



JUDICIARY OF
ENGLAND AND WALES

REGINA

-v-

SHAHID KHAN

Manchester Crown Court

10 November 2020

Sentencing Remarks of Mrs Justice Yip DBE

1. Shahid Khan, I must sentence you for the manslaughter of Christopher Hales following your guilty plea today.
2. Mr Hales was just 56 years old when he died at Wythenshawe Hospital on 15 May 2017. You were an experienced surgeon entrusted with carrying out a routine procedure on him. For reasons which are still not entirely clear, you made a catastrophic mistake and administered a toxic dose of anaesthetics which killed him. That is what is sometimes described as a “never event”. It should not have happened. There is no excuse for it. By your plea, you admit Mr Hales’ death resulted from your gross negligence. Put simply, your conduct that afternoon fell so far below the standard to be expected of any doctor as to be criminal.
3. This case involves a real tragedy for all concerned but centrally for Mr Hales’ family. Their moving statements illustrate the impact on his wife, three adult children and his youngest daughter, who was only 11 years old when her father died. They are desperately sad to read. Mr Hales was clearly a committed family man, taken far too soon. The trauma experienced by Mrs Hales who was at her husband’s side when things went tragically wrong is hard to imagine.
4. Mr Hales underwent talc pleurodesis under local anaesthetic to treat complications of his lung disease. That is not a risky procedure and Mr Hales ought to have gone home after a short period of recuperation. In performing the procedure, you gave a lethal

overdose of anaesthetic drugs. Mr Hales collapsed and subsequently went into cardiac arrest. In the aftermath, you were apparently unable to give any sensible explanation of what you had done.

5. This lack of clarity about your actions is both surprising and concerning. Entirely understandably, Mr Hales' family viewed it as a lack of honesty on your part and this has added to their trauma. Dr Bell, the expert instructed by the Prosecution, also questioned whether you had displayed the candour required of a doctor. It is a matter I have given very careful consideration to since I would view a lack of frankness after the event as a significant aggravating factor.
6. At first sight, it is hard to understand how you were unable to give a clear account of what you had done. However, after reading all the available evidence with care, I am prepared to accept, as the Prosecution have, that you were doing your best to answer what you were asked honestly. There is no doubt that this was a highly charged situation. You were shocked. Other doctors and nurses were plainly distressed. No one, including you it seems, could believe what had happened. I think that the Prosecution are right to say that you have since made various attempts to rationalise the inconceivable: that your professional standards slipped to such an extent that you killed a man through a gross mistake which no one would ever have expected of a senior doctor.
7. In the circumstances, while I acknowledge the distress that the protracted investigation of this matter caused Mr Hales' family, I do not find that this was contributed to by deliberate lies on your part. You have had the sense and the courage to plead guilty and I will give you credit for your plea. The delay since the commission of the offence troubled me but the explanation provided by the Prosecution is sound. I note that you were first interviewed by the police over a year after Mr Hales' death and that you were not charged until December 2019. You might have accepted your responsibility sooner, but it is fair to say that much of the delay cannot be attributed to you. The matter has weighed heavily on you and your family, as it has on Mr Hales' family.
8. You are now aged 63. You were 60 at the time of the offence. You had been a doctor for 35 years, 29 of those years were spent practising as a cardio-thoracic surgeon. You were a fellow of two Royal Colleges. You had an unblemished career and had never been subject of any complaints. I have read the impressive references. A consistent picture emerges of a hard-working, diligent and caring doctor. From the start of your

career until 2014, you were well-respected and seen as highly competent. The offence is considered completely out of character by those who know you.

9. In 2014, you suffered a life-threatening illness. You were in intensive care for three weeks and remained in hospital for four months. You had several operations. You were unable to work between August 2014 and November 2016. Your return to work was managed by the Occupational Health department. Recommendations were made to avoid fatigue. Regrettably, those recommendations were not always enforced. You were expected to be on-call more often and for longer than had been advised. I have seen evidence that this was an onerous duty. The hospital has since introduced a separate on-call registrar for cardiac and thoracic surgery to better manage the demands.
10. Sadly, there is evidence that after your illness you may not have been the doctor you once were. There is no evidence that you had made other mistakes or previously put any patient at risk. However, colleagues who had not known you before did not have the same positive impression. It appears that there was a view that you were not pulling your weight. That is unfortunate. It was not your fault that you required some adjustments. Equally, I understand the additional burden this placed on already stretched colleagues. This created a difficult situation.
11. On a previous occasion when you were asked to do a talc pleurodesis, you said you were not happy to carry out the procedure having not done one for a long time. The reaction of your colleagues was to roll their eyes. You were seen as shirking your responsibilities. This undoubtedly made it more difficult for you to decline the request to carry out the procedure on Mr Hales. It is no part of your case that you were not fit and competent to do the procedure. It is notable that this was not a risky operation and indeed it was not the performance of the procedure itself which led to tragedy. However, in seeking to explain the otherwise inexplicable, it may be that the stresses surrounding your return to work and your worry about carrying out a procedure you had not done for a long time played some part in what occurred.
12. The doctor who asked you to perform the procedure said that he asked the nurses to support you with the procedure because you had not done one for a long time. However, you did not in fact get any additional support. Mrs Hales has indicated that staff levels were poor, and the nurse was popping in and out. The evidence of the senior nurse demonstrates that she was not aware of the need to provide any extra support. The evidence was not clear as to who obtained the anaesthetic drugs. There appear to have been no checks and no intervention when you made the mistakes that you did. While

the primary responsibility rested firmly upon you, it does appear that there was a breakdown in communication somewhere such that you were left unsupported. None of this explains or excuses what happened.

13. The procedure can be very painful and to avoid causing Mr Hales suffering you decided to use two agents, one faster acting and one that had a longer effect. At the time, the hospital had no written protocol for the procedure. A protocol has been put into place following this case. Your preparation for and execution of the anaesthetic plan was, as the Prosecution have rightly said, disastrous. You decided to give both agents at their maximum dosage. That in itself meant Mr Hales was receiving a toxic overdose. You received one of the drugs in a large bag marked for epidural use rather than in the ampoules you anticipated. You now admit that you mixed the other drug into this. On any basis, you gave an overdose of one of the drugs. You have given different accounts as to the quantities of each drug you administered. Having rejected the notion that you have deliberately lied about this, the only explanation is that you were utterly confused about what you did in fact give Mr Hales. You were unable to give a coherent account to the crash team who were trying to save Mr Hales' life. That demonstrates the extent to which you fell below the standard to be expected. You were an experienced surgeon, yet you got the administration of local anaesthesia catastrophically wrong and were not even able to recognise and respond appropriately to that catastrophe.
14. Any case of gross negligence manslaughter will almost invariably require an immediate custodial sentence. However, each case must turn on a detailed consideration of its facts. I must also have regard to the guidelines produced by the Sentencing Council. There is no doubt that the seriousness of your offence can only be met by a custodial sentence. I must determine the length and whether the sentence should properly be suspended.
15. I agree that your conduct properly falls within culpability category D. That gives a starting point of two years imprisonment and a range of one to four years. This was a lapse in your otherwise satisfactory conduct over a long career. It represented an isolated incident. It was though a particularly gross piece of negligence.
16. I have already said why I do not regard your actions after the event to have been a deliberate attempt to cover up what you had done or to hinder the investigation. None of the other aggravating factors referred to in the guideline are applicable here.
17. There is a significant amount of mitigation available to you. You are a man of previous good character with many positive characteristics as evidenced by your references. You

will never practise again. You will be struck off and have lost your professional reputation and identity as a doctor. I consider that you were subject to stress and pressure which must have played some part in your negligent conduct. While you undoubtedly always had the primary responsibility, there were also some failings on the part of the Trust, as recognised in Dr Bell's expert report. There was the lack of support I have mentioned. At times you were required to work beyond what had been recommended. There do not appear to have been proper checks on your competence and performance, even when you expressed concerns about doing the procedure. There was no institutional protocol to follow. There appears to have been confusion amongst other medical staff as to how the drugs would usually be presented. No explanation was given when the epidural bag was brought rather than ampoules. The nursing staff did not step in when you made the mistakes that you did.

18. You are not in good health as confirmed by the medical evidence I have seen. In 2018, you were diagnosed with prostate cancer, the treatment of which has been complicated by residual problems from the abdominal condition that necessitated your lengthy hospital admission in 2014. I note that you must self-catheterise your bladder daily and have significant bowel symptoms. You are subject to careful and regular cancer monitoring. You are also the primary carer for your elderly mother who is in poor health. You are currently living away from your family to provide her care.
19. Taking account of the grossness of your negligence but balancing the available mitigation, I consider that the starting point after a trial would have been a sentence of 2 years' imprisonment.
20. You did not indicate your guilty plea at the first available opportunity or when the matter was listed for a plea and trial preparation hearing. However, you did give notice to the Prosecution and the Court in good time before the trial was due to start. I consider that a discount of around 15-20% would be appropriate, reducing the sentence to 20 months' imprisonment. That is not the end of the matter as I must go on to consider whether it would be appropriate to suspend the sentence.
21. I readily accept that you will present no risk or danger to the public in future. The end of your career sees to that. However, I start with the proposition that the sentence for gross negligence manslaughter will almost invariably be one of immediate custody. That is to achieve appropriate punishment for the devastating harm caused to the family of the deceased. Of course, no sentence I could impose could in any way truly reflect the suffering caused to Mr Hales' family.

22. Set against this, the Sentencing Council's guideline for the imposition of custodial sentences requires me to have in mind the strong personal mitigation available to you and the harmful impact immediate custody will cause to others. I regard your health conditions as a significant feature in considering the impact an immediate custodial sentence will have on you. Any family is likely to suffer when a loved one is sent to prison. It goes without saying that such suffering cannot compare to that of a grieving family who have lost their loved one forever. I do regard the impact on your mother who depends on you for care and on your daughter, who is studying for her A levels, as something to put in the balance.
23. That balance would, at any time, be a fine one. There is an additional consideration to bear in mind currently. As recognised in the Sentencing Council's note of 23 June 2020, a court sentencing during the pandemic must consider whether increased weight should be given to the mitigating factors and should keep in mind that the impact of immediate imprisonment may be particularly heavy for some groups of offenders or their families. Your age, ethnicity and pre-existing conditions put you at an increased risk for Covid-19. No doubt entering the prison estate at this time would cause real concern for you and your family. The impact of a prison sentence is also likely to be heavier during the current emergency. I do not suggest that this factor would be sufficient by itself to make it appropriate to suspend your sentence. However, taking account of everything, I do find that the balance is tipped in favour of suspending the sentence.
24. To impose a suspended sentence without any requirements would, in my view, leave Mr Hales' family with a justifiable sense that you have not received appropriate punishment. In taking the exceptional course that I do, I consider that there must be a real punitive element. Current circumstances combined with your health conditions are likely to make unpaid work problematic. The punitive element will accordingly be met by an electronically monitored curfew. I appreciate that in the immediate weeks that may not represent a very significant restriction on liberty. However, I intend to impose a curfew for a period representing half of the custodial term. This will restrict your freedom and will serve as a reminder to you and others as to the seriousness with which your offending is viewed. I recognise that your personal circumstances are such that the imposition of a curfew will place restrictions on the time you can spend with your family. It is intended to serve as a real punishment and a true alternative to immediate

custody. I make it clear I am not intending to prevent you from accessing medical treatment.

25. In addition, you will pay the Prosecution costs which I recognise will be a significant financial burden.

The sentence

26. Shahid Khan, for the manslaughter of Christopher Hales, I sentence you to 20 months' imprisonment suspended for a period of 2 years. In addition, you will be subject to an electronically monitored curfew between the hours of 8pm and 8am for the next 10 months.

27. You must be aware that should you commit any offence in the next 2 years or should you fail to comply with the terms of your curfew you will be brought back to court and it is likely you will be required to serve the sentence of imprisonment.

28. You will pay the Prosecution costs in the sum of £32,319, such sum to be paid within 12 months.

29. The appropriate statutory surcharge will be applied.