



JUDICIARY OF
ENGLAND AND WALES

REGINA

-v-

ROCKY MARCIANO PRICE

Preston Crown Court

14th August 2020

Sentencing Remarks of Mrs Justice Yip DBE

Introduction

1. Rocky Marciano Price is to be sentenced today for the murder of Lindsay Birbeck on 12 August 2019. He is now aged 17. There is only one sentence that the law allows to be passed for murder: that is a mandatory life sentence. For an offender under the age of 18, this is expressed as detention at Her Majesty's Pleasure. Let there be no misunderstanding, a life sentence is just that. It may be that the defendant is never released from custody. If he is, he will be on licence and liable to be recalled to prison for the rest of his life. That is the sentence I shall pass but I must also determine the minimum term that must elapse before the defendant can be considered for release.
2. I am required to set the minimum term by reference to the statutory scheme laid down by Parliament and to explain my reasons for selecting the term that I do. I recognise that the defendant, who has learning difficulties, is unlikely to immediately absorb all that I say. However, these remarks are not addressed only to him. At the conclusion of the hearing, I will distribute my remarks in writing so that they can be repeated and broken down for the defendant later to aid his full understanding. When I come to pass sentence, I will address the defendant directly in clear terms.

The facts

3. Lindsay Birbeck was 47 years old. She led a normal, full life, of which the court saw only a small snapshot during the trial. She worked as a high level teaching assistant, helping youngsters with difficulties. She was much loved by her children, Sarah and Steven, her family and friends. She liked to keep fit and enjoyed walking and running. We have heard today the victim personal statement of Sarah Birbeck. Her statement is measured and understated, and no less powerful for that. Sarah reflects the terrible loss caused to the whole family. As she says, the void that Lindsay has left will never be filled. Throughout, Lindsay's family and friends have conducted themselves with dignity. This no doubt reflects the person she was. It is hard to imagine the suffering they have been caused and they have my deepest sympathies.
4. Seeing Lindsay in the CCTV footage from the day of her death is very poignant. The day began so normally. It was the school holidays. She took Sarah shopping for her college clothes. This was to be the last milestone they would share. Before cooking tea for Sarah and her boyfriend, she decided to go for a quick stroll. When she went for a walk in broad daylight, nobody could have dreamt that she was putting herself in the path of danger.
5. That danger came in the form of Rocky Price, then aged only 16. He lay in wait on the coppice near to Lindsay's home. The only conclusion I can draw from the evidence I heard at trial is that he was looking for a woman to kill. He had walked towards the coppice at around 2.30pm. I do not know what was on his mind at the time. There is no evidence that he had a weapon or was otherwise equipped to kill. I am, however, sure that he had formed a murderous intent by 4pm that day.
6. Lindsay left home just after 4pm. As she was heading towards the coppice, another woman was heading hurriedly away via a different route. Like Lindsay, she was out for a pleasant afternoon stroll. She saw Rocky Price. Her sixth sense kicked in. He was, as I find, stalking her. She was not attacked but was sufficiently afraid that she headed quickly to safety, all the time looking for something heavy to defend herself with. She was lucky. Lindsay Birbeck was not. Lindsay entered the coppice just moments later.
7. We have no direct evidence of what happened next, but we know that the defendant murdered Lindsay. The evidence points to this happening very quickly. Just ten minutes after she was last seen, a couple walking their dog saw what I am sure was

Lindsay's jacket hanging on a fence post. They heard a single voice but heard no struggle or shouting or screaming. By 4.30pm Lindsay's phone was not receiving messages. I conclude that the defendant had the wherewithal to switch off or destroy the phone when he attacked Lindsay.

8. There is no evidence of any sexual assault or other apparent motive. Why the defendant chose to kill Lindsay, only he knows. The evidence of the other woman demonstrates, beyond doubt, that Lindsay was not targeted for any reason, other than that she was a lone woman. If it had not been her, it could have been someone else. This was the entirely random killing of a stranger. While thankfully such crimes are rare, they strike fear into communities.
9. When Lindsay's body was eventually recovered, she was found to have sustained very severe neck injuries, consistent with the application of a significant compressive force such as kicking, kneeling or stamping on the neck. There was gross disruption of the cartilages in the neck. The forensic pathologist, Dr Carter, considered whether the damage to the neck could have been caused after death but did not think that was a realistic possibility. While not totally excluding the prospect that additional damage was done after death, she was clear that the cause of death was compression of the neck. There were no other injuries that could have accounted for the death. I regard the suggestion that the defendant intended only to do really serious harm rather than to kill as utterly fanciful. The pathology evidence leaves me in no doubt that the defendant deliberately killed Lindsay. Even if some damage was done after death, there is no sensible explanation for such severe compression of the neck other than that the defendant was making sure she was dead.
10. Having killed Lindsay, Rocky Price set about concealing her body. In the early evening, he went home then returned to the coppice with a rucksack. By then, he may have had a saw with him. Certainly, at some point, the pathology evidence reveals that he attempted to dismember the body. He must have discovered that cutting through a leg was harder than he anticipated.
11. Later that evening, the defendant took a wheelie bin to the scene. The evidence demonstrates that he placed Lindsay's body into that bin. On the 17 August, he can be seen wheeling the bin through Accrington. He was taking Lindsay's body to the cemetery where he buried her in a shallow grave in a wooded area. The body was naked and wrapped in plastic wrapping which the defendant had taken from his home.

12. It is an odd feature of the case that the defendant chose to move the body from the coppice where it had gone undetected for some days to the graveyard. I cannot speculate as to his reasons for doing that. However, the body did remain concealed for 12 days in total. I can only imagine the agony of Lindsay's family and friends during that time. As Sarah's statement makes clear, the reality is that they knew she would not disappear of her own accord and expected the worst from an early stage. The local community came out in force to look for Lindsay. There is no doubt that her disappearance and the subsequent discovery of her body caused fear and concern to many people. There will have been a natural sense that what happened to Lindsay could have happened to any woman.
13. The defendant was identified via CCTV images which showed him brazenly wheeling the bin, now known to have contained Lindsay's body, through Accrington. When the images were circulated, his parents and other family members took him to the police. He was to deny that he killed Lindsay, inventing a story that, while out walking, he had been approached by a complete stranger who offered him a lot of money to 'get rid of the body'.

The defendant

14. Rocky Price was 16 years old at the time of the offence. He has significant learning difficulties. His IQ is 65, putting him in the "extremely low intelligence" category. He has a diagnosis of autism and ADHD. His ADHD has been well controlled with medication. He has no previous convictions. There are some reports of aggressive behaviour when he was in his final year of junior school. However, such are perhaps not wholly out of the ordinary for a youngster struggling with mainstream education. At the time of his arrest, the defendant was attending a special school, the Alternative School in Barnoldswick. It appears that he had settled into that school. His teacher and headteacher gave evidence that he had never given them any cause for concern or shown signs of aggression. They considered him to be young for his age and not like the other boys of his age group. He was kept away from the more boisterous boys as they thought he was vulnerable to bullying. Both teachers were shocked by the defendant's identification in connection with the murder.
15. I have considered the psychological evidence in the reports of Dr Joanna Hearne, dated 18 February 2020 and Ms Rekha Davis, dated 24 February 2020. They reached similar conclusions. Ms Davis, instructed by the prosecution, expressed the view that the defendant is a very vulnerable young man. The defendant's autistic needs have a

significant impact on his social communication, social interaction and social imagination. He has significant communication difficulties. He has difficulties anticipating potential consequences. His condition reduces his capacity for empathy. However, it did not cause him to be violent.

16. In my judgment, the defendant's mental disorder cannot in any way excuse, or even explain, his actions. I have no doubt that he knew what he was doing when he killed Lindsay Birbeck and that he knew that killing her was terribly wrong. The stalking of the other woman before he killed Lindsay Birbeck demonstrates that his crime did not arise out of a sudden loss of control or in the heat of the moment. This was a premeditated attack. He persisted in a plan to target a lone woman. His actions after the killing clearly suggest he had the capacity to plan and reason. His teachers told the court that he was far better at practical tasks than academic subjects. He used that aptitude to set about concealing the body. The defendant was also capable of putting forward a story which, while incredible, was designed to explain the evidence against him.
17. I am though prepared to accept that the defendant's mental condition reduces his culpability to a modest degree. More generally, his significant immaturity and the additional challenges he will face in a custodial setting offer some mitigation, as does his previous good character.
18. I have read and carefully considered a report dated 13 August 2020 from Jill Reed, social worker, of the Lancashire Youth Offending Team. It paints a positive picture of the defendant's behaviour since being remanded in custody. It also confirms his vulnerability within the custodial estate. (For completeness, I should note that there is a reference to an incident at paragraph 1.9 and a suggestion that I am aware of what lies behind it. In fact, I have very limited information but recognise that there may be different versions of what occurred. For the purpose of sentencing, I will accept that, whatever may have happened, this does not detract from the reports of positive conduct and the challenges that the defendant is facing in custody.)

The sentencing exercise

19. It is important to be clear about the function that I have today and the very different role that the Parole Board will have in the future. My task is to set the minimum term before the defendant can even be considered for release. It will be the role of the Parole Board to ensure that the defendant is not released unless and until he no longer presents a danger to the public. When, or if, that time may come, I do not know.

20. The murder of a stranger in broad daylight, for which there is no rational explanation, is particularly horrifying to all right-thinking members of society. The random nature of the attack suggests that the defendant presents a very real risk to members of the public. I am encouraged to read of his positive behaviour in custody. However, it is to be noted that he displayed similar behaviour at his special school and gave no warning or indication of what was to come. No doubt, a significant amount of work will have to be done and full risk assessments will be required before any consideration is given to the defendant's potential release. A copy of these sentencing remarks should be kept on the defendant's file for consideration by the Parole Board in due course.
21. Horrifying as this murder was, I remind myself that the protection of the public falls within the remit of the Parole Board and that, in setting the minimum term, I should focus upon an assessment of the defendant's culpability rather than future risk.
22. The law recognises that crimes committed by children and young persons should be viewed in a different light to similar crimes committed by adults. I have the defendant's lack of maturity and his capacity for change as he gets older firmly in mind. Parliament has decided that the starting point for the minimum term for an offender under the age of 18 is 12 years, as set out in Schedule 21 to the Criminal Justice Act 2003. However, the starting point is not the end point and, even after reflecting the mitigation available to the defendant, I consider that the facts of this case will call for a substantial uplift. Had he been older and not suffering from any mental disability, the minimum term would have been very significantly longer.
23. Having identified the appropriate starting point, I must consider the aggravating and mitigating factors.
24. Statutory aggravating factors are set out at paragraph 10 of Schedule 21. I find that the following sub-paragraphs apply to this case:
 - (a) a significant degree of planning or premeditation
 - (g) concealment, destruction or dismemberment of the body.
25. I accept that there is no evidence of a long held plan or of the defendant going equipped to kill. However, I have no doubt that the murder was significantly premeditated. At some point that afternoon, if not before, the defendant formed the intent to kill a woman. On the evidence I have seen and heard, I find that he was deliberately targeting lone women. Lindsay Birbeck was not the first to attract his attention. The attack was swift

and brutal. I am sure that the defendant lay in wait with the intention of killing a passing woman.

26. The defendant attempted to dismember the body. He managed to conceal it for 12 days, first in the wheelie bin, then in a shallow grave. The Birbeck family suffered profoundly during those 12 days. I do, however, recognise the point made on the defendant's behalf that the court cannot be certain of the defendant's motives in burying the body in the cemetery.
27. In assessing the true seriousness of any murder, the court is not rigidly bound by or limited to the specific aggravating factors in paragraph 10. Schedule 21 does not purport to identify all relevant aggravating and mitigating factors. A murder committed in public, in broad daylight causes significant public dismay and concern. (See *R v Peters* [2005] EWCA Crim 605). The huge public response to Lindsay Birbeck's disappearance demonstrates the community impact of this crime. This is a significant (non-statutory) aggravating feature. It would be unrealistic to approach this case as an 'ordinary' murder, aggravated only by the two statutory factors I have already identified.
28. In relation to the mitigating factors referred to in paragraph 11 to Schedule 21, I am urged on behalf of the defendant to treat the following as relevant:
 - (a) an intention to cause serious bodily harm rather than to kill
 - (c) the fact that the offender suffered from any mental disorder which ... lowered his degree of culpability.
29. I have already indicated why I reject the possibility that the defendant intended only to cause serious harm rather than to kill. The pathology evidence, coupled with the evidence about timings leaves me in no doubt that this was a brutal, deliberate killing.
30. The defendant's mental condition does not explain his violent actions. Low IQ, suggestibility and communication difficulties do not generally lead to the commission of such terrible acts. However, I have accepted that his culpability was reduced to a modest degree. I also take account of his immaturity and the challenges he will face in a custodial setting, while taking care not to double count the mitigation that flows from his learning disability.
31. The defendant's previous good character and the reports of his good behaviour on remand also afford him some mitigation.

32. Nevertheless, this was a particularly serious murder, for which I conclude that there must be a significant uplift from the starting point, even after allowing for the defendant's mitigation.

The sentence

33. Rocky Marciano Price, for the murder of Lindsay Birbeck, you will be detained at Her Majesty's Pleasure. That means you will serve a life sentence. The murder was a very serious one. I have thought about all that has been said about you before deciding how long you must serve as a punishment. You must serve a minimum of 16 years, less the 348 days you have been remanded in custody. That is the least amount of time you will be in custody. After that time, you will only be released if the Parole Board decide you are not a danger. If you are released, you will be on licence for the rest of your life.
34. The appropriate statutory surcharge will be applied.