

IN THE CROWN COURT AT BIRMINGHAM

BEFORE MR JUSTICE JULIAN KNOWLES

REGINA

v.

JOHN BROADHURST

SENTENCING REMARKS

17 December 2018

A. INTRODUCTION

1. John Broadhurst, on 11 December 2018 you pleaded guilty to the manslaughter by gross negligence of Natalie Connolly in the early hours of 18 December 2016. The plea came at the end of the prosecution's case, you having been on trial for her murder and for causing her grievous bodily harm with intent to do so. That plea of manslaughter was acceptable to the Crown, and so I directed the jury to acquit you of the two counts in which they were in charge. The Crown offered no evidence on a separate count of assault by penetration, and a not guilty verdict was entered in relation to that.
2. I must now sentence you for the offence of manslaughter to which you have pleaded guilty. In passing sentence, I remain faithful to the plea which you have entered and which the Crown has accepted and to the not guilty pleas which were entered at my direction. However, in applying the Manslaughter Sentencing Guidelines for the purposes of arriving at a just and appropriate sentence, I am entitled to draw inferences from the evidence which I have heard about which I am certain and which are consistent with those pleas.

B. THE FACTUAL BACKGROUND

3. Natalie Connolly was a much-loved mother, sister and daughter. At the time of her death she had been in a relationship with you for a few months and had moved into the house in Kinver which you were renting. She was just 26 when she died in that house. You were 39.

4. Those who knew Natalie all spoke with one voice as to what sort of person she was. Her friend Katy Parker said that she was, 'fun, bubbly, loving'. Another friend, Stephen Lambert, said that Natalie was a 'free spirit, full of fun, said it how it was. A lovely girl'. Her twin sister Gemma said that she liked a drink and could consume large quantities, but that she was happy when she was drunk and never aggressive.
5. I have read and taken into account the victim personal statements from Natalie's family. Parts have been read out this morning. They are moving and heartbreaking. You fully understand, I am sure, the pain and suffering that you have caused.
6. It is plain from the evidence that you are a wealthy man and that you were able to buy Natalie a car and to support her financially. There had been times in her life when Natalie had struggled to make ends meet, but after meeting you she was comparatively well-off. I am sure that, apart from the stresses and strains that happen in nearly all relationships, you and Natalie were happy together and I accept Mr Vullo QC's submissions in that regard. I accept that she had bonded with your son JR and you with her daughter Maddison.
7. The day before Natalie died was Saturday 17 December 2016. It is not necessary for me to rehearse the evidence in detail. You were picked up by your driver around lunch time and from that point on until the early hours of the following day you and Natalie drank more or less continuously at pubs; at The Hawthorns where you had lunch and watched a football match; after the game; and then afterwards at an Indian restaurant. The evidence showed you and Natalie were getting on well that day.
8. Whatever the position had been with your previous partners, I am satisfied that you and Natalie did engage in sexual activity which involved consensual beating and the like for the purposes of sexual stimulation. Mr Vullo queries whether BDSM (bondage, domination, sado-masochism) is the right term, but I am sure that Natalie's motivation arose from the fact that she derived sexual satisfaction by being beaten quite hard. I am also sure that on occasion this could cause Natalie to become bruised. There was photograph in evidence sent by Natalie to her mother showing a bruise that she said you had caused during sex. Stephen Lambert described seeing what he called 'angry' bruises on her about a week before she died. You also spoke openly at the football match about your sex life and bruising that Natalie had suffered during sex.
9. In the late evening your driver dropped you back at your house at Kinver. He drove away but returned to give Natalie her phone that she had left in the car. He handed the phone over to her at the doorway to the house at about 11.20pm. That was the last time Natalie was seen alive by anyone other than you. Only you know what happened in the following hours.
10. What is certain is that at 9.23 on the morning of Sunday 18 December 2016 you telephoned the emergency services. You told them that you had just woken up and that Natalie was dead. You attempted CPR until a paramedic arrived. He quickly ascertained that Natalie was dead and pronounced life extinct shortly afterwards. You told the police that you had gone to bed at 3am and awoke after 9am. However there was evidence that you were awake at around 6am. That is because of the health app data from your iPhone showing that stairs were ascended at 6.06, and because of the

text message you sent to Leslie Griffiths at 6.11 asking him to have the children for some time longer because you and Natalie had been 'sick as a dog all night'. I accept as a possibility that you were wrong as to your timing in interview.

11. I turn to the account of that night which you gave in your police interviews.
12. You told the police that having been drinking all day since lunch time, after you had returned home you and Natalie continued drinking including a whole bottle of Amaretto. Natalie's blood alcohol level was 389 mg per 100 ml of blood, in other words, nearly five times the drink drive limit. Your expert Professor Jones, who is one of the world's leading experts in the field, said this represented 272g of alcohol, or about five bottles of wine. He said that she was in a dangerous or possibly life-threatening situation because of the amount of alcohol she had consumed. You also said that you both took cocaine. Her cocaine level was 0.74 mg per litre of blood and her cocaethylene level was 0.59 mg per litre.
13. Professor Jones said he had never seen such high levels of alcohol and cocaine together. He put into evidence Dr Dubowski's chart of clinical signs and symptoms of acute alcohol intoxication. The bracket Natalie was in, namely 350 – 500 mg of alcohol per 100 ml of blood falls into the stage of alcoholic influence labelled 'Coma and death'. Among the clinical signs and symptoms are near or complete unconsciousness; coma; anesthesia; depressed or abolished reflexes; subnormal temperature; impairment of circulation and respiration; and possible death. The lower 250 – 400 category ('Stupor') has among the symptoms apathy; general inertia; approaching paralysis; inability to stand or walk.
14. Your own blood alcohol level was high, at 259 mg per 100 ml of blood at (based on a back-calculation to 3am, and lower still at 6am), but nowhere as high as Natalie's. It is plain from your account that you were significantly less drunk than she was and you were capable of taking decisions and making choices.
15. You said that you beat Natalie on her bottom at her request with a suede Church's boot, which the jury saw. You told the police it was your idea to use the boot (Interview 2, p16). You said (Interview 1, p16) that she liked to be 'smacked on the bottom ... or on the breasts' and that '... last night she actually asked me to smack her harder and I thought that I'd smacked her bottom hard enough ... cos I could see a bruise coming on it, so I stopped then once I started to see it you but she used to like, that was her thing to get bruised you know it was'. Later (p17) you said you struck her on the breasts with your hand. You said you did not want to carry on but 'I think she made me carry on a bit more'. In your second interview (p11, p12) you said that you would back off from what she wanted, however you also added that 'most weeks she'd have bruises to her breasts or her arms and her bottom'. You said that one on occasion you had hit her with a belt on her bottom so that she could not sit down (Interview 2, p14) and that 'she had ... quite bad bruising across her breasts there ... I think one breast was pretty dark'.
16. I am sure that you caused the majority of injuries 28 – 31 (breast bruising) and injury 47 (bruising across the lower back and buttocks) by beating Natalie with your hand and boot as you described. Dr Kolar described the latter as follows: 'a large area of

bruising over 47 cm x 29: a variance of colours – red/purple and yellow areas too. There was thick haemorrhage into fatty tissues. There is corresponding injury to the fatty tissue within the buttocks, extending deeply and widely, but the gluteous muscle was free of injury.’ I am prepared to accept that some of these bruises may have been caused on a previous occasion, but I am sure that the bulk of them were caused on the night that she died.

17. On your account, after beating her, Natalie’s requests became more extreme. She asked you to insert a bottle of spray carpet cleaner into her vagina, as a sexual stimulant. This was a large object with a trigger. It became lodged in her vagina and you could not get it out. You went to get a bottle of lubricant to try and remove it. The pathological evidence was that the bottle caused lacerations to her vagina resulting in arterial and venous haemorrhage.
18. When you pulled the bottle out of her vagina, you said that ‘I had to put my hand inside her and twist and pull it out and some blood came out at the same time ... She discharged some blood ... there was a reasonable amount I mean reasonable amount of blood’ (Interview 1, p7). You said she said she was fine but ‘she slurred cos she was very drunk so it was a bit gobbledy gooky’ (p7). You said that she had banged her head, and you ‘noticed there was blood on that door ... and on the balustrade’ (p9). You also noticed blood coming out of her nose (Interview 3, p11).
19. Despite her obvious injuries you did not summon assistance or call an ambulance. You just left her at the foot of the steps and went to bed. You said she seemed to be ‘okay you know asleep and I just thought I’ll jump into bed, house was warm anyway’. You did not cover her up, get her a blanket or a pillow. Nor did you even place her in the recovery position but you left her flat on her back, and she died as you left.
20. I turn to the Sentencing Council’s Definitive Guidelines for Manslaughter. They delineate four levels of culpability for gross negligence manslaughter, according to prescribed characteristics. I am required to balance these characteristics to reach a fair assessment of your overall culpability in the context of the circumstances of the offence. I am required to avoid an overly mechanistic application of these factors particularly in cases to which they do not readily apply.
21. I bear firmly in mind that the offence to which you have pleaded is one of gross negligence manslaughter by leaving Natalie unsupervised at the foot of the stairs without contacting the emergency services in circumstances where there was a risk of death as a result of her condition which would have been obvious to a reasonable and prudent person. That does not mean, however, that I must entirely leave out of account how it was that Natalie came to be in that condition.
22. The prosecution submits that your offence falls into Category B (High Culpability) because it says the criterion, ‘The offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct’ is satisfied. The prosecution does not submit that any of the injuries you caused Natalie were inflicted unlawfully and it therefore does not submit that the criterion, ‘The negligent conduct was in the context of other serious criminality’ is

applicable. The Crown accepts, however, that it is for me to form my own judgment on this that is consistent with the verdicts that have been entered.

23. I begin with the question whether any of the injuries suffered by Natalie were criminally inflicted. At the close of the prosecution's case, it submitted a written document maintaining that on the basis of *R v Brown (Anthony)* [1994] 1 AC 212, it was a possibility that, even if Natalie consented to her injuries being inflicted, your behaviour in inflicting them was unlawful. That is on the assumption that Natalie was capable of giving consent in fact, notwithstanding her extreme intoxication. Now, the Crown said in a note that 'We do not submit that the breast and buttock injuries became unlawful as a result of the case of Brown. We do not argue that the Brown criteria applies to them'. I understand the causation difficulties that arose on the evidence in proving unlawful act manslaughter, but that is different from the question of whether at least some of the injuries which on your own account Natalie suffered at your hands were unlawful notwithstanding they were done with her consent, and thus whether your failure to call an ambulance was negligence 'in the context of other serious criminality', namely unlawful sexual violence. If it was, the unlawful sexual violence need not itself be a cause of death.
24. I cannot be sure that Natalie was not capable in fact of consenting, notwithstanding her extreme intoxication, and I will proceed on the basis that she did indicate her consent to being beaten by you with a shoe and with your hand.
25. I also accept that some of the injuries Natalie suffered, including the bruising to her head and the blow out fracture to her left orbit – which were probably her most serious injuries - may have been caused accidentally as she stumbled around in a heavily intoxicated state and collided with objects or caught herself in the face with her watch. I do not hold you responsible for those.
26. However, as I have said, I am satisfied so that I am sure that you caused the bulk of the injuries to Natalie's breasts and her bottom/lower back (injuries 28 – 31 and injury 47 respectively). In my judgment, this amounted to actual bodily harm of quite a serious type, given the tissue haemorrhaging which Dr Kolar found to be associated with the bottom/lower back injuries. The authorities are clear that a person cannot in law consent to being subjected to actual bodily harm or grievous bodily harm for the purposes of sexual pleasure, and I reject Mr Vullo's submissions to the contrary.
27. Recently, in *R v BM* [2018] 3 WLR 883, [21], the Court of Appeal presided over by the Lord Chief Justice said that the question whether the consent of a victim could provide a defence to offences of causing actual bodily harm, contrary to s 47 of the Offences against the Person Act 1861, or wounding contrary to s 20, had been authoritatively considered in the case of *R v Brown (Anthony)*, supra. The injuries were inflicted during the course of consensual extreme sado-masochistic sex. A majority of the House of Lords, with Lord Mustill and Lord Slynn of Hadley dissenting, concluded that consent provided no defence. Lord Burnett of Maldon CJ said that the headnote in the official report captures the *ratio* of the decision:

“... that although a prosecutor had to prove absence of consent in order to secure a conviction for mere assault it

was not in the public interest that a person should wound or cause actual bodily harm to another for no good reason and, in the absence of such a reason, the victim's consent afforded no defence to a charge under section 20 or 47 of the 1861 Act.”

28. Lord Burnett then said that the satisfaction of sado-masochistic desires did not constitute such a good reason.
29. In my judgment, therefore, you having assaulted Natalie unlawfully to cause her at least actual bodily harm means that your failure to call for assistance subsequently was negligence which took place in the context of other criminality. Putting it shortly, Natalie's need for medical help arose in part, and I stress only in part, because you had unlawfully injured her. This conclusion is in no way inconsistent with the verdicts which have been entered. That you recklessly, if not intentionally, caused Natalie actual bodily harm by causing bruising and tissue haemorrhage to her buttocks, and bruising to her breasts is not inconsistent, and that the use of the bottle was not unlawful, it not inconsistent with your acquittals for murder and the s 18 offence, both of which require at a minimum an intention to cause really serious bodily harm. I accept you did not have this intention. Mr Vullo submitted it would be inconsistent with unlawful act manslaughter the rejection of which was encompassed by the not guilty verdict of murder. Even assuming that is right, I do not accept there is any inconsistency. No-one suggested the buttock/back injuries and the breast injuries alone caused her death.
30. Even if I am wrong about that, beating her in the way you did, in the condition she was in, so as to cause injury (lawful or not) is not something which I can properly leave out of account in determining the proper sentence.
31. I turn to the injuries to Natalie's vagina caused by the insertion of the bottle of cleaning spray. That, it seems to me, was something which came about on your account because once you had beaten Natalie, she wanted something more extreme done to her. As I have said, I am prepared to accept in your favour that she instigated this. It seems to me that this act was not unlawful, notwithstanding that it did in fact injure her. A woman may lawfully consent to having something inserted into her vagina (or rectum) for the purposes of sexual gratification but without an intention to cause injury, even if doing so carries a risk of injury, and injury is indeed caused: see *R v Slingsby* [1995] Crim LR 570.
32. That said, this was nonetheless grossly irresponsible behaviour by you. The insertion of the bottle came at the end of your sexual activity with Natalie when it must have been plain to you that she very now very drunk indeed becoming falling down drunk and, in your own words, talking 'gobbledy gook'. Just because she wanted that item inserted into her vagina did not mean that you had to do it. Your own account to the police was that you would draw the line when her sexual demands were too extreme for you, and that you did so that night (eg by hitting her with your boot rather than a belt). Professor Gupta's evidence was that the injuries you caused involved arterial damage which would have continued to bleed had Natalie not died and that they would have to have been treated with stitches. That bottle of carpet cleaner should never have

been anywhere near her vagina no matter what she demanded of you. You chose to do something which, even if not unlawful, carried a high degree of risk.

33. The defence expert obstetrician and gynaecologist, Mr Nicholas Morris, was asked by Mr Vullo whether using lubrication to remove the bottle was a good idea. Mr Morris said that it was a good idea, because it gave you time to think and work out what to do. That answer cried out for the question in cross-examination: 'Do you think it would have been a better idea to have called an ambulance?' That question was never put, but the answer is obvious. You told the police that you noticed Natalie was bleeding from her vagina when you removed the bottle. It must have been apparent that you had injured her internally yet you left her and went to bed. Your plea is an admission that you left that badly injured young woman to die in the saddest and most avoidable of circumstances.
34. Added to that is the fact that Natalie was so dangerously intoxicated. I accept that as an adult woman she was free to make her own choices about what she drank. But equally some people when they become intoxicated lose the ability to choose when to stop and are entitled to rely on those who love and care for them to protect them from themselves by preventing them from drinking further. It is striking that you never said to the police that you warned Natalie that perhaps she had had enough, or that after more than 12 hours of near continuous drinking it might be time to stop. You were by some distance older and more experienced than her, and you were considerably less intoxicated than her. You told the police that you exercised your judgment about what you did to her sexually that night, and in my judgment your failure at least to try and stop her from becoming potentially fatally intoxicated is something which aggravates your offence at least to some degree because it contributed to her need for medical treatment which you then failed to seek.
35. The Crown submits that I should conclude that this is a case of higher culpability ie Category B, because you 'showed a blatant disregard for a very high risk of death'. In support of that the Crown make the following points:
 - a. You were aware that Natalie had consumed vast amounts of alcohol, as well as cocaine.
 - b. On your own case, she was in a highly intoxicated state and was incapable of standing up properly. She had fallen over at the foot of the stairs causing obvious head injury.
 - c. Not only had she suffered head injury, she was already suffered breast and buttock injuries through being beaten by you.
 - d. Having fallen over in the state that she was clearly in, you proceeded to remove the carpet cleaner bottle from her vagina, breaking it in the process and causing further obvious bleeding. This was clear and obvious because she was effectively naked.
 - e. She had ceased being able to speak coherently at that stage and was clearly groggy.
 - f. The Crown accepts that you were intoxicated, but not to the same degree.

- g. It must have been blatantly obvious, even in the state that he was in, that Natalie was in a very serious and dangerous state and that there was a very high risk of her dying without treatment.
 - h. It was within that context that your failure to summon help showed a blatant disregard for the risk.
36. Mr Vullo submits this criterion does not apply. He says that the definition of the offence of gross negligence manslaughter means that by definition, the breach of duty must have created a serious and obvious risk of death that has led to that death. Therefore ‘blatant disregard’ must mean significantly more than the objective test of failing to recognize a serious and obvious risk of death, otherwise all gross negligence manslaughter would fall into this category. He says it adds an element of the subjective. In the same manner, ‘very high’ risk must mean significantly more than an obvious and serious risk of death. He says that because you were intoxicated you did not have a blatant disregard, and that in any event the nature of Natalie’s condition was not such that you could have appreciated that she was at very high risk of dying and he points to the evidence of Dr Fegan-Earl in support of the latter point.
37. My conclusions on these two criteria and the overall categorisation of your offence are as follows.
38. Your failure to call for assistance – which was your negligent conduct – took place in the context of you having caused Natalie actual bodily harm of a serious type, which then led on to the insertion of the bottle into her vagina which caused her further serious injury but, for the reasons I have given, was not unlawful. However, this was not quite the type of ‘serious offending’ contemplated in Category B.
39. As to the other criterion, Natalie did require medical help and it was obvious that she did because she was very drunk (as you knew), she was bleeding from her nose (as you knew) and bleeding from her vagina (as you knew), and she had multiple other injuries. I do not accept your explanation in interview for leaving her that this was just another heavy night, and you had left her in a similar condition before without any problem. For example, I am sure you had never left her before with bleeding arterial vaginal injuries. I consider that you showed blatant disregard for a very drunk and injured woman. By that I meant that her need for medical treatment was obvious and to recognise it did not require any high degree of insight or a difficult judgment call. I do accept, however, that – drunk and bleeding those she was - it may not have been obvious to you that without treatment she was at very high risk of dying as a combination of her injuries and her alcohol and drug intoxication.
40. Category C of the Guidelines applies to those cases where the offender’s culpability falls between the factors as described in high (Category B) and lower (Category D). In my judgment, that is the situation here. Your case is not clearly within Category B, but I do not accept the submission this is a Category D case. You were very significantly responsible for causing or permitting Natalie to get into the position whereby she needed medical help which you failed to summon in circumstances where her need for

help was obvious. The features of this case that I have identified, and the two criteria I have discussed to which I have had measured regard, mean that your case is properly placed towards the upper end of Category C.

41. I bear in mind everything which has been said on your behalf in writing and orally. I give you full credit of a one third discount for your plea of guilty and I treat you as a man of good character as you only have one unrelated previous conviction. I have regard to your good character more broadly for the other reasons that have been advanced. You are a successful businessman. I accept that you are a loving father and the sole carer of JR and were a good partner in your previous relationships. I also accept that you loved Natalie and were planning a future together with her and her daughter and your son. Nonetheless, this offence is so serious that only a custodial sentence is justified.
42. I take as my starting point five years six months imprisonment (66 months). Your offence is aggravated by the fact that you were under the influence of drink and drugs, although I also recognise that was an aspect of your breach – in other words, I accept that your decision to go to bed was taken in drink and I guard against risk of double counting. But there is no escaping the fact that the whole context of the sequence of events which led to Natalie being badly injured and potentially fatally intoxicated was the taking of drink and drugs. On the other hand, as I have said, I have regard to your good character and lack of previous convictions and all the other matters urged upon me. I accept what is said in the PSR about your remorse. The aggravating and mitigating features balance out leaving a sentence of five years and six months. I reduce that by one third to reflect your plea of guilty, producing a sentence of forty four months imprisonment, ie three years and eight months.
43. Would you stand please ?
44. John Broadhurst, the sentence I pass upon you for the manslaughter of Natalie Connolly is one of three years and eight months imprisonment. You will serve half of that in prison. You will then be released on licence, and you will serve the remainder of the term in the community subject to licence conditions. If you commit any further offence during the licence period you will be recalled to prison to serve the remainder of your sentence plus any sentence for the new offence.
45. You will also pay the statutory surcharge.
46. You may go down.