JUDICIARY OF
ENGLAND AND WALES

R v. Colin HEATH
SENTENCING REMARKS
By The Hon. Mr Justice Haddon-Cave
At Birmingham Crown Court - 17th April 2015

Colin Heath,

1. You have pleaded guilty to the manslaughter of, Kealeigh-Anne Woolley, who died on 6th February 2011 aged 11 years 7 months.

2. The circumstances are as unusual as they are tragic. Over 10 years earlier, on 4th December 2000, you pleaded guilty to causing grievous bodily harm to, Kealeigh when she was baby (aged 7 months), contrary to s. 20 of the Offences Against the Persons Act 1861 ("the Act"). On 16th January 2000 you shook Keakeigh causing her profound brain damage and life-threatening and life-limiting injuries. Sadly, despite a long and brave struggle by Kealeigh and her mother who cared for her, she eventually succumbed to her injuries, and died in 2011.

Background facts

3. The history of the matter is as follows. In late 1999 and early 2000 you were in a relationship with Kealeigh's mother, Amanda Woolley. On 16th January 2000, Amanda Woolley went out with friends for the evening and left you in sole charge of Kealeigh. When she returned home late at about 11.30 that night, it was obvious that her daughter was unwell. She was lying flat on her back and looking pale and jaundiced. She had a bright red mark on her forehead. You told Amanda Woolley that Kealeigh had been vomiting and unwell but did not tell her what you had done. She, unwittingly, left her daughter to sleep overnight but took her to hospital in the morning. On arrival, it was immediately clear to the medics that Kealeigh was in a very poor state indeed. A consultant paediatrician, Dr Davidson, found that Kealeigh had suffered very severe head injuries including a brain injury. A second consultant paediatrician, Dr Magnay, referred to the injuries as *"life threatening"* and concluded that they were *"non-accidental"*. A consultant opthalmologies, found 50% haemorrhaging in the eyes suggestive of a severe shaking injury. There were bruises to the child's arms and torso consistent with gripping. The injuries were indicative of a non-accidental shaking using severe force. There were, however, no fractures or other injuries suggestive of any prolonged violence or abuse. This was a case of one brief incident of shaking causing catastrophic brain injuries. The initial prognosis was that Kealeigh was unlikely to survive for very long.

4. You were arrested on 21st January 2000 and interviewed. You described the events of that evening and the difficulties you had in coping on your own that evening with Kealeigh who was being sick. You initially denied any ill treatment of Kealeigh. You were prosecuted under s.18 of the Act for causing grevious bodily harm with intent. Shortly before the trial you pleaded guilty to the less serouis offence of unlawfully and maliciously inflicting grievious bodily harm on Kealeigh contrary to s.20 of the Act. You were sentenced on 4th December 2000 by HHJ Shand at Stafford Crown Court to 18 months imprisonment for the s.20 offence. You served your sentence and were released sometime in 2001. Due to the passage of time the Judge's sentencing remarks are, unfortunately, no longer available.

5. As a result of exceptional medical skill, Kealeigh pulled through and survived but was profoundly disabled. As a result of the brain injuries you caused, Kealeigh has suffered from a variety of serious and complex medical conditions, including cerebral palsy, severe scoliosis, epilepsy, spastic quadriplegia, blindness and global development delay. She had reflux and has had to be fed via a PEG (which was prone to infection). She was confined to a wheelchair. She has required constant care. The fact that Kaeleigh has survived so long, is due in large part to the extraordinary dedication and hard work of her mother, Amanda Woolley, and the medical and support staff. Despite her profound disibilities, and the extraordinary pain and privations she enduring during her life, there were bright moments and she was able to smile and turn her head to her mother's voice.

6. Sadly, as I have said, on Sunday 6th February 2011, following earlier problems and admissions to hospital due to problems and infections association with her PEG site, Kealeigh was found to have died in her sleep at home. She had lived another 11 years after her initial injuries. Despite the terrible pain and privations she suffered during her young life, Kealeigh would have known that she was truly loved and cared for.

7. Kealeigh's death at a relatively young age was not unexpected. In a statement produced for the original trial, Dr Magnay, stated his opinion that Kealeigh's injuries were so severe that she had a considerably higher risk than most people of acute deterioration due to factors such as the aspiration of gastric juices or pneumonia.

Cause of death in 2011

8. The unanimous medical opinion is that Kealeigh's death in 2011 was directly attributable to the injuries she suffered at your hand that night in January 2000.

9. Although the exact mechanism of her death is not apparent, it is clear that the underlying brain injury can be said to have been the principal cause of her death. Five distinguished experts have written reports to this effect. In particular, the Home Office pathologist, Dr Kolar, concluded that Kealeigh's death was cause by *"late complications from the brain injury"*. Dr Malcolmson is of the opinion that her original brain injury was the untimely cause of her death 10 years later. They observed that the fact that Kealeigh had survived so long was a testament to the remarkable level of love and care that she had received during her life from her mother and the medical services.

Aggravating factor

10. The aggravating factors in this case are:

    (1) First, the extreme vulnerability of a baby of this age – Kealeigh was only aged 7 months.

    (2) Second, the breach of trust – she had been left in your care as baby-sitter when, her mother went out for the evening.

    (3) Third, the fact that severe force was used when you shook her in a moment of frustration and temper.

    (4) Fourth, the fact that you did not come clean straight away to her that night, or subsequently when the medical staff became involved.

Mitigating factors

11. I have listened carefully to everything that has ably been said by Mr Muldoon on your behalf. The key points to be born in mind by way of mitigation are as follows:

    (1) First, there was no intent to kill or harm.

    (2) Second, you shook Kealeigh in a momentary act of frustration and temper. The level of actual violence use was at the lower end of the scale. This was a 'one shake' case. Though, as is depressingly familiar, we know that even low levels of momentary violence towards young vulnerable babies can have momentous and life-changing consequences.

    (3) Third, it was an isolated incident. There is no evidence of any other violence or cruelty inflicted that night by you on Kealeigh.

    (4) Fourth, it was out of character. You are a person with no convictions before or after this incident. Since your release in 2001 you have been employed and led a quiet life.

    (5) Fifth, I accept Mr Muldoon's submission that that you are and always have been genuinely remorseful for what you have done. You drafted letters back in 2000 seeking to apologise to Kealeigh's mother. You have had to live with the knowledge of what you had done and that it was likely that Kealeigh would die prematurely and the police would come knocking on your door. You told the officers that you have always known that this day would come. You told police officers that you felt guilty that you were given such a short sentence at the time.

    (6) Sixth, I have read the Psychiatric Report dated 20th March 2015 prepared by Dr David Vaggers regarding the effect on you.

    (7) Seventh, I have also read the Pre-Sentence Report dated 27th March 2015 prepared by Ms Jane Finnesey which refers to the fact that you are a carer for his aged mother and re-inforces some of the points in mitigation.

(8) Your early plea of guilty. I accept Mr Muldoon's submission that your legal advisers were right to advise you to seek independent medical evidence before indicating your plea. I shall therefore give you a full third credit.

Victim

12. The effect on Amanda Woolley and the immediate family has, of course, been profound. Her life was turned upside down in 2000. Her happy, healthy baby was sudden profoundly disabled. It is to her great credit that she has shown all the love and care that a mother could and devoted every fibre of her being in the past decade to looking after Kealeigh. As I have noted, the fact that Kealeigh lived as long as she did is a testament to the remarkable care that she received. Kealeigh certainly would have known all her life that she was truly loved and cared for and, therefore, known happiness.

13. I have carefully read and re-read the witness statement of Kealeigh's mother, Amanda Woolly. She describes movingly of the lifetime of pain and anquish which you have caused and speaks eloquently of the life that Kealeigh has had taken from her. I would like to quote a few passages:

> *"Keals would have been 16 years old this year. She should be getting excited for her school prom as she would have left school this year! She should be here with her family, she should be asking me for advice on what she should be doing with her career. She should be here because she needs her mummy! You took it all away from her."*
>
> *"From that day onwards our lives were changed forever."*
>
> *"But no matter what my little girl went through she always had a smile. That's something you didn't take away."*
>
> *"I thank Keals for giving me 11 years….11 amazing years. I would do anything to have Keals back here with us. I can't have her back though because she has gone forever, and you did that."*

11 years between injury and death

14. As counsel have said, this is unusual case which involves the death of a child as a result of a serous assault committed on her more than a decade earlier. It is a fact, and a matter of record, that during the past 11 years Kealeigh has suffered daily and grievously from the numerous, serious painful, life-limiting medical conditions consequent on the catastrophic brain injuries. She has endured many years of post-trauma suffering. This Court has the advantage of knowledge of the actual *sequelae* over the previous sentencing Court.

Issues

15. How is the Court to approach this unusual sentencing exercise and the fact of this long gap in time between the assault in 2000 and the eventual (but almost certainly inevitable) fatal outcome in 2011?

16. Two particular issues arise. First, whether, how and to what extent the Court takes into account the suffering of Kaeleigh between the infliction of the original injuries in 2000 and her eventual death 2011. Second, to what extent does the court have regard to the increase in severity of sentencing involving death, consequent on the 2003 Criminal Justice Act 2003.

First issue: 11 year interim period

17. I turn to the first question, namely whether, how and to what extent the Court takes into account the suffering of Kealeigh between the infliction of the original injuries in 2000 and her eventual death 2011.

18. There is some guidance to be found in *R v. Owen* [2009] 2 Cr App R (S) 113, a case involving strikingly similar facts. In that case, the appellant began a relationship with the mother of a young child in 2000. The child aged six months was taken to hospital where she was discovered to have injuries indicative of having been violently shaken. She suffered a significant brain injury with spasticity of the limbs, remained blind and unconscious, unable to be moved or fed orally and requiring continual suction to clear her airways. The appellant pleaded guilty to inflicting grievous bodily harm on the child and was sentenced in 2001 to three years' imprisonment. In 2007 the child became ill and died. A post-mortem examination found that the cause of death was pneumonia secondary to cerebral palsy caused by shaking or impact. The appellant was subsequently charged with manslaughter and pleaded guilty and was sentenced to 12 months' imprisonment.

19. The sentencing judge in *Owen* considered the length of sentence that would have been appropriate if the child had died in 2000 when the injuries were inflicted and concluded that the appropriate bracket for the offence of manslaughter would have been four to five years. The appellant submitted that the sentence of 12 months should have been suspended and that the sentencing judge did not give sufficient weight to the fact that this was a second sentencing exercise, more than six years after the appellant's release from prison for the same criminal act committed by him and since his release the appellant had worked hard and lived a nearly blameless life. The Court rejected this submission and stated as follows:

> *"14. We disagree. There was a purpose. The purpose was to mark the death of Shauna and to punish the appellant not only for destroying her quality of life, for causing her years of pain and misery, but for killing her. The flaw in Mr Robert's argument, as it seems to us, is that he accepted that a total immediate sentence of four years for manslaughter had it been imposed back in 2001 could not be described as in any way excessive; some way argue it would not be long enough. The question, therefore, is whether the appellant's excellent behaviour in the period between the two convictions means the judge was obliged to suspend a perfectly proper sentence."*

20. The focus and debate in *Owen* was whether or not an immediate custodial sentence was called for. The CA made it clear that it was. Hallett LJ did mention *en passant* in paragraph 14 that the purpose of the sentence was *inter alia "to punish not only for destroying her quality of life, for causing her years of pain and suffering, but for killing her"*. The CA did not grapple with, or consider, in any detail the question of how the Court approaches the interim period – in that case 6 years and in the present case 11 years – between injury and death. The issue perhaps did not arise directly in

argument because it was not suggested (perhaps unsurprisingly) that the additional sentence of 12 months was in any way excessive.

21. Ms Brand, for the Prosecution submitted that the period of 11 years of suffering should be taken into account, but simply as one of the factors in the overall sentencing exercise but she, rightly, did not seek to elevate it to an overriding factor. Mr Muldoon, for the Defence, agreed that the period of 11 years should be taken into account but it should be balanced with the other factors, including the impact on the Defendant.

22. In my judgment, the relevant principle to be applied is the well-known Common Law principle that you take your victim as you find him or her. The Court must have proper regard to, and take full account of, everything that has happened in intervening 11 years between the infliction of the original injuries in 2000 and Kaleigh's eventual death 2011. It is clear, and a matter of record, as I have said, that the Kealeigh suffered greatly for 11 years from her disabilities, including blindness, quadriplegia and numerous operations and hospital visits consequent on her disabilities and complex conditions. It is clear also that the need to care for Kealeigh in life for so many years, and the need now have to grieve for her in death, has had a profound effect on the lives of who loved her, particularly her mother, Amanda Woolley.

23. However, one does not look simply at that undoubtedly important factor of what Kealeigh's prolonged suffering in isolation. It is tempered and to be balance with the other features of this period, in particular, that the fact of life and that during this period there were no doubt many moments of joy and happiness which Amanda Woolley describes. In addition, the Court takes into account the effect of that having this 'Sword of Damocles' hanging over you for so many years has had on the defendant. It has undoubtedly circumscribed your life as Mr Muldoon described. It seems to me that the Court should take into account and balance all these multi-faceted features of the case in arriving at the eventual sentence.

Second issue: Increased tariff for cases involving death

24. The second issue is the extent does the Court have regard to the increase in severity of sentencing involving death, consequent upon the 2003 Criminal Justice Act 2003.

25. In *R. v. Burridge* [2011] 2 Cr App R (S) 27, Leveson LJ cited Lord Judge LCJ's judgments in *Wood* [2010] 1 Cr App R (S) 2 and *AG's References Nos. 60, 62 and 63 of 2009 (Appleby and others)* [2010] 2 Cr App R (S) 47 and went on to say this (at para. 139):

> *"139. Having considered the authorities and referred back to Wood and the disparity between a sentence for murder with the tariff fixed by reference to Sch.21 of the 2003 Act and that for manslaughter, he went on (at [22]):*
> *"[C]rimes which result in death should be treated more seriously, not so as to equate the sentencing in unlawful act manslaughter with the sentence levels suggested in Sch. 21 of the 2003 Act, but so as to ensure that the increased focus on the fact that a victim has died in consequence of an unlawful act of violence, even where the conviction is for manslaughter, should, in accordance with the legislative intention, be given greater weight."*

26. Ms Brand submitted that since the act in question took place in 2000, the Court should have regard to the levels of sentencing for manslaughter cases in 2000. She submitted that the cases on sexual offences where the Sentencing Guidelines had increased the tariffs in relation to historic sex offences were *sui generis*. Mr Muldoon did not demur from this approach. The point was not raised or argued in Owen (supra) and Counsel are not aware of any guidance.

27. In my view, however, this approach is flawed and it would be wrong in principle to approach the question of tariffs on this basis that the Court was tied to the levels of sentence for manslaughter current when the injuries were inflicted in 2000. In my view, the correct and principled approach is to ask 'when was the current offence (of manslaughter) committed?'. The offence of manslaughter was not committed in law until 6th February 2011 when Kealeigh died aged 11 years 7 months. The fact that the *actus reus* took place some years before is not to point. The offence of manslaughter was not committed until her death. Again, the principle to be applied is that one takes one's victim as one finds him or her.

28. Accordingly, in my judgment, the Court is bound to have regard to the current (*i.e.* 2011) levels of sentencing in manslaughter cases. As highlighted by Leveson LJ in *R. v. Burridge* [2011] 2 Cr App R (S) 27, since the 2003 Act there is an increased focus no on the fact that a victim had died as a result of an unlawful act of violence and greater weight must be given to that fact (see Lord Judge LCJ in *Wood* and *Appleby (supra, passim*).

Relevant cases

29. It is right to re-iterate once again that each case depends on its own fact. I have, however, considered a number of recent cases regarding the manslaughter of young children in order to assist in calibrating the current sentence.

30. In particular, I have considered *AG's Reference Nos. 125 of 2019 (Draper)* [2011] 2 Cr App R (S) 97. I have had regard to the observations and guidance of Lord Judge LCJ in relation to cases of manslaughter of young children and directed my self accordingly. In that case, a 4 month old baby was thrown as a result of a sudden loss of temper. It was noted that the aggravating features present in *Burridge* were not present. Nevertheless, the CA increased the sentence from 3 ½ to 5 years. Some reliance was placed on *R v. Owen* (*supra*) where, as noted above, only 12 months was added to the original sentence of 3 years. It is noteworthy that Hallet LJ's passing remark that for some a sentence of four years *"would not be long enough"* was particularly highlighted by Leveson LJ in *Burridge (*at para. 136).

31. *Draper* (and the present case) are to be contrasted with the facts of cases such as *AG's References Nos. 84 of 2014 (Pearce)* [2014] EWCA 2095 where numerous injuries were inflicted on a 6-week old baby with implements, including a sandal and a bottle, causing blunt injury traumas leading to the child's death. In *Pearce* a sentence of 9 years was held not to be unduly lenient.

32. Save for *Owen,* none of the cases involved long-term post trauma suffering.

Sentence

Colin Head, please stand up

33. The approach I take is to start by asking what sentence would be passed if you were being sentenced today for the first time in relation to this matter, *i.e.* without any element of double–jeopardy. Then to make the relevant deduction for (a) your plea of guilty and (b) your previous sentence.

34. Taking all the factors into account, all the 5 aggravating and mitigating features of this case which I have outlined, and the approach in law which have I have set out, the starting point which I take is one of seven years. I give you full credit of 1/3rd for your early plead of guilty which reduce that figure to 4 years 8 months. From that figure of 4 years 8 months, I further deduct your first sentence of 18 months which you have already served, to arrive at a net figure of 38 months, *i.e.* 3 years 2 months imprisonment.

35. So, Colin Heath, I sentence you to 3 years 2 months imprisonment for the manslaughter of Kealeigh-Anne Woolley.

36. Your counsel will explain the nature of the sentence. The statutory surcharge applies. Please go with the officer.