

Central Criminal Court

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Ben Butler

Sentencing Remarks of Mr Justice Wilkie

21 June 2016

Ben Butler you have been convicted by the jury of the murder of your 6 year daughter Ellie on 28th October 2013 and of child cruelty to her early in October.

You murdered her in a brutal assault prompted by your evil temper. You struck her head so hard against a flat surface, or hit her so hard on the head with a blunt implement that, whether you hit her once or more than once, you inflicted catastrophic skull and brain injuries from which she very quickly died.

This is not the case of an otherwise good parent who, in a moment of exhausted frustration, gives way to a bad tempered assault with such disproportionate force that a young child dies, leaving that parent distraught and full of remorse. In such a case any court would, despite the horrific nature of the offence, be obliged to feel some compassion and would temper the inevitable lengthy sentence accordingly.

Your case is quite different. I am satisfied, having conducted this trial and having observed you closely for in excess of 2 months, that you were very far from being a good parent.

You are a self absorbed, ill tempered, violent and domineering man who, I am satisfied, regarded your children and your partner as trophies having no role other than to fit in with your infantile and sentimentalised fantasy of family life with you as the patriarch whose every whim was to be responded to appropriately.

Having been granted care of your two young children, you were totally incapable of coping with the reality of bringing them up, lively, mischievous, and sometimes not compliant with your wishes. Within weeks, you were complaining in vilely abusive and self pitying terms of your lot and were taking out your inadequacies on your partner, violently and vilely, both physically and verbally. Within a year Ellie was dead having suffered a series of injuries, some serious, in the last few weeks of her life.

I am satisfied that from, at the latest, late summer 2013 you subjected Ellie to a series of physical attacks, when she was in your sole care, in which she sustained injuries for none of which you sought medical attention. You lied to Jennie Gray about how she came by these injuries and she, totally beholden to and dominated by you, felt she had no option but to believe you and collude in your ill treatment of her. As a consequence, Ellie was kept away from school for significant periods during which you and Jennie Gray told lies to the school and to the GP who, on one occasion, wrote a careful letter for the school recording what she was told was the reason for Ellie's absence.

I am satisfied that, on 1st October, you inflicted a serious injury on Ellie, a fractured scapula, for which you and Jennie failed to seek medical attention though you must have known she would have been in pain

Thus it is that when, on the 28th October, you, feeling under the weather and trying to catch up with your chores, lost your temper with Ellie and attacked her with lethal violence, it was not a tragic aberration but was all too consistent with your treatment of, and your attitude towards, her.

That this was so is eloquently evidenced by what came next. Far from collapsing in distress and remorse, as any decent person would, given behaviour to their child a fraction of the seriousness of yours, your default position of selfish callousness came into play.

You calmly went about creating an alternative version of what had happened, diverting attention away from yourself and towards a possible accident for which you could not have been responsible because you were not in the house at the time, an alternative version which you have maintained, in some or other form, to this day.

You arranged the scene of her death to suggest a fall from a chair. You peremptorily summoned Jennie Gray home, telling her whatever lie would bring her home urgently. You exploited and manipulated your friend Iain Hudson, engaging in phone communication giving the impression of normality shortly before Jennie's arrival home and ensured that it was on the record by texting him after phoning him.

On Jennie Gray's arrival home you prevailed on her to delay calling 999 until you had completed your arrangements which, most wickedly, involved hinting that it was she who had been the only adult in the house when Ellie met her death. You arranged the cake charade, you had a clothes wash put on, a display of normality and, in all likelihood, to conceal evidence of Ellie's blood on Jennie's blouse which would place Ellie's death much earlier. You went out, walked the dog, disposed of incriminating evidence and gave a bravura performance, for the neighbours, of cheery normality which would cause them to remember and would serve to confirm the narrative you were constructing. You even involved Ellie's younger sibling in the fiction, to "discover" Ellie and to contribute to the shocking 999 call. You may well, in addition, have inserted the Peppa Pig DVD in the DVD player to assist and support the fiction of her jumping and falling.

All of this took some two hours during all of which you left your dead daughter lying unattended on her bedroom floor like a carefully placed prop in a stage scene.

Your performance in the 999 call was not only breath taking in its level of deceit, but your cruel disregard for any dignity to be afforded Ellie, lying there dead, is evidenced by her body being subjected repeatedly to cCPR by Jennie Gray, I have no doubt at your suggestion, all to serve the cover up. In my judgment this was cynicism and selfishness at an almost unbelievable level.

Thereafter you brazenly maintained the lie and obtained that Jennie Gray should do so too until it became obviously unsustainable in its initial form and you replaced it with another set of lies in May 2015 which you maintained in this court.

The only sentence I can pass on you for murder is life imprisonment and I do so.

I have to fix a minimum term before the expiration of which you will not be considered for release on licence. It is possible that you may never be released but, in any event, you will not

be released on licence until the minimum term has expired. Once, if ever, you were released on licence you would be subject for the rest of your life to its conditions and liable to recall to prison at any time if you were to be in breach of them.

For murder, pursuant to schedule 21 of the Criminal Justice Act 2003, it is common ground that the starting point is one of 15 years. There are some mitigating features: no intention to kill; lack of premeditation; the stress you had been under for a number of years, though in my judgment that carries little weight. On the contrary, you knew you were failing as a parent and you went to great lengths to conceal your difficulties from the independent social workers who might have relieved you of a burden you were clearly unfit to perform safely.

However there are a number of serious aggravating factors both statutory and additional. You are a man with a history of violence both outside and, as I have concluded, within the home. I have to sentence you for child cruelty as well as for murder. I have concluded that you did inflict the fractured scapula on Ellie. This will result in an enhanced minimum term as the sentences will have to be concurrent. Ellie was particularly vulnerable because of her age and history. There is a gross breach of trust at the heart of your offending. You have deprived Ellie's younger sibling of a lifelong sibling companion. In that regard your hypocrisy in affecting outrage with the coroner and your previous legal advisers for failing to prevent Ellie's cremation is breath taking. You concealed the fact of her death for your own ends as I have explained. The cover up as I have explained is a serious aggravating feature both in its own right and as it exposes the attitudes which underpinned and provided the context for the murder.

Those aggravating features far outweigh the mitigating features and as a result the minimum term which I fix before you will be considered for release on licence is one of 23 years from today less the number of days spent on remand which will be determined administratively.

For the offence of child cruelty, the focus is on the infliction of the injury to the scapula and the failure to obtain medical treatment for it. I am satisfied that you did inflict the injury, that it would have required a severe blow to do so and is in itself a serious injury. In addition you obviously neglected her, failing to obtain any medical attention for an injury which, I am satisfied, would have been painful and disabling for most if not all of the 2 weeks she was kept away from school during which you went to significant lengths to conceal what had happened to her. I am also satisfied that this was not an isolated example of cruelty and that she underwent a similar experience at the end of August and as a result of what ever happened on 10th October.

All this adds up to a serious case of child cruelty which falls at the top of category two. The sentence upon you for that is one of 5 years imprisonment which will run concurrently to the life sentence I have imposed.

Jennie Gray

I have to sentence you for the offence of Perverting the Course of Justice to which you pleaded guilty on 21 May 2015 after the jury in that trial had been sworn. You are therefore entitled to some limited credit for that guilty plea.

You have, however, in evidence denied that you are guilty of any other than particular d in that charge. There has, therefore, effectively been a Newton hearing in respect of particulars a, b and c. I am sure that you have lied on oath about your lack of knowledge why you had been summoned home on 28th October. I am also sure that you have lied to the jury about knowing that the blouse you wore to work was washed to remove blood from it which, I am sure, was Ellie's blood on the collar which was deposited when you hugged her body on your return from work. I am also sure you lied to the jury about having lied to the police about what shirt you believed you had worn to work that day. I am sure that you are guilty of particulars a,b,c, and d. Thus your limited credit for a late plea of guilty will be further reduced.

The jury has found you guilty of the offence of child cruelty on the basis that you knew that Ellie had sustained a shoulder injury and was in pain and you failed to obtain medical attention for it.

I am satisfied that the injury was inflicted on Ellie by Ben Butler on 1st October so that you must have known of the pain she was in and you did not obtain medical attention for it for a period of some two weeks.

I am prepared to accept, for the purpose of sentencing, that you believed what Ben Butler must have told you, that her shoulder injury was sustained accidentally and that you were unwilling to believe that he had inflicted it upon her. Even so, I am satisfied that you withheld medical attention and lied to cover the reason she was away from school for selfish reasons namely, to avoid revealing her serious injury and the neglect, at the least, which must have been involved in her sustaining it which would have come to light had medical attention been sought. You well knew that such a serious incident might well result in Ellie and her younger sibling being removed from your care so you put your self interest and that of Ben Butler ahead of your duty of care as a mother to Ellie and her younger sibling.

You were also aware that this was not the first occasion, when in Ben Butler's sole care that Ellie had suffered injury which potentially required medical treatment and which was not obtained.

Under the guidelines I am satisfied that the offending falls within category 3 but towards the top end. The appropriate sentence, other things being equal would be one of 21 months.

I now consider the offence of perverting the course of justice to which you have pleaded guilty. The offence in question was the murder of your own child by her father and your partner. Your role was crucial. The cover up was intended to do two things. First to seek to suggest that Ellie had sustained her fatal injuries accidentally by falling from a chair, perhaps whilst imitating Peppa Pig and her tendency to jump up and down.

The second was to postpone her time of death so that it was discovered when Ben Butler did not have sole care of her and may have been at a time when he was not in the house and you had sole care of her. This would serve to suggest both that it was accidental and, if not, to muddy the

waters as to which of you did it. The evidence you falsely provided suggested that you may have been the only one to have had care of her at the relevant time.

I have concluded that you rushed home, knowing that something terrible had happened to Ellie. I am prepared to accept that you believed Ben Butler, as you had on numerous other occasions, when he told you that Ellie had suffered yet another accident. I am prepared to conclude that such was the depth of your dependence on Ben Butler and your need to believe him, that he was able to abuse your trust and gullibility and persuade you that the deceit you were about to embark on was necessary to protect him, an innocent man, from a second round of injustice.

It may be that you were exceptionally naïve and stupid to believe him, but you still had to carry out the plan and you did so with total commitment and you have continued to do so in this court by lying to the jury about matters you well knew were not true. I am satisfied that you changed your work blouse and it was washed with your knowledge to conceal the fact that Ellie was dead by the time you came home. You went along with, and endlessly repeated, the fabrication about cutting the cake for a treat shortly before the 999 call. You played your full part in the grotesque charade that was the 999 call whilst subjecting your dead daughter to the indignity of pointless CPR when you well knew that she had been dead for over 2 hours.

You maintained your false account to all and sundry for 20 months until you pleaded guilty to this offence on a partial basis which I have concluded does not fully reflect the extent of your lies.

In my judgment the appropriate sentence for this offence after a trial would be one of three years imprisonment. With appropriate credit for your plea of guilty the sentence would be one of 33 months.

This offence was committed on a separate occasion as and so has to be treated separately to the offence of child cruelty and the sentences must be consecutive. Giving a total of 54 months.

I have to reflect on whether the total sentence I pass is commensurate with your criminality. I also have to reflect the fact that your part in this offending was the result, as I find it, of your unquestioning and deluded devotion to Ben Butler who, by a combination of physical, emotional and verbal abuse so dominated you that you were disabled from seeing what, to any right thinking person would be obvious, that it was he who had harmed and hurting Ellie on 1st October 2013 and killed her on 28 October 2013.

Having regard to these two factors the total sentence I pass on you is one of 42 months. 18 months for the child cruelty offence and 24 months for the offence of perverting the course of justice those sentences to run consecutively.