



JUDICIARY OF  
ENGLAND AND WALES

**Regina -v- Benjamin Monk**

**Sentencing remarks of His Honour Judge Melbourne Inman QC  
Recorder of Birmingham**

1. Benjamin Monk you have been convicted by the jury of the manslaughter of Dalian Atkinson.
2. Mr. Atkinson was only 48 years of age when he died but he had a very full and successful life. He had been a very successful professional footballer in this city, in this country and in Europe. The court heard the history of his many sporting achievements. He is fondly remembered by all of those who supported those clubs and was liked and respected by all. Sadly in later life his health deteriorated dramatically and by 2016 he had a precarious hold on life. Despite that he lived a full and happy life. He has a large family and no one could fail to have been moved by the effect of his death as described by his brothers and sisters and partner. None of them can come to terms with their loss and the depth of their grief was evident.
3. Mr. Atkinson died in the early hours of Monday 15<sup>th</sup> August 2016. In the hours that preceded his death Mr. Atkinson's mental state had suddenly and dramatically deteriorated. It was not self induced and the reasons, whilst not fully understood by the doctors, seem to have related to his underlying health problems. Equally it must be made clear that Mr. Atkinson's actions can in no way diminish either his memory or the very high regard in which he was held by all. He sadly and suddenly lost touch with reality and lapsed into a form of psychotic state. Mr. Atkinson was unrecognisable to those who knew him at the scene and you of course knew nothing of him, or how he normally was, when he emerged from number 22 Meadow Close. The circumstances that led up to his death are, however, obviously relevant.
4. Late on Sunday evening Mr Atkinson suddenly started to claim at home that he was the Messiah. Despite the best efforts of those with him to stop

him, he insisted on driving to his father's home in Meadow Close. It was now after 1 o'clock in the morning. Upon his arrival there was a disturbance outside number 22 such that a neighbour rang 999. You were tasked to respond to the 999 call and you arrived at the scene at 1.36 am. Inside the house Mr. Atkinson had taken hold of his father by the throat and told him that he had killed other members of the family and that he intended to kill him.

5. What happened over the following five minutes was witnessed by a number of those who lived in the street. It is a feature that no one recognised Mr. Atkinson and he was clearly, as I have explained, acting wholly out of character. It is clear from the evidence that he was very aggressive and yelling such things as 'he was the Messiah ; that he had killed members of the family; that taser volts could not hurt him and that the day would go down for ever'. It is also clear from the evidence that you were trying to calm Mr. Atkinson down and retreated from him until it was necessary for you to deploy your taser which you did by showing it, then red dotting Mr. Atkinson until finally discharging it. The taser however appeared to have no effect upon Mr. Atkinson and he continued to advance and then went back to the door of number 22. Because of your concerns for whoever was inside number 22 you deployed the taser for a second time. Again that had no effect upon Mr. Atkinson who then smashed the glass in the front door of number 22 with his fist. Mr. Atkinson then advanced upon you again and again you retreated into the road, still trying to calm Mr. Atkinson down and get him to stop until you were again required to deploy your taser for the third time. On this occasion the taser was effective and Mr. Atkinson fell to the ground.
6. The third deployment of the taser occurred at 1.41am, exactly 5 minutes after you had arrived at the scene. The events, that I have just summarised, described by the witnesses during that five minutes included a vivid description of their reactions to what they saw. Some found it very frightening, one feared the man in the street may have been wired to explosives. It was undoubtedly a frightening scene and, as the prosecution accepted and as the jury were directed, the force that you used in deploying tasers on three occasions was necessary to try and restrain and control Mr. Atkinson and was reasonable and lawful. The evidence was that reasonable use of the taser would include deliberately maintaining an electrical circuit for about 5 to 10 seconds during which the subject would suffer neuro muscular incapacitation (NMI) and collapse. After Mr. Atkinson went to the ground you were not free to simply walk away. You

were still required to restrain and control him and were entitled to use reasonable force so to do.

7. Once Mr. Atkinson had gone to the ground you kept the taser depressed for 33 seconds in all, and then you kicked Mr. Atkinson in the head whilst he was on the ground but in a position where his head must have been above the floor. The prosecution alleged that either or both of those actions amounted to the use of unlawful force.
8. The jury, by their verdict, have clearly found that after Mr. Atkinson went to the ground you used unreasonable force against him. I have to determine on the evidence what force I am sure the jury decided was unlawful.
9. There was no dispute that you continued to engage the trigger switch beyond the time necessary to cause (NMI) in Mr. Atkinson. There was a body of evidence called which related to the use of tasers including the advances made since 2016 in their design and evidence that compulsive, that is unintentional grip of the trigger switch, was not uncommon in those who had to deploy them. Having heard all of the evidence I cannot be sure that the jury found that that your continued grip was not compulsive. However, of greater relevance, the jury were directed that even if they were sure your grip was not convulsive they had to be sure that there was an effective electrical circuit maintained on Mr. Atkinson for a period beyond that when the taser was being deployed lawfully.
10. The reality at the conclusion of the evidence was that both prosecution and defence considered that the most likely cause of the third taser being successful in causing (NMI) was one barb contacting Mr. Atkinson's chest and one the lower abdomen. It was only when Mr. Atkinson's lower garments were examined during the trial that minute damage was discovered consistent with such distribution. The expert's opinion however was also that minute damage to the lower leg of the trousers was consistent with the barb having become detached and striking the trouser as it fell causing the minute electrical form of damage discovered. On that basis the most likely explanation was that Mr. Atkinson's leg must have been in a broadly vertical position in which case the barb would likely have become detached before Mr. Atkinson completed his fall to the ground.
11. There was a considerable body of evidence as to Mr. Atkinson's condition, movement or otherwise and what was said after he went to the ground. None of the evidence was capable of proving to what point the taser was effectively delivering a completed electrical circuit and a likely, if not the most likely explanation, is the one advanced by the expert. In

- those circumstance neither I, nor anyone, could be sure that Mr. Atkinson was in fact subjected to an electrical current for any period materially beyond the time when he went to the ground which was accepted as being lawful. It should also be noted that the medical experts were agreed that the taser did not directly affect Mr. Atkinson's heart. Its painful effect served to increase the pressure on a heart already struggling to cope.
12. Clearly the jury were sure that your actions in then kicking Mr. Atkinson in the head when he was on the ground exceeded reasonable force.
  13. As to the number of kicks the evidence from those at the scene, understandably, varied. The scientific evidence revealed, under polarised lights, that there were two impressions from your boot. What is clear therefore is that you kicked him not less than twice.
  14. In relation to the force of the kicks, the experts were of the joint view that they were delivered with moderate force. They did not cause any fractures of the face of head or bleeding of the nose and caused no damage to the brain. They did not therefore cause any serious injury and would not have caused death in a healthy person.
  15. It is not necessary to rehearse Mr. Atkinson's medical condition in detail. Sadly he had a very unhealthy heart, his kidneys could not function without dialysis and he had very high blood pressure. The cause of Mr. Atkinson's death was cardiorespiratory arrest with very close temporal proximity to the successful deployment of a taser device, followed by a brief period of restraint and blunt force trauma in a person with hypertrophic cardiomyopathy and end stage hypertensive nephropathy.
  16. The medical experts were also agreed that, whilst Mr. Atkinson could have died at any moment with or without stress, he would not have died that night without the combination of circumstances that arose. All the experts were agreed that the kicks to the head were a contributory factor to Mr. Atkinson's death and the jury clearly accepted the evidence of those experts who considered that the kicks made a more than minimal contribution. The expert evidence was that Mr. Atkinson had moved from a mobile person who was shouting to an immobile person saying nothing after he had fallen to the floor and been kicked. The effect of the kicks was to cause, or increase, Mr. Atkinson's degree of unconsciousness which had an adverse effect upon his ability to maintain his airways and breath properly in circumstances where his body was struggling to maintain sufficient oxygen in his blood.
  17. Against that background I turn to the guidelines.
  18. In relation to the harm caused, in all cases of manslaughter the harm will inevitably be of the utmost seriousness because a life has been taken.

19. In relation to culpability, having regard to the circumstances that led up to your actions in kicking Mr. Atkinson it is, as I have explained, clear from the evidence at the scene that you were trying to calm and control Mr. Atkinson. I am satisfied from all of the evidence I heard that you did not suddenly change and decide to gratuitously intend to cause to harm falling just short of really serious injury. Whether it was the result of adrenalin or other cause, you did use excessive use. That force involved two kicks to the head with moderate force which caused Mr. Atkinson to be unconscious or added to it. Anyone is now aware of the potential serious effects of any traumatic head injury with even those not causing loss of consciousness requiring immediate medical attention. In this case there were two kicks and I am sure therefore that the unlawful force you used carried a high risk of really serious injury which was or ought to be have been obvious to you.
20. I agree with the prosecution submission therefore that factor indicates high culpability which would place the case in category B with a starting point of 12 years custody with a range of 8 to 16 years.
21. As I have set out the kicks did not in fact cause serious injury. The use of a shod foot is the use of a weapon although it was not carried unlawfully and can also be distinguished from obviously lethal weapons such as knives. Those factors would result in a reduction from the starting point.
22. Equally, as I have stated it is clear that for five minutes you were dealing with a very unpredictable and no doubt frightening situation where you were confronted by a man who had to be restrained and controlled because of the leave of threat he posed to whoever was in number 22, other members of the public and you. That is significant because it clearly provides the context of what happened. It was thereafter, when Mr. Atkinson was on the floor that you used force that went beyond that which was reasonable in the circumstances. Both prosecution and defence agree that that context includes factors which indicate lower culpability and would fall within category D with a starting point of 2 years and a range of 1 to 4 years.
23. As the Guidelines make clear, as has the Court of Appeal in cases such as Bailey, and as the prosecution and defence agree, in such circumstances I have to adjust the starting point at this stage to reflect those factors.
24. Having balanced all of those factors I am satisfied that the appropriate starting point is one of six and a half years.
25. Before turning to other mitigating and aggravating factors I make it clear that I have taken into account the use of the foot, how it was used, the elements of self defence and therefore lack of premeditation and all the

other circumstances of the offence in determining the starting point. Further reference to them would be double counting.

26. In relation to further mitigating circumstances you have no previous convictions. You have never been involved in any violent behaviour. It is common ground that the dangerousness provisions do not apply. I have read a number of references both as to your personal integrity and your actions as a police officer. Senior colleagues speak highly of your work as a police officer. You have previously received a commendation. On the day of this offence you had successfully dealt with someone about to commit suicide on the motorway. I accept therefore the submission that this was wholly out of character for you and I accept you have genuine remorse.
27. The offence was nearly five years ago. That has doubtless been an extremely difficult time for you and your family. You have not reoffended in any way. The delay in trial is not attributable to you. Given your position your time in prison will be more difficult.
28. The obvious aggravating factor is that you committed this offence whilst on duty as a police officer. The police play a central and important role in upholding the rule of law in our society. The public entrust powers to the police which they expect to be used for the common good of society. It is not an easy job and the police have to go to dangerous situations. The sentence must reflect the importance of maintaining public confidence in our police. You have let yourself and the force down. Although they were difficult, you failed to act appropriately in the circumstances as they developed and you used a degree of force in delivering two kicks to the head which was excessive and which were a cause of Mr. Atkinson's death.
29. Balancing those factors the minimum term of imprisonment I can impose upon you is one of eight years imprisonment. That reflects the higher end of category C of the Guidelines which I am sure is appropriate.
30. Could you stand please. The sentence therefore is one of 8 years imprisonment. You will be entitled to release when you have served two-thirds of that term when you will be released on license. If you fail to accord with the terms of your license or commit any further offence you would be recalled to serve the balance. The relevant victim impact surcharge will apply.