



Case No: U20150140

IN THE CROWN COURT IN NOTTINGHAM

Date:

Before:

MR JUSTICE HADDON-CAVE

THE QUEEN

- v -

FREDERICK DAVID GAZELEY

Mr Linehan QC (instructed by the CPS) for the Crown
Mr Hankin QC (instructed by Cocks Lloyd of Nuneaton Solicitors) for Frederick David
Gazeley

Hearing date: 5th October 2015

SENTENCING REMARKS

MR JUSTICE HADDON-CAVE:

Mr Gazeley, you have today pleaded not guilty to the murder of Jean Gazeley but guilty of her manslaughter by reason of diminished responsibility. That is a plea which is accepted by the Crown. I will now sentence you and explain the reasons for my sentence. Please remain seated for the moment.

Introduction

1. This is another exceptionally sad and tragic case.
2. On 2nd January 2014, the Defendant, Frederick Gazeley (aged 58), administered morphine to his wife, Mrs Jean Gazeley (aged 54), and then smothered her with a pillow. They had been happily married for over 36 years and were a devoted and loving couple. Mrs Gazeley, had been suffering for many years with serious medical problems. Mr Gazeley had been her constant and devoted carer. Her condition had considerably worsened in the previous days and weeks. As I shall describe, Mr Gazeley was under intolerable strain at the time when he ended his wife's life. In the morning, he called the emergency services and admitted what he had done.

Procedural history

3. The matter came before me on 22nd May 2015, at Hereford Crown Court, on a point of law as to whether the Defence Case Statement disclosed a defence to murder. On 19th June 2015, I ruled that the Defence Case Statement did not disclose a defence to murder. That ruling was handed down to Counsel and the parties but not published at that stage in order not to prejudice any eventual trial. In view of the Defendant's plea today, my ruling *R v. Gazeley* (Case No. U20150140, Ruling 19th June 2015) can be published today; and because it is germane to the sentence today, I will briefly touch the nature of that Ruling.

Psychiatric report

4. I have had the benefit of reading and studying the reports of the eminent Consultant Forensic Psychiatrists, Dr Dinesh Maganty MBBS FRCPsych (instructed by the Defence). Dr Maganty is of the opinion that at the time Mr Gazeley killed his wife, he was suffering from severe emotional stress and a recognised mental condition called an 'adjustment disorder' which impaired his ability to exercise self-control and the plea of diminished responsibility is available in this case.

The Facts

5. The tragic facts of this case are not dispute in any material respect. The following summary of the facts is largely taken from my Ruling of 19th June 2015 with various additional points made by Counsel today.
6. Mr and Mrs Gazeley had been happily married for many years and had two children, Zoe (aged 35) and David (aged 30) and grandchildren. They were a

close and loving family. Jean Gazeley had, unfortunately, been suffering for over 20 years, since 1994, with a seriously debilitating and progressive disease. This was diagnosed during her lifetime as Multiple Sclerosis (but the *post mortem* results showed she had a type of leukodystrophy called Alexander Disease which mimics the symptoms of Multiple Sclerosis). Mrs Gazeley slowly lost movement of her legs and left arm, became wheelchair bound and was regularly in extreme pain. She showed great courage in coping with the disease and the pain. She had been nursed and cared for throughout this time with great love and dedication by her husband, Mr Gazeley, at their home in Nuneaton. He carried her up and down the stairs and dressed her and tended to her daily needs in a selfless and caring way. Despite everything, she enjoyed life and her family.

7. By 2011, Mrs Gazeley was mainly confined to bed and she began to suffer from attacks of spasms and severe pain. It was at this stage that she began discussions with her family and her GP about ending her life. These discussions included the possibility of travelling to Switzerland to use the facilities of 'Dignitas'. Her fear was that she would reach a stage when she would be unable to end her life by her own hand. She said that she did not want her husband to have to take her life.
8. The family spent a happy Christmas 2013 together. Between 28th and 31st December 2013, Mrs Gazeley began to suffer from particularly severe spasms and bouts of pain. Her GP, Dr Johnson, visited her at home and concluded that she was having a 'flare'. She did not want to go to hospital. He prescribed hydration and liquid morphine called "*Oromorph*" as a pain-killer. The "*Oromorph*" came in a 300 ml bottle. The GP told Mr Gazeley that it was to be taken in 5 ml doses as and when needed but no more than once every two hours. The bottle therefore contained 60 doses which would last a minimum of 5 days. Mr Gazeley gave Mrs Gazeley a few doses with a spoon. She told her carers, Jacqueline McMasters and Jennifer Darliston, that "*I don't want this*", which they understood to mean that she no longer wanted to go on.
9. On the morning of 1st January 2014, Mrs Gazeley's pain had become so serious that an ambulance was called to take her to hospital. The paramedics found her in great pain. She said to the first paramedic who arrived "*Kill me, kill me*". She cried out later to the paramedics, "*Help me*", "*Please let me die*" and "*I want to die*". Mrs Gazeley was admitted to the acute medical ward at George Eliot Hospital. She was X-rayed to see if she had an infection. Mr Gazeley accompanied his wife to hospital and told the doctors that his wife's condition had deteriorated over the past two weeks, she had not eaten any solid food since Christmas and she was spitting out the morphine which had been prescribed for her pain. He explained that she had made it clear to the family that she did not wish to receive medical treatment that would prolong her life. There followed a high-level conference of the medical staff, including the senior doctors. It was decided that, in the light of Mrs Gazeley's untreatable illness and expressed desire not to receive any further hospital treatment, her wishes should be respected and she should be discharged from hospital and allowed home to her family.
10. Mrs Gazeley returned home at about 6 pm on the evening of 1st January 2014. Once at home, she was placed in her bed on the ground floor. There she spoke to her family in terms that showed that she was preparing for death, telling them that

she loved them and speaking about their future happiness. By late evening, when the other members of the family had gone home or gone to bed, Mr Gazeley was left alone with his wife. He did not tell the others what he planned to do.

11. At 6 am the next morning, 2nd January 2015, Mr Gazeley telephoned the 999 emergency line and said: *“My wife has passed away in the night with my help. She’s been suffering with multiple-sclerosis for twenty-five years and this weekend she was really bad and everything and we arranged to end it for her. Gave her some morphine that the doctor prescribed for her. ... I placed a pillow over her face to make sure. I finished about half-past two.”*
12. Mr Gazeley told the police in interview that, that night, he had fed his wife the rest of the bottle of the 300 ml bottle of *“Oromorph”* by squirting the liquid morphine into her mouth using a syringe. He then placed a plastic bag and pillow over her face and held it there for a long time until about 2.30 am. He said that he had read the *“Oromorph”* instructions and knew that it was dangerous to exceed the stated dose. He stated he planned to smother his wife and he gave her the morphine so that she should suffer less when he did so. He had asked her if she wanted the last of the morphine and she said yes; and she then said she was *“ready”*. He said that he had acceded to her clearly expressed wishes.

Charge

13. Mr Gazeley was charged with murder and attempted murder of his wife, Mrs Jean Gazeley. He initially pleaded not guilty to both charges. The primary defence is that this was a case of assisted suicide, not murder. The Crown, however, submitted that the Defence Case Statement disclosed no defence to murder.

Ruling of Law – 19th June 2015

14. I turn to summarise briefly my ruling on this issue of law. The Prosecution case was (and remains) that Mr Gazeley committed two unlawful acts with the intention of bringing about the death of his wife. The first was the administration of morphine to his wife. The second was the placing of a plastic bag and pillow over his wife’s face and holding them there for a prolonged period. The toxicology report was inconclusive as to whether Mrs Gazeley died from the morphine and her illness or from suffocation or from a combination of both. On Mr Gazeley’s own version of events (accepted by the Crown), Mrs Gazeley was, in fact, still alive and breathing when he finished administering the morphine and placed the plastic and cushion over her face and suffocating her. The Prosecution argued, nevertheless, on any view of causation there could be no defence to murder.
15. The Defence argued that case should be left to the jury because they jury could not be sure whether Mrs Gazeley’s death was due solely to the effects of the morphine as opposed to the smothering, and Mrs Gazeley’s deliberate act of swallowing of the morphine - pursuant to a voluntary, settled and informed decision which she had the freedom and capacity to make - broke the chain of causation between her husband’s actions and her death such that he was not guilty of murder.

16. On 19th June 2015, I ruled that Mr Gazeley's action in introducing the morphine into Mrs Gazeley's mouth amount in law to "administering" of a noxious substance within the meaning of that term in ss.22 and 23 of the Offences Against the Person Act 1861 Act and that the Defence Case Statement, therefore, disclosed no defence in law to murder. It was appropriate for the Defence to test this issue in the circumstances this case.
17. The Defence now accept the Crown's position on causation and that Mrs Gazeley was in all probability still alive when Mr Gazeley placed the plastic and pillow over her head. The pathologist, Dr Al-Sarraj, expressed the opinion that, mercifully, it was likely that Mrs Gazeley died quickly, whatever was the immediate cause of her death.

Psychiatric report

18. I am grateful to Dr Maganty for his report. It is appropriate to cite in full Dr Maganty's concluding opinion:

"OPINION

1. Mr Gazeley does not suffer with any severe, enduring mental illness, such as schizophrenia, bipolar disorder or severe depression. He did not suffer with any of these conditions, based on the information available to me and the evidence available to me at the material time of the alleged index offence.

2. Mr Gazeley would satisfy the diagnostic criteria for F43.2 adjustment disorder, as per the International Classification of Diseases Version 10. This in his case is characterised by, during the material time of the alleged index offence, a subjective state of distress and emotional disturbance, interfering with his functioning and performance whilst he was adjusting to his wife's severe illness and distress. He is noted to have been emotionally extremely distressed during this period together with presenting as being tired. He was also described to have insomnia, with not sleeping for days. This would be a mental disorder within the meaning of the Mental Health Act 1983 (amended 2007).

3. He currently remains fit to plead and fit to stand trial, on the balance of probabilities. He has a clear understanding of the role of the judge and that of the jury, the difference between pleading guilty and not guilty and would be able to instruct his legal team appropriately. He has a clear understanding of the legal process and the evidence presented against him and would be able to give evidence in his own defence.

4. From the accounts available to me, Mr Gazeley and his wife, Jean Gazeley, had a loving and caring relationship and any actions that Mr Gazeley took appear to be based on the discussions and wishes expressed by Mrs Gazeley and driven by his desire to help and care for Mrs Gazeley and prevent suffering. I have not seen any evidence to suggest that his actions were motivated by any malicious intent. The opinions expressed below are expressed on the acceptance that the above is true.

5. At the material time of the alleged index offence Mr Gazeley had already taken Mrs Gazeley to hospital where multiple doctors had assessed her and the conclusion that was reached, based on the information available to me, was:

1. *That she likely had capacity to make a decision to end her life and was making an active request to end her life.*
2. *She was in severe pain and was finding this pain unbearable.*
3. *A clinical decision after consideration of her physical health and mental health was made by her treating medical team that she was to be discharged back home to receive palliative care and nothing curative could be done for her. Mr Gazeley, at the material time of the alleged index offence, was clearly severely distressed regarding his wife's state and her suffering severe pain and that doctors were unable to help her (which was expressed to him I note documented in her clinical records as requiring palliative care). He was, at the material time, suffering with an adjustment reaction and at a point where he was clearly feeling hopeless and he openly describes feeling desperate. He describes feeling anxious.*
6. *Adjustment disorder is a recognised medical condition and could be accepted as an abnormality of mind. The emotional distress that he was suffering with, as part of his adjustment disorder and the extreme emotional stress that he was undergoing seeing his wife dying in pain and after being told that no further medical help other than "palliative" (end of life) support could be given to her and being discharged back home to die as he saw it, he was severely affected by the emotional distress that he was undergoing. His wife's repeated requests to him to end her suffering and pain while suffering with his severe emotional distress caused by his adjustment disorder would have impaired his ability to exercise self-control and on balance, in my opinion, would have been a significant factor for his lack of self-control. In my opinion, his adjustment disorder would have provided an explanation for his actions to accede to his wife's repeated requests to end her pain and suffering. His mental disorder would have impaired his rational judgement at the material time. In my opinion, a defence of diminished responsibility on the grounds of a recognised medical condition is open to Mr Gazeley. It is ultimately for the jury to decide if this could have substantially diminished his responsibility for his actions.*
7. *It is important to recognise that Mrs Gazeley was considered to have capacity. As required under the Mental Capacity Act 2005 as the presumption is one of capacity the doctors treating her made a decision that she "likely had capacity" and on this basis a decision was made to discharge her home so that she may proceed to complete her desire to die at home by refusing food, fluids and also medication. It was accepted, based on all the information that I have seen, that she had expressed a capacious decision to die."*

Plea accepted

19. On 1st July 2015, an offer to manslaughter by reason of diminished responsibility was indicated and a copy of Dr Maganty's report sent to the Crown. On 7th July 2015, the Crown indicated that a plea of manslaughter by diminished would be acceptable and that the opinion of Dr Maganty was accepted. That plea has been made today.
20. Mr Linehan QC had repeated today on behalf of the Crown that, in view of the context and the evidence in this case, the Crown accept Mr Gazeley's plea to manslaughter in this case on the grounds of diminished responsibility, in the particular circumstances of this case.

21. I accept Dr Maganty's report and conclusions. I am satisfied that at the time, Mr Gazeley was suffering from a recognised mental condition as described by Dr Maganty in his report and that the plea of diminished responsibility is available in this case. In my judgment, in the light of the facts and evidence which I have outlined, it is appropriate that the Crown should accept the plea to manslaughter and I sentence on that basis.

Principles

22. This case has parallels with cases such as *R v. Mann* which I sentenced at the Warwickshire Justice Centre on 13th April 2015 (<https://www.judiciary.gov.uk/wp-content/uploads/2015/05/r-v-mann-sentencing-remarks-130415.pdf>). I set out below, for convenience, my summary of the relevant principles to be applied when sentencing in cases such as the present (see para. 19):

“19. I have considered the authorities including, in particular, *R v. Leslie Susan Higgins* [1996] 1 Cr App R (S) 271, *R v Chambers* 5 Cr. App. R. (S) 190), Attorney General's Reference No.83 of 2009 (Patrick John Andrew Moore) [2010] 2 Cr.App.R.(S.) 26 at 161, *R v Webb* [2011] 2 Cr. App. R. (S) 61, *R v Beaver (Peter Richard)* [CACD 24 March 2015, unreported]). In the light of the authorities, it seems to me that the principles to be applied when sentencing in cases of manslaughter by diminished responsibility such as the present are as follows:

- (1) The fundamental principle of the sanctity of human life is always to be respected and reflected in the sentence passed.
- (2) The culpability of the defendant in diminished responsibility manslaughter cases may sometimes be reduced almost to extinction, while in others, it may remain very high. Each case will depend on its own particular facts.
- (3) Subject to the specific element of reduced culpability inherent in the defence, the assessment of the seriousness of the instant offence of diminished responsibility manslaughter should have regard to the guidance in Schedule 21 to the Criminal Justice Act 2003.
- (4) In assessing the seriousness of a killing consequent on manslaughter rather than murder, regard should be had to the criteria for determining the minimum term to be served in murder cases and then to reduce the sentence to allow for the extent to which the culpability of the offender was reduced by his or her mental condition.
- (5) In diminished responsibility cases, there are various courses open to a judge. In cases where the evidence indicates that the responsibility of the accused for his acts was so grossly impaired that his degree of responsibility for them was minimal, a lenient course will be open to the judge. Provided that there is no danger of repetition of violence, it will

usually be possible to make such an order as will give the accused his freedom, possibly with some supervision.

- (6) It is of central importance that a court must not overlook the feelings of the family of the deceased. It is of the greatest importance that those feelings should be respected.
- (7) In an appropriate case, the principle of the sanctity of human life would not be undermined if an immediate custodial sentence was not imposed.”

23. The present case also has features in common with *R v. Webb (supra)* and I bear in mind the following pertinent observations of Lord Judge LCJ:

“24. On any view this was an exceptionally difficult sentencing exercise. The killing of Mrs Webb was, and will always be, the result of an unlawful act. On the basis of diminished responsibility it was not murder, but manslaughter committed as a mercy killing intended by the appellant to help his wife achieve her settled intention to end her own life, notwithstanding his pleas to her that she should not do so. In our judgment his actions in this case came very close to the offence of assisting in his wife's intended suicide, acting as he did to fulfil her clear, unequivocal wishes to end her life, so that when she failed to achieve what she wanted, he took over from her.

25. All this must be set in the context of a man whose responsibility, if not altogether extinguished, was substantially reduced. We accept the submission that if he had not been in the situation in which he was and suffering from the condition from which he did suffer, it is most unlikely that this killing would have occurred. We remind ourselves of the turmoil which he must have suffered as he committed the last fatal act.

26. The appellant has now served the equivalent of a sentence of six months' imprisonment. In the unusual and particular circumstances of this case we do not believe that the principle of the sanctity of human life would be undermined if the sentence imposed on the appellant were now reduced to one of twelve months' imprisonment, suspended, so that this lonely old man may receive the help that he will need to come to terms with the disaster that has overtaken him.”

24. In *R v. Webb (supra)*, the Court of Appeal quashed the order of immediate imprisonment and substituted an order of twelve months' imprisonment suspended for twelve months and attached a supervision order. In *R. v Mann (supra)*, I imposed a sentence of two years suspended for two years. In *R. v Beaver (Peter Richard) [ACD 24 March 2015, unreported]*, on facts striking similar to *R v. Webb*, the Court of Appeal in that case quashed a sentence of imprisonment of three years and substituted a sentence of two years suspended for two years, with conditions.

Mrs Mann's wishes

25. I am satisfied that there is compelling evidence that Mrs Gazeley could not endure her suffering any more and wanted her husband to end her life. It is clear that this was a settled intention. As long ago as 21st January 2011, Mrs Gazeley is recorded as having asked her GP, Dr Johnson, to help her by writing to 'Dignitas'. It is clear from the evidence that Mrs Gazeley's condition continued to deteriorate from that time until the end of 2013, and then seriously deteriorated in the days immediately before her death and she could bear the pain no longer.

26. The context in which Mr Gazeley came to take Mrs Gazeley's life is accurately distilled in Paragraph 6 of the Prosecution Case Summary prepared by Prosecuting Counsel, Mr Linehan Q.C:

“Medical staff, carers and [Mrs Gazeley's] immediate family have provided a wealth of evidence that details the suffering Mrs Gazeley endured to the progression [of] her illness, Mr Gazeley's compassionate care of her and eventually her profound heart-breakingly expressed desire that death should relieve her of her suffering.”

27. As Mr Linehan Q.C. also said in paragraph 41 of the Prosecution Case Summary:

“Nobody could fail to be moved by the history that led up to Mr Gazeley's decision to comply with his wife's clearly expressed wish that he should help her by ending her life.”

Responsibility diminished

28. In his helpful submissions for the Defendant, Mr Hankin QC, submitted that Mr Gazeley's responsibility for his wife's death, if not altogether extinguished, is substantially reduced by virtue of the adjustment disorder from which he was suffering at the material time. If he had not been in the situation in which he was, and suffering from the condition from which he did suffer, it is most unlikely that this killing would have occurred (as Dr Maganty's report demonstrates). He submitted that Mr Gazeley was motivated at all material times by a desire to alleviate his wife's suffering and to honour the commitment he had made that he should do so. He was a devoted, selfless man who was driven to act as he did.

29. The Prosecution, in accepting the plea, also accepts that Mr Gazeley's responsibility was substantially diminished by reason of the adjustment disorder from which he was suffering at the time.

30. I am satisfied, in the light of all the evidence, that Mr Gazeley's residual culpability was low. He was devoted to his wife and was entirely motivated entirely by a desire to alleviate her suffering and to be faithful to her wishes.

Family's wishes

31. It is important to have regard to the fact that neither of Mrs Gazeley's two children, Zoe and David, bear any resentment against their father for what he did. I would like to quote from their moving tribute to their father in their letter to the Court dated 2nd October 2015:

“Our Dad is the kindest, loving, most honest and caring man we know. What he did for my Mum took courage and he will always have to live with what he did for his wife. He spent 36 years devoted to my Mum and we are not sure how he is coping. He has been completely selfless.

We do not blame our dad in any way for what happened. Our main worry is about losing dad as well as mum. It would be impossible to bear if he was sent to prison. I am not sure we would ever be able to get over it.”

32. Equally, neither does Mrs Gazeley’s sister, Barbara Nicol, bear any resentment towards him. She said this in her letter to the Court dated 23rd July 2015:

“Fred never ceased to amaze me at his dedication to Jean. ... I honestly think that Jean would have given up on life a lot sooner if Fred had not been there to encourage her and love her. ...
...[A]lthough I have lost my sister I know that I admire Fred for his total commitment to Jean and doing what she wanted.”

Mitigation

33. Mr Gazeley is now 60 years of age. He has lived in Nuneaton most of his life. He met his wife, Jean, when he was 20 and they married three years later. He is someone of positive good character with an impeccable employment record, spending 30 years working as an artic lorry driver. He has a close and loving family who do not blame him for what he has done.
34. Mr Gazeley reported himself to the police and fully assisted them in their enquiries into the circumstances of his wife’s death. His plea to manslaughter was offered at the first available opportunity. He has never sought to deny responsibility for his wife’s death (indeed an offer to plead guilty to assisting suicide was made in writing in December 2014).
35. Mr Gazeley does not pose a danger to the public. There is no danger of the repetition of violence. This is not a case where a hospital order is necessary. This is not a case where any form of supervision is necessary.

Conclusion

36. In my judgment, in the exceptional circumstances of this case, an immediate custodial sentence for manslaughter is not required. This case is at the lowest end of culpability. This seems to me to be a very strong case for leniency and mercy. I accept Mr Hankin QC’s central proposition that the principle of the sanctity of human life would not be undermined if the sentence imposed on this Defendant were to be suspended.
37. There is no public interest or need to send him to prison. I am satisfied that, given the exceptional circumstances of this case, this case can nevertheless properly be dealt with by way of a Suspended Sentence Order.
38. The recent amendments to the suspended sentence provisions by LASPOA 2012 now allow for a suspended sentence for up to two year’s duration and for a

sentence to be suspended without any community requirements being attached to that sentence (*c.f. Archbold* 5-538).

Sentence

Mr Gazeley, please stand up. The Court accepts your plea today of not guilty today to murder but guilty to manslaughter by reason of diminished responsibility. For the reasons which I have explained in detail, in the exceptional circumstances of this case, the sentence which I impose upon you for this offence is a sentence of two years imprisonment, suspended for two years. The usual victim surcharge order applies.