



JUDICIARY OF
ENGLAND AND WALES

Sentencing remarks of Mr Justice Kerr

The Queen

v

Pedro Rubim

Blackfriars Crown Court

28 March 2018

1. Mr Rubim, please remain seated for the moment. The jury has convicted you of unlawfully killing your son, Alejandro. During the morning of 20 February 2016, you injured him so badly that he died in hospital four days later.
2. This is a distressing and tragic case. You did not mean him to die. You did not mean to cause him really serious injury. But you did unlawfully assault him causing his death.
3. Most killings are done by people far worse than you. Until this happened, no one would have thought of you as a bad man. You have led a productive and blameless life.
4. Yet, what you did to Alejandro was very bad, almost certainly worse than anything else you have done or will do in the future. For what you did to Alejandro, you must answer to the law.
5. I am required to apply the provisions of section 143(1) of the Criminal Justice Act 2003: “In considering the seriousness of any offence the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.”
6. In *R v Pisano (Ricardo)* (2014) EWCA Crim 2519 the Court of Appeal said the offence of manslaughter can be committed in widely differing circumstances and sentencing is necessarily fact specific. It may involve the judge in a difficult exercise of balancing culpability and harm so as to arrive at a just and proportionate sentence.
7. Among the manslaughter cases I have considered, the following have been the most helpful: *R v Appleby* [2010] 2 Cr. App.R.(S.)

46; *R. v. Burridge* [2011] 2 Cr.App.R.(S.) 23; *A-G's Reference (No. 125 of 2010) (R. v. Draper)* [2011] 2 Cr.App.R.(S.) 97; and *A-G's Reference (No 84 of 2014) R v Pearce (Michael)* [2014] EWCA Crim 2095.

8. In manslaughter cases where there is no intention to kill or do really serious harm to the victim, whatever the degree of culpability of the offender, the harm is, necessarily, of the utmost gravity since death is caused. Our senior judges have explained in a series of cases that since the Criminal Justice Act 2003, the courts are required to pass sentences for manslaughter which give greater weight than previously to the fact that death is caused by the defendant's conduct.
9. As for culpability, the Court of Appeal has emphasised that sentencing in manslaughter cases is difficult because the *mens rea*, or guilty state of mind, varies greatly. A highly culpable defendant may have intended harm at a level only just short of that required to sustain a murder charge. At the other extreme, the accused may have intended no more than minor harm.
10. I have to consider the medical evidence to form a judgment where on that spectrum your assault on Alejandro lay.
11. It is clear from the medical evidence that there were three separate impact traumas: the impact to the head causing sub-scalp bruising, the bruising to the buttocks and the brain injury caused by shaking. I am satisfied on the evidence, applying the criminal standard of proof, that you caused all three of those separate injuries.
12. I do not accept that the injury to the head occurred when Alejandro fell to the floor from the baby bouncer. The medical evidence, in particular of Dr Richards and Dr Carey, makes me sure that the injury did not occur in that way. The injury to Alejandro's head was, I am sure, inflicted by you.
13. I take into account that the injury to the head was not sufficient to split the skin or fracture the skull. But taking all three injuries together, it is abundantly clear from the medical evidence that the degree of force used overall, and the way it was used, were horrific.
14. Having considered all the expert evidence about the injuries caused to Alejandro and how they were caused, I consider that the degree of harm you intended fell in the middle of the spectrum: your *mens rea* was not as high as just short of that required for murder; nor as low as an intention to commit just a minor assault.
15. In my judgment, there was a momentary intent on your part to commit a violent and obviously wrong and dangerous assault on this vulnerable victim, with tragic consequences.

16. Each case is different and turns on its own facts. I have to consider the aggravating and mitigating features in the present case. The cases I have considered are not guideline authorities. But they do make clear that the death of a baby is always a tragedy and that the sentence must be sufficient to meet the gravity of the offence.
17. The case has certain aggravating features:
- (1) This was not a case of a parent who had reached the end of his tether. You had not had to endure a particularly unusual degree of stress from having to care for Alejandro. You were not his main carer; Ms Ortiz was.
 - (2) There were no other particular difficulties in your life, such as in your work, that might have weakened your ability to withstand the ordinary stresses and strains of being a parent and having to cope with caring for Alejandro.
 - (3) The amount of force used in inflicting the shaking injury – though less so in the case of the head injury – was, in my judgment, judging from the medical evidence, very considerable.
 - (4) You repeatedly gave an implausible and untruthful account of how Alejandro had sustained the injuries that led you to alert the London Ambulance Service.
18. There are, on the other hand, also mitigating features in this case:
- (1) You are a man of previous good character. There is nothing to your discredit in your past. You were, until this incident, a loving partner to Ms Ortiz and father to Alejandro. You were in suitable accommodation and stable employment.
 - (2) There was, therefore, obviously no premeditation. I am sure that until the incident happened, you would never have dreamed of harming Alejandro. The offence was truly out of character. There had been no previous incidents.
 - (3) It was you who alerted the emergency services and did what little you could to help save Alejandro. You acted as a caring father would, apart from not telling the truth about what had happened.
 - (4) Although you did not tell the truth at the time or in this court, you expressed sadness and remorse that, I have no doubt, was genuine and heartfelt. You said in your evidence that you took responsibility for Alejandro's death.

(5) Finally, you have lost your only son. You will have to live the rest of your life without him, knowing that it is your fault he is not there with you and his mother. I am sure you miss him and will miss him in future.

19. I have also taken careful note of the other points eloquently made on your behalf by Mrs Radford QC: that you will have to endure suffering in prison; you will lose your job and your home; and you will have to leave this country after serving your sentence.
20. Balancing the aggravating and mitigating factors, I have come to the conclusion that the shortest period of imprisonment I can impose on you that meets the seriousness of your crime is one of 8½ years.
21. Stand up please, Mr Rubim. The sentence of the court for the manslaughter of Alejandro is one of 8 years and 6 months. You will serve half that sentence in custody and the remainder on license.
22. The statutory charge applies and should be dealt with administratively.