Archway, I have struggled to see the point of life. But that bastard Trout knew what he was doing at the time – I know it in my guts.”*
9. In July 2020 Trout was arrested. When he was informed of the reason for his arrest, he made an unsolicited comment which was recorded by the arresting officer PC Dud as follows: *“What? Oh yes. I remember that kid – the one I tattooed Wenger’s face on. What a daft idiot he was, going on and on – talking drivel about Spurs ….he annoyed me so much I just decided I wanted to kind of really annoy and bloody upset him for a while - you know, give him something to remember me by always that kinda hurt him and made him cry, maybe even cause him some ongoing heartache – but I meant no real proper physical harm. Why’s the bloody fool gone and killed himself?”*
10. In interview, Trout answered ‘No Comment’ to the questions he was asked, including questions which touched upon the question of what had been his intention at the time that he was tattooing the Wenger image onto the back of Mr Greaves on 1 July 2017.

**Trial**

1. At trial the prosecution called Dr Smith. He gave unchallenged evidence that in his opinion the events of 1 July 2017 had triggered a progressive decline in Greaves’ mental health. When he had first been asked to see Greaves, he diagnosed him as, in all probability, having been suffering from severe depression since adolescence; however, he regarded the events of 1 July 2017 as the trigger for the onset and development of post-traumatic stress disorder. He regarded the 1 July 2017 as having been the critical event in relation to the latter. He further stated that over the course of the following two years, he had noticed a progressive decline in Greaves’ condition. He was unsure of the extent to which Greaves had complied with the anti-depressant medication regime upon which he had placed Greaves, but was clear that there had been no improvement (as might normally have been expected when the prescribed medication is taken). He confirmed that he considered that Greaves had suffered a progressive and steady deterioration of his wellbeing between July 2017 and the time of his death.
2. Evidence of the unsolicited comment of the defendant recorded upon arrest by PC Dud was adduced by the Crown. Under cross-examination, it was suggested to PC Dud on behalf of the defendant that the words attributed to the defendant had been wrongly recorded by the officer; it was further suggested that what the deceased had actually said were words to the effect that the Wenger tattoo had been completed at the specific request of the deceased and that the defendant could not therefore understand why the deceased had killed himself.
3. The jury were provided with an agreed fact which established that in interview the defendant had been informed that he was being interviewed under suspicion of having committed the offence of wounding with intent, he had been cautioned and had then answered each question he was asked about the circumstances of the tattooing, by saying “No Comment”.
4. At the conclusion of the prosecution case, Counsel for Trout made a submission of No Case to Answer in respect of both Count 1 and 2.
5. In the ruling under appeal, the trial judge ruled as follows in upholding the submission made on behalf of the defendant:

“*I have considered with care the submissions made on behalf of both parties regarding the evidence . I have also had regard to the decisions of the House of Lords in R v Brown and others* [1994] 1 AC 212 *and to the decisions of the Court of Appeal in R v Wallace (Berlinah)* [2018] 2 Cr. App. R. 22 *and R v M(B) [2019] QB 1 which have been cited to me.*

*The following evidence of significance has been adduced during the course of the prosecution case…[****as recited above****]*

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*I propose to deal with the counts as they appear on the indictment, whilst recognising that, here, Count 1 would only ever arise in circumstances where a case to answer was established by the Crown in respect of Count 2.*

*Count One concerns the allegation that Trout murdered Greaves.*

*Even had I been satisfied that there was a case to answer on Count Two (which I deal with below), I consider that there is no evidence upon which the jury could safely conclude that the actions of the defendant on 1 July 2017 were really the significant and principal, or even the main, cause of the defendant’s death nearly two years later. In my view, the evidence is such that a reasonable jury is likely to conclude that the events which led to the defendant’s death were multi-factorial and included, amongst others things – a latent history of depression (long before the deceased chose to visit the defendant’s tattoo parlour), a suspicion of non-compliance on the part of the deceased with the regime of anti-depressant medication upon which he had been placed by Dr Smith, and the 2019 diagnosis of terminal cancer to which the deceased made reference in the written note found at his address. Whilst, on one view, the events of 1 July 2017 were undoubtedly part of a chain of events, and in that sense significant, and they led ultimately to the deceased’s decision to take the pills, in my opinion a reasonable jury would be likely to come to the conclusion that taking everything into consideration by that stage those events had fallen very much, as it were, into what ought to be seen as part of the background.*

*Additionally, and in my opinion importantly, I do not consider that it would be likely that a jury could safely infer that it was reasonably foreseeable that the response of the deceased to the actions of the defendant on 1 July 2017 would be to take a fatal overdose of paracetamol.*

*In my judgment, a reasonable jury would rather and much more naturally be driven to the conclusion, as I am, that the actions of the deceased in taking his own life, tragic though they may be, amount to an exercise of free will and as such break any chain in a line of causation as there might be said to be. Count 1 will be withdrawn.*

*I now come to deal with Count 2. In my judgment the evidence here indicates that the business of licensed tattooing falls within the category of exceptions identified by the House of Lords as lawful activities in R v Brown [1994] 1 AC 212 (See the speech of Lord Templeman at 231F)*.  *I note that Mr Greaves had signed a ‘consent and disclaimer’ form in advance of the performance of the tattooing work on his back which recognised that the quality of the tattoo artist’s workmanship could not be guaranteed. I note also that the particulars of Count 2 upon which the Crown chose to proceed failed to particularise any distinction as between the Kane and the Wenger tattoo – alleging simply that the defendant had on 1 July 2017 unlawfully wounded Mr Greaves with intent to do grievous bodily harm.*

*Furthermore, in light of the remarks made by the defendant upon his arrest I consider that there is insufficient evidence that the defendant acted with an intention to cause really serious harm at the time at which he performed the tattooing work on Mr Greaves’ back. It does not seem to me that the remarks made by the defendant upon arrest are capable of supporting an inference that the defendant had acted with the requisite intent. Further, I derive no assistance from the fact that during his interview under caution the defendant chose to answer ‘No comment’ in relation to the questions he was asked about the circumstances of the tattooing.*

*Accordingly, I propose to withdraw Count 1 from the jury.”*

Leading counsel should address Ground 1.

Junior counsel should address Ground 2.

**Moot problem set by:**

Duncan Penny QC

6 KBW College Hill

2 June 2021