JUDICIARY OF
ENGLAND AND WALES

R v Matthew Daley

Sentencing Remarks by Mr Justice Singh

In the Crown Court at Lewes

8 July 2016

Introduction

1. The defendant may remain seated for the time being.

2. This case arises out of the death of Donald Lock, which occurred just after 8:30pm on 16 July 2015. Mr Lock was killed after a minor collision between his car and the Defendant's car took place on the A24 at Findon in West Sussex.

3. The Defendant braked suddenly and Mr Lock's car bumped into the back of his car. Mr Lock got out of his car and asked why the Defendant had stopped. The Defendant then proceeded to stab Mr Lock many times. There were 39 wounds on his body although the pathology evidence at the trial indicated that some of those wounds may not have been caused by separate stabbings.

4. The most significant wound was to the aorta. This caused massive internal bleeding and principally accounted for the cause of Mr Lock's death. In addition there was injury to some ribs, to the skull and also to the lungs and the liver. The stab wounds associated with damage to bone would have required a severe degree of force.

5. On 16 May 2016 the Defendant was acquitted by the jury of murder but convicted of manslaughter. It is clear from the jury's verdict that any suggestion of lawful self-defence was rejected, otherwise there would have been a complete acquittal. This means that the jury must have been sure that, even allowing for the Defendant's mental illness and deluded perception that he might be under attack, the amount of violence used was unreasonable. As Dr Ley describes it in his report dated 7 July 2016 (at para. 7.6):

> "The attack was ferocious and relentless."

6. Although one possible reading of the jury's verdict is that they were not sure that the Defendant acted as he did with the intention to cause at least really serious harm, I put that to one side. In my judgment, the only sensible interpretation of the jury's verdict is that they were satisfied, on a balance of probabilities, that the Defence had established that the Defendant acted as he did on grounds of diminished responsibility.

7. Indeed I proceed on the basis that I am sure that the Defendant acted as he did with the intention to kill Mr Lock and not merely to cause really serious harm. This is because of the large number of stab wounds, the severity of the

force used and all the circumstances of the incident about which I heard evidence during the trial.

8. I proceed to sentence, therefore, on the factual basis that this would otherwise have been a serious case of murder. The reason why the Defendant's culpability is reduced is because his mental responsibility for his acts was substantially impaired by reason of his mental condition.

The facts

9. Mr Lock was a retired solicitor aged 79 but young and fit for his age. He was a keen cyclist. The Court has before it a victim personal statement by Sandra Goodlad, Mr Lock's daughter, which was read in Court by her brother. I am grateful to them both and have taken that statement into account. It eloquently testifies to the continuing impact on Mr Lock's family and many other people who knew and loved him.

10. The Defendant was aged 34 at the time of the offence. He is a man of previous good character.

11. The Defendant would help out at Woodland Stables and also kept a pony at Rogers Farm in Findon. He had just been to Rogers Farm before this offence took place.

12. A number of eye witnesses gave evidence at the trial about what happened during the incident. Mr Lock was not aggressive at all. The Defendant

appeared to be calm. One of the witnesses described the Defendant as being expressionless and looking straight through him. Another said it was as if he was possessed. One witness was struck by the silence of the occasion. However, one witness did describe there being noise, including shouting. The Defendant himself, when he gave an account to a doctor later that evening (Dr Jake Harvey), said that he had shouted to Mr Lock: "Die you fucking cunt". I accept that was said during the incident.

13. At the trial evidence was given by Mr Andrew Slater, one of the eye witnesses, about the attack. He said that Mr Lock was flat on the ground and the Defendant was hitting him in the head and chest. Mr Slater tried to intervene and said "come on mate, leave it out." The Defendant stopped and looked around but then carried on stabbing Mr Lock several times. He then moved towards his car almost in a crouched position and drove away.

14. Although the Defendant did not give evidence at the trial he did give an account to various different people both on the evening of the offence and later. In particular the jury had played to it several hours of the video recording of the Defendant's interviews with the police on 18 and 19 July 2015.

15. The account which the Defendant gave was that he was afraid of what he thought Mr Lock was going to do. He could see, as he thought, that the driver in the car behind his was angry and aggressive. His account was that he reached for the knife which he kept in the car behind his seat in order to

defend himself against what he, wrongly of course, perceived to be an imminent attack on him.

16. He explained that he had bought the knife recently in connection with his work with his goats.

17. The Defendant said to the police that he wanted to protect the environment of the car, not least because he had recently been driving a friend's children in that car. He felt that this important space was being invaded by someone else.

18. As is clear from the evidence advanced on behalf of the Defence, which the jury clearly accepted in reaching the verdict that it did, the Defendant was suffering from delusions and not behaving in a rational way.

The Defendant's history

19. The Defendant appeared to have a normal life, although he was a quiet boy at school. He was intelligent and did well in his exams. He wanted to qualify as an architect and so did some work with a building business initially and then studied architecture at university. However, he began to suffer from mental health problems from about the age of 19.

20. It is clear from the evidence which was given at the trial that for many years the Defendant was either wrongly diagnosed or under-treated. His parents had tried valiantly to get help for him from at least 2008. Although this is not a straightforward case even for the medical professionals, it has now become clear, consistent with the evidence which the jury must have accepted at the trial, that the Defendant suffers from paranoid schizophrenia. He has suffered

for many years from delusions and auditory hallucinations. It is only recently, while he has been detained in a medium secure unit at Hellingly, that he has received the therapeutic anti-psychotic medication which he needs for that psychosis. In the view of the treating clinician, Dr Roderick Ley, the Defendant has begun to improve his mental health as a result of that treatment.

21. It is also clear from the evidence at the trial that there had been a number of previous incidents in which the Defendant had engaged in actual or potential violence against other people as a result of his mental health problems. The most serious was an incident in June 2012, which involved him taking a hammer to the house of a friend of his father's. He had also had confrontations with members of the public in the street.

22. In the week before the offence took place the Defendant's mother in particular was very concerned about his mental health. She referred to it as a "week of incidents". Among the stress factors which the Defendant suffered in that week were the breakdown of his relationship with his girlfriend. There was concern about his debt problems. He was concerned about his car and in particular about having to get the MOT done, a task which most people would find simple but which he had great difficulty with, so much so that his mother had to help him with that the day before the offence took place.

23. The Defendant was obsessive about some of his habits; in particular he would run in the South Downs, doing the equivalent of a marathon every day. He would put ear plugs in his ears, not to listen to music but so that he could keep

the voices out of his head. He loved the animals for whom he cared and with whom he found some solace.

Medical evidence

24. At the trial the jury heard from three expert witnesses on behalf of the Defence: Dr Michael Lawson, a consultant clinical psychologist; Dr Roderick Ley, a consultant forensic psychiatrist, who (as I have already said) is the treating clinician at Hellingly; and Dr Andrew Johns, a consultant forensic psychiatrist based at the London and Maudsley NHS trust.

25. At the trial the jury also heard evidence from Dr Philip Joseph, who was called by the Prosecution.

26. For the purpose of this sentencing hearing I have seen fresh reports prepared by both Dr Johns and Dr Ley. I have also heard oral evidence from Dr Ley. They are both registered practitioners for the purposes of the Mental Health Act 1983.

27. I have before me a report by Dr Johns dated 25 May 2016. He states that the Defendant continues to show signs of psychosis in that he is hearing derogatory voices every day. He maintains that the main diagnosis in this case is paranoid schizophrenia. The Defendant also has marked and persistent traits of Asperger's syndrome, without reaching the full criteria for that diagnosis. He concludes that the fatal attack in this case arose from the overall effect of paranoid schizophrenia on the Defendant's mental state, i.e.

paranoid misinterpretation, inability to exercise self-control and emotional disconnect from his actions and his surroundings. Having received an update from Dr Ley, Dr Johns concludes that the Defendant currently shows signs of a severe paranoid psychosis. At present he has only the most superficial insight into his illness and the homicide. Dr Johns is of the opinion that the risk to others is contained while the Defendant is in his present, highly monitored hospital environment. However, much work remains to be done.

28. Dr Johns strongly recommends a hospital order under section 37 of the Mental Health Act 1983. He also recommends a restriction order under section 41 of the same Act, as this is necessary for the protection of the public from serious harm.

29. I also have before me a report by Dr Ley dated 7 July 2016 and I heard oral evidence from him at the sentencing hearing. Dr Ley also recommends a hospital order under section 37 and a restriction order under section 41 of the 1983 Act.

30. At para. 7.6 of his report Dr Ley describes the nature of the offence in the following terms:

> "Mr Daley stabbed and killed Mr Lock. There was no clear provocation for the killing. Mr Daley was psychotically unwell at the time. The attack was ferocious and relentless."

31. Having described the Defendant's progress at Hellingly since the trial, Dr Ley sets out his opinion and recommendations to the Court in his report. He

expresses the opinion that "the offending was entirely due to him suffering from a mental illness." See para. 6.7 of his report.

32. I note that at para. 6.6 Dr Ley also states the following:

> "... The jury's unanimous decision indicates they concluded from the evidence that Mr Daley was mentally unwell at the time of the stabbing. It was noted that Mr Daley did show some personality traits (narcissistic) which it was suggested may have contributed to the stabbing. In my opinion these personality difficulties are intertwined with his Asperger's traits and both are likely to be a consequence of his psychotic illness."

33. One of the specific questions which Dr Ley has been asked by the Defence to address is whether, once treated, the Defendant will cease to be a danger to the public. At paras. 6.9-6.10 of his report Dr Ley states the following:

> "6.9 Risk predication is very difficult and imprecise. However, it is clear that Mr Daley's risk to the public will be substantially and significantly reduced once he has made a good response to treatment. Currently he has only shown a partial response to treatment. The biggest challenge with Mr Daley is improving his ability to give a reliable account of his mental state to clinicians. This will likely take many years of individual psychological therapy. His mental state and functioning will require close monitoring in the future. The need for this will be even more important if and when he moves to conditions of lesser security. However such a move would not be considered until there has been a significant and substantial response to treatment. It is not possible to give a time frame but it is likely to be a number of years.
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> 6.10 Even when Mr Daley has responded well to treatment and made a good recovery, he will require ongoing close monitoring and supervision for the foreseeable future to ensure he remains mentally well. With such close supervision and monitoring, the risk to the public can be minimised. We do not consider risk prediction in absolute terms so would never conclude a person ceases to be a risk to the public but a person can be considered low or very low risk."

34. Neither report by Dr Johns or Dr Ley expressly addressed the question of a possible order under section 45A of the 1983 Act. In his oral evidence Dr Ley expressed the opinion that an order under section 45A would not be appropriate. This is because, he said, the diagnosis is of a psychotic illness rather than a personality disorder and that illness is treatable. Furthermore there is no history of violence outside the context of the Defendant's mental disorder. Nevertheless, in my view importantly, Dr Ley said in oral evidence that, although the Defendant's mental illness reduced his responsibility for the attack, he was aware of what he was doing and does hold some responsibility for it.

35. Dr Ley also said in oral evidence that, with appropriate treatment the best that the doctors can achieve is a low risk of future violence. This will take many years and, even then, the Defendant will need support and monitoring for the foreseeable future.

36. I must be loyal to the jury's verdict in this case. It is clear from that verdict that the Defendant's responsibility for the homicide in this case was substantially impaired. It does not follow that it was completely extinguished.

Sentencing principles in cases of manslaughter on grounds of diminished responsibility

37. I have been assisted by notes for the sentencing hearing prepared on behalf of the Prosecution and of the Defence. I have been reminded of the provisions of the relevant legislation: in particular sections 37, 41 and 45A of the 1983 Act.

38. I have also been reminded of several decisions of the Court of Appeal (Criminal Division) including R v Vowles [2015] 2 Cr. App. R. (S.) 6.

39. In Vowles, at para. 12 the Court said that:

> "The primary importance of the determination by the sentencing judge where the option is either to impose an indeterminate sentence or to make a hospital order under sections 37/41 is the release regime that will apply to the offender."

40. The order under section 45A is sometimes known as a "hybrid order". This is because it enables the Court to impose a sentence of imprisonment but to make a direction (referred to in the Act as a "hospital direction") and also a direction that the offender be subject to the special restrictions set out in section 41 (referred to in the Act as a "limitation direction"). This has the consequence that the offender, instead of being removed to and detained in a prison, shall be removed to and detained in such hospital as may be specified in the hospital direction.

41. As the Court explained in Vowles, at para.21, the advantage of making a hybrid order in an appropriate case is that an offender sentenced to an indeterminate or long determinate sentence can immediately be directed to have treatment in hospital, but the timing of his release is subject to the decision of the Parole Board rather than the First-tier Tribunal. The Parole Board has to take a much wider view of the risks to the public than that Tribunal.

42. I have had careful regard to the guidance given by the Court in Vowles, in particular at paras. 51-56. As the Court said at para. 51, I must carefully consider all the evidence in this case and not feel circumscribed by the psychiatric opinions before me. Where the conditions in section 37(2)(a) are met I must consider what is the appropriate disposal. In considering that wider question the matters to which I must have regard include:

> "(1) the extent to which the offender needs treatment for the mental disorder from which the offender suffers;
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> (2) the extent to which the offending is attributable to the mental disorder;
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> (3) the extent to which punishment is required; and
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> (4) the protection of the public including the regime for deciding release and the regime after release.
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> There must always be sound reasons for departing from the usual course of imposing a penal sentence and the judge must set these out."

43. I also remind myself that where, notwithstanding the Defendant's mental disorder, there is an element of culpability which merits punishment the imposition of a prison sentence may be a proper exercise of discretion: see Vowles at para. 46, quoting R v Birch (1990) 90 Cr. App. R. 78 (Mustill LJ). The Court also cited the observations of Lord Lane CJ in R v Castro (1985) 7 Cr. App. R. (S.) 68, where he stressed that the sentence had to be looked at not only from the point of view of the offender but also from the point of view of the public.

44. There is therefore a need to examine the issues with great care and to take into account not merely the psychiatric evidence but also broader issues such as the extent of the culpability attributable to the Defendant's mental disorder,

the need to protect the public and the regime on release: see Vowles at para. 48 and the cases cited more fully there.

45. A hospital order and restriction order under sections 37/41 are more likely to be appropriate in a case where the mental disorder is a severe mental illness rather than a personality disorder, because it is more likely that such an illness may have a direct bearing on the offender's culpability and because the illness is likely to be more responsive to treatment in a hospital: see Vowles at para. 50(iii). I also note that it is very rare for a person to have solely a psychotic illness such as schizophrenia or solely a personality disorder, and that a person who suffers from schizophrenia alone is very rare: see Vowles at para. 50(iv). In the present case the evidence is that the Defendant does not suffer only from paranoid schizophrenia. There are other traits, including Asperger's and narcissistic traits.

46. I remind myself of the guidance given by the Court in Vowles at para. 53. The fact that two psychiatrists are of the opinion that a hospital order with restrictions under sections 37/41 is the right disposal is never a reason on its own to make such an order. I must consider all of the relevant circumstances, including the four issues I have already set out, and then consider the alternatives in the order in which they were set out by the Court in Vowles at para. 54.

47. First, I must consider whether the Defendant can appropriately be dealt with by a hybrid order under section 45A. If he can then I should make such an order.

48. If such a direction is not appropriate I must consider whether the conditions in section 37(2)(a) and (b) are met. In a case where the Court is considering a life sentence under the Criminal Justice Act 2003, as amended in 2012:

> "... if:
>
> (1) the mental disorder is treatable;
>
> (2) once treated there is no evidence he would be in any way dangerous; and
> (3) the offending is entirely due to that mental disorder,
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> a hospital order under sections 37/41 is likely to be the correct disposal. ..."

49. I turn to consider the question of a possible sentence of imprisonment as part of a hybrid order under section 45A.

50. There can be no dispute that the offence of manslaughter is a serious, specified, violent offence. The maximum penalty available in law is a sentence of life imprisonment. Although it is normally a discretionary sentence there are circumstances in which it must be imposed. Section 225 of the 2003 Act applies where a person aged 18 or over is convicted of a serious offence such as this and the Court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences. Subsection (2) makes it clear that, if the Court considers that the seriousness of the offence in such circumstances is such as to justify the imposition of a sentence of imprisonment for life, the Court must impose that sentence.

51. In a case where the Court does impose a life sentence it must then go on to specify the minimum term which must be served before a person becomes eligible for consideration by the Parole Board for release on licence. I stress that this is the minimum period and the actual period may be longer. This is because the Parole Board may not make such a direction unless the Defendant is no longer a danger to the public. Even if he is released the Defendant will then be on licence for the rest of his life and may be recalled to prison by the Secretary of State if he breaches the terms of his licence.

52. Since this is not an offence of murder the terms of Sch. 21 to the 2003 Act do not as such apply. Nevertheless, as the Court of Appeal explained in Att-Gen.'s Reference (No.34 of 2014) (R v Jenkin) [2014] 2 Cr. App. R.(S.) 84, at para. 34, "a nuanced approach must be taken to Sch. 21 so as to reflect the fact of diminished responsibility" and that the greater the residual culpability, "the greater the impact of the Sch. 21 factors."

53. In the present case the Prosecution submit that, if this had been a case of murder, the appropriate starting point would be a minimum term of 15 years. I would agree but, in my view, the minimum term to be imposed in a case of murder would have been much higher than that in the light of the particular circumstances of this offence, some of which I have already outlined in my earlier summary of the facts. It should be recalled that this violent, unprovoked attack took place in a public place in the presence of other members of the public.

54. I also accept that the following aggravating features were present in this case:

(1) Mr Lock was vulnerable because of his age;

(2) the Defendant used a weapon, that is the knife which he had in his car;

(3) the Defendant understood that he had done serious injury to Mr Lock at the very least but fled the scene;

(4) in the immediate aftermath of the attack he took steps to cover his tracks: washing some of his clothes and his hands; throwing away documentation relating to his car and even contemplating using a false number plate.

55. It is also clear from the evidence at the trial that the Defendant was planning to leave home and, from what he told his mother on the day after the incident, that he was aware that he done something seriously wrong.

56. These features of the case also make me sure that the Defendant's culpability in this case was not attributable solely to his mental disorder.

57. Therefore, if this had been a case of murder, my view is that the appropriate minimum term would have been at least 20 years and probably more in the region of 25 years.

58. As is common ground before me the mitigating factors in the present case are the absence of any previous convictions and the Defendant's mental disorder.

59. In sentencing the Defendant I must be loyal to the verdict of the jury and recognise that his responsibility for the homicide in this case was substantially impaired by his mental disorder. That is why there was a conviction for manslaughter and not murder.

60. Nevertheless, having carefully considered the principles set out in Vowles and all the evidence before me, I have come to the conclusion that this is not a case in which the Court can simply make an order under sections 37 and 41 of the 1983 Act. In my view, I can and therefore should make an order under section 45A, in other words a hybrid order, which will both enable the Defendant to receive the treatment he needs in hospital but also permit of the possibility that, if he should be released from hospital before the custodial part of any prison sentence has expired, he could then be detained in prison in order to serve a sentence of punishment.

61. In relation to the punitive element of the order, I intend to impose a discretionary sentence of life imprisonment. As I have said, the minimum term to be served must be reduced considerably from what it would otherwise have been so as to reflect the fact that the Defendant was convicted of manslaughter and to reflect the other mitigating circumstances in this case, including of course his mental illness.

Days spent on remand

62. I direct that the time spent by the Defendant on remand is to be deducted from the minimum term imposed. On the information before me that is 355 days. If that turns out to be incorrect, I direct that it can be corrected administratively.

Statutory surcharge

63. The legislation on surcharges applies in this case and an order will be drawn up accordingly.

The sentence of the Court

64. The Defendant should now stand.

65. The sentence of the Court is life imprisonment with a minimum term of 10 years less the time spent on remand as I have already directed.

66. I direct, under the provisions of section 45A of the Mental Health Act 1983, that in the light of the psychiatric evidence the criteria for a hospital order are met. Instead of being removed to and detained in a prison, you will be removed to and detained in a hospital, namely Hellingly Centre (Medium Secure Psychiatric Hospital). You will be subject to the special restrictions set out in section 41 of the Mental Health Act without limit of time.

67. This means that you will be detained in hospital for as long as necessary. The time you spend in hospital will count towards the minimum term which I have imposed. If and when it is no longer necessary you will be transferred to prison. Once in prison you will serve the remainder of the minimum term which I have imposed. If and when that minimum term has expired, you will be eligible for consideration for release on licence by the Parole Board. On release from prison you will be subject to the conditions of your licence and also subject to conditions of your release from hospital. You will be liable to recall by the Secretary of State for the rest of your life.

Postscript

68. Before I finish I would like to add a few further remarks.

69. On any view this was a tragic case. I would like to express my sympathy to the family and friends of Mr Lock for their sad loss. There was evidence at the trial that the Defendant was for many years under-diagnosed and under-treated for his mental health problems. The Defendant's parents gave evidence of the sustained and sometimes desperate efforts they made to secure proper treatment for him. It would be inappropriate for me to comment further because this has been a criminal trial and not, for example, a public inquiry. However, I hope that the appropriate authorities will do everything possible to investigate what happened and to learn appropriate lessons for the future. The public is entitled to no less.

70. Finally I would like to thank the police for their efforts and to thank all counsel for the way in which they have conducted this case.

-ENDS-