



JUDICIARY OF
ENGLAND AND WALES

R. v. BROWN AND SHIRLEY

SENTENCING REMARKS

HHJ LUCRAFT QC

1. On Friday 4th March 2022, Kemar Brown you were convicted by the jury of the murder of Kyrell Matthews. Phylesia Shirley you were convicted of manslaughter. Brown you were also convicted of causing or allowing serious injury to Kyrell over the month before his death. Shirley you pleaded guilty to that offence and also to causing or allowing Kyrell's death before the trial commenced. I must now sentence you.
2. In the course of the trial still images and short movie clips were shown of Kyrell Matthews. Kyrell was born on 19th September 2017. He was just a month over his second birthday when he was killed. The photos and video clips taken in the course of his short life show him to be a bright and bubbly little boy. His father and many of his extended family will mourn his loss.
3. I have read victim personal statements from Kyle Matthews and Karl Matthews. I include two short extracts. Kyle says:

“The loss of Kyrell is something that we will never get over and we will have to learn to live with it. The pain we feel everyday cannot be explained and we are left with a huge hole in our hearts. Kyrell was a happy, playful and loved little boy and he was taken from us in the cruellest of ways. I trusted that when he was not with me and my family, he was in a safe place with his mother and her partner, but clearly that was not the case.”

Karl says:

“We as a family are totally broken still. Kyrell was a member of an extensive family. He did not belong to just his mother. He was not a piece

of furniture which could be abused and discarded of when no longer required. Sadly, all we are left with are photos of Kyrell and our memories of him which have now been tainted as we are left questioning how we didn't see it going on. We really wish you all could have seen Kyrell as the little boy we love, who had such bright eyes and the most infectious smile”.

4. Many others looking from the outside into this case, and particularly those who desperately seek to have a family, will struggle to understand how those primarily responsible for this little boy's nurture and day-to-day care can have acted so cruelly to take his life.
5. After Kyrell's death various post-mortem analyses were undertaken. They showed instances of abusive injury being caused to Kyrell on no fewer than five separate occasions. Examinations show that in the period leading up to his death he was subjected to serious injury and then the infliction of the fatal blow or blows on 20th October 2019.
6. The fatal injuries Kyrell sustained were a laceration of the liver with macerated tissue, other damage to internal organs which together caused significant blood loss, as well as recent fractures to a number of his ribs. The post-mortem revealed no fewer than 41 rib fractures. Those fractures were aged and were inflicted on no fewer than four separate occasions in the 28 days before the infliction of the fatal injuries on 20th October. As Dr Nat Carey, the pathologist made clear all of the injuries Kyrell had sustained are consistent with blunt impact through forceful squeezing, punching, kicking, stamping or crushing to his body. In addition to the injuries I have mentioned so far, there was bruising to Kyrell's body including a bruise to the mid-shaft of his penis consistent with forceful pinching or pulling. A truly shocking catalogue of injuries to a 2 year-old boy.
7. When the police arrested the two of you they recovered your mobile phones. On your phone Shirley, the police found a number of recordings. From the dates of the downloads the recordings span a period from 28th June to 6th September 2019. In the course of the trial those recordings were adduced in evidence. The recordings are harrowing and deeply upsetting. Listening to them one can hear Kyrell being hit. Most of the blows inflicted on that little boy in the course of the recordings come from you Brown, but Shirley you too can be heard hitting or slapping Kyrell. In one of the recordings Brown you are heard to say the words: *“You have to ruin the fun.”* Those six words show your disregard for him or his life.

Sentence for murder.

8. For murder, Parliament has said that the sentence must be one of life imprisonment and you will receive a sentence of imprisonment for life. The issue for me is the minimum term you must serve before you are first considered for release. When it comes to the minimum term that you will serve, I make plain that I am not ordering that you are to be released at the end of it. Whether you will be released or not at that stage, at any later stage or at all, will be a matter for the Parole Board to consider. Only when the minimum term has been served can the Parole Board decide whether it is safe to release you or not. If the Board does release you, then you will remain on licence and liable to recall for the rest of your life.
9. Having considered the provisions of schedule 21 of the Sentencing Act 2020, and in particular paragraph 5, the appropriate initial start point for the minimum term in this case is one of 15 years.
10. Having chosen that initial start point, there are a number of aggravating factors that, in my judgment apply in this case. The murder of Kyrell was the culmination of a period of sustained abuse inflicted on him. The dates of the recordings give an indication of when the abuse started. Whilst one needs to approach the dates given on the recordings themselves with a degree of caution, they span some months. The rib fractures that were found span a period of up to 4 weeks before the death. As Professor Mangham explained, it is possible that there were earlier fractures that had healed. Whilst it may not be possible to say the death was premeditated or planned, the fact of this course of conduct is an aggravating factor. Secondly, Kyrell was particularly vulnerable due to age. He was 2 and non-verbal. This in my view, is a highly significant aggravating factor. Thirdly, there is clear mental and physical suffering inflicted on the victim before death. There is clear evidence of abuse inflicted on Kyrell in the months before his death. I have mentioned this already in relation to the first aggravating factor I identified and so I need to be careful so as not to 'double count' in the calculation of the appropriate minimum term. Fourthly, this was acts in the abuse of a position of trust. You were living with Phylesia Shirley and with Kyrell and were entrusted to look after him. You should have been caring for this 2 year old not abusing him. Finally, it seems to me that your failure to assist in anyway by saying what you had done when the emergency services were seeking to care for Kyrell is also an aggravating factor.

11. Brown you are aged 28. There are a number of offences recorded against you. The most significant convictions are from May 2010 when you were convicted of possessing a knife, blade or sharp pointed article in a public place and were sentenced to a detention and training order for 8 months and then a robbery conviction from 22nd February 2011. Following a guilty plea to that offence you were sentenced to a term of 6 years in a young offenders institution. That, I am told relates to demanding a significant sum of money from a female in her home. In August 2015 for offences of battery and using violence to enter premises you received a sentence of 8 weeks' imprisonment. This relates to violence towards a former partner. In June 2018 for another offence of possessing a knife, blade or pointed article you were sentenced to 6 months' imprisonment. There are also a number of convictions for the possession of cannabis.
12. In terms of the mitigating factors set out in schedule 21, I accept an intention to cause really serious harm rather than to kill. That mitigates the sentence to a limited degree.

Sentence for manslaughter.

13. In terms of the proper basis of sentence on manslaughter, I agree with what is set out by Ms Sweet in her sentencing note. I am satisfied that Brown inflicted the fatal injury on 20th October. I am also satisfied that Shirley you were present. As Kyrell's mother you had a clear duty to intervene to prevent the act or acts taking place and you did not do so. By failing to intervene, you encouraged the acts and were, thereby part of a joint agreement where you clearly foresaw some injury being caused.
14. The Sentencing Council guidelines for unlawful act manslaughter clearly apply to this case. As to culpability, in my judgment this case is one that clearly falls within high culpability. The guidelines set out characteristics that are indications of the level of culpability. On the facts as set out this was a case where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of grievous bodily harm or where death was caused in the course of an unlawful act which carried a high risk of death or grievous bodily harm which was or ought to have been obvious to Ms Shirley. In my judgment this case falls within culpability B with a start point for sentence of 12 years' imprisonment and a range of sentence of between 8 and 16 years' custody.

15. Looking at factors that increase seriousness, this was a case where, knowing that Brown was hitting and beating Kyrell, you continued to leave him in Brown's care including on the day of his death. In addition you also ill-treated Kyrell and used physical violence on him. On the other aggravating factors as set out in the guidelines, there was a history of violence or abuse towards Kyrell; there was significant mental or physical suffering caused to Kyrell; Kyrell was particularly vulnerable due to age and there was an abuse of a position of trust. This was not just an abuse of a position of trust, but a gross abuse of a position of trust: Kyrell was brought up in a household where, to your knowledge, he was very seriously abused when he should have been cared for and where he should have felt safe and secure.
16. In terms of factors reducing seriousness or reflecting personal mitigation, you have no convictions prior to this case. Secondly, you were 22 when Kyrell was killed and 24 now. In my judgement some modest allowance should be made for age and / or lack of maturity. Thirdly, the lack of premeditation so far as you are concerned needs to be factored in. As with Brown, the impact of this factor is minimal as you knew, from your pleas of guilty to counts 2 and 3 that Kyrell was being assaulted and injured seriously in the weeks before his death.

Dangerousness.

17. The issue of dangerousness arises and I need to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences. Whilst there are some aspects of this case that give rise to risks, I do not find the test is met in this case.

Sentence for causing or allowing a child to suffer serious physical harm.

18. I need also to sentence you both in respect of count 3. For this offence looking at the relevant guideline this case comes within high culpability so far as you are both concerned. There were prolonged and/or multiple incidents of serious cruelty. There was an element of gratuitous degradation and/or sadistic behaviour towards Kyrell. This is clear from the injury to his penis. There was also the use of very significant force and the deliberate disregard for his welfare. As was clear from the expert evidence Kyrell would have been in significant pain and discomfort as a result of the repeated injuries he sustained to his ribs and yet neither of you did anything to help him. In terms of harm, in my judgement the case comes within category 2. There was here serious physical harm which would have had a substantial effect on

Kyrell as shown by the 36 rib fractures dated to the 28 days before 20th October 2019. The guidelines point to a start point of 7 years' custody and a range of sentence of 5 to 9 years' custody.

19. Shirley, I am entirely satisfied on the evidence that you struck Kyrell yourself as well as knowing that Brown was striking him. You pleaded guilty to causing or allowing serious injury on the basis of allowing. In my judgment you also caused serious physical harm and should be sentenced on that basis. The categorisation within guidelines I have referred to apply equally to you.
20. In terms of the factors increasing seriousness so far as count 3 is concerned, there is the failure on both of you to seek medical help. Secondly, the offence was committed whilst both of you were under the influence of cannabis. Brown you regularly bought and used cannabis at the flat and Shirley, you smoked it too. The recordings show what was taking place and Shirley, you were aware of what they revealed. Despite that, you continued to leave Kyrell in Brown's care. I am also satisfied that there was a move to conceal what was going on from family and friends. It was very telling to hear about Kyrell's reaction when he was brought back to your care after a few hours with his grandfather and his partner.
21. In relation to you Brown, what I have set out in relation to count 3 in my judgment aggravates the sentence for murder and I will pass concurrent determinate sentence on count 3. For you Shirley, the features I have identified also aggravate the sentence for manslaughter. In your case I propose also to pass a concurrent sentence on count 3.
22. In terms of personal mitigation, there is very little if anything that has been, or indeed that could be, said about you Brown. Your conduct towards Kyrell was both cruel and brutal.
23. In your case Shirley, I have read and considered with care what is set out in the helpful sentence note in your case. I have also read a letter that you have written. I recognise that you will have to live with the responsibility and consequences your actions and inaction had in the killing of your child, but any normal parent's response is to love and protect their child and you did neither when it really mattered.
24. In your case Brown, allowing for the aggravating and mitigating features I have identified, there must be a significant uplift from the initial start point for the

minimum term I identified. There will in your case be a life sentence with a minimum term of 25 years'. That minimum term will be less the 472 days that you have been on remand. If this calculation is later found to be wrong, it will be put right by correcting the record administratively without any further hearing. A sentence of life imprisonment with a minimum term of 25 years' less the 472 days.

25. On count 3, there will be a concurrent term of 8 years' imprisonment. I repeat what I stated earlier that when it comes to the minimum term that you will serve, I am not ordering that you are to be released at the end of it. Whether you will be released at that stage, at any later stage or indeed at all, will be a matter for the Parole Board to consider. Only when the minimum term has been served can the Parole Board decide whether it is safe to release you or not. There are many troubling aspects about you and your behaviour. Even if the Board does release you, you will remain on licence and liable for recall for the rest of your life.

26. In your case Shirley, on manslaughter catering for all of the aggravating and mitigating factors, there will be a sentence of 13 years' imprisonment. On count 3, allowing for your role as opposed to Brown, your plea at the start of the trial a concurrent term of 5 years' imprisonment. You will serve two-thirds of the 13 year sentence passed upon you and then released on licence for the remainder of the sentence. You must comply with the terms of the licence. At any stage the licence may be withdrawn and your return to custody ordered.

27. If the statutory surcharge applies in your cases then the appropriate orders may be drawn up. Brown barring is an automatic consequence of your conviction, but I must inform you that you will be included in the barred list of the Disclosure and Barring Service.

His Honour Judge Mark Lucraft QC
Recorder of London
Central Criminal Court
London EC4M 7EH
March 25th 2022.