



JUDICIARY OF  
ENGLAND AND WALES

**Rex**

**-v-**

**Marcus Carter**

**Sentencing Remarks of Mrs Justice Hill DBE**

**Bristol Crown Court**

**Tuesday 14<sup>th</sup> February 2023**

1. Marcus Carter, you are now 43 years old. I have to sentence you for the manslaughter of your 10-week-old son, Remari, to which you have pleaded guilty. Remari died on 21<sup>st</sup> August 2020 as a direct result of your forceful shaking of him in the family home in Bristol on the evening of 10<sup>th</sup> August of that year.
2. Remari was a tiny baby. He was born on 8<sup>th</sup> June 2020. You had been in a relationship with his mother, for around two years. She has a daughter from a previous relationship, who was 9 years old at that time. I will refer to her as X as she has the benefit of a court order protecting her identity. In order further to protect the child's identity I will refer to her mother, your then partner, as Y.
3. Y has described you as being helpful and supportive to her during the pregnancy with Remari. You told police you were "over the moon" and "blessed" at his arrival; that you had been "waiting 10 years" for him. You, Y, X and Remari lived together as a family in a maisonette in Easton, Bristol.
4. You were a "hands on" father. Remari was difficult to settle when crying. He was believed to have colic, but his crying did not seem to bother you. You would rock him or sit patiently on a bean bag next to his swing seat, while you watched television. However, there were ongoing tensions in your relationship with your step-daughter X.

Your relationship with Y was also in difficulties in the last few weeks of Remari's life. She had put your clothes in bags for you to leave but you had not done so. You were sleeping apart. She believed that you felt trapped in the relationship with a new-born baby. However, when the police asked you about this, you said that the problem was that you did not like living in Easton. You had lost your job shortly before 10<sup>th</sup> August 2020, though Y did not think you were particularly stressed about this, nor have you said you were.

5. You have three older children from a previous relationship. There is no evidence you were violent towards those children. Remari's grandmother has said that there were two occasions when your handling of him was a little rough. You do not accept these allegations. I cannot be sure about this evidence and so disregard it for the purposes of sentencing. I therefore sentence you on the basis that you had not injured any of your children before the night of 10<sup>th</sup> August 2020.
6. On Friday 7<sup>th</sup> August 2020 Y took Remari to the GP about his crying. However, she told police that he had had "two really good days" over the weekend of 8<sup>th</sup> and 9<sup>th</sup> August 2020. She thought he was beginning to "grow out" of his colic. On the evening of Sunday 9<sup>th</sup> August 2020, you were seen by a neighbour walking Remari around, trying to pacify him. His crying continued into the night.
7. Monday 10<sup>th</sup> August 2020 was the final day in which Remari was able to enjoy his short life. It was a hot day. Y took Remari, X, and a neighbour's daughter to an inflatable fair in Portishead and then to her sister's house to celebrate her niece's birthday. Remari's auntie settled him to sleep. The overall impression is that Remari spent that day surrounded by love, being passed around family and friends who cared for him.
8. You spent the day at home alone. You told the police you had been watching television, "chilling", and living your "best life". You said you were happy; the sun was shining and you were in a good mood; you were happy because you had a girlfriend and children.
9. At around 9.15 pm, Y arrived back home. X carried Remari from the car into the house and handed him to you. He was already unsettled by this point. He was due a

feed. You stood and rocked Remari while Y unpacked the car. Y went to her neighbour's briefly to tell her what a good day her daughter had had. You put Remari in his swing seat. You thought that the heat of your respective bodies was stopping him from settling. This angered Y, though, as she knew he was hungry and did not think this would be addressed by putting him in the swing. Y realised that she did not have any formula milk for Remari. She told you she was going to the nearby supermarket to get some, with a neighbour. Remari was still crying by the time she left. She suggested you take him to the front door so he could see the trees, which she knew soothed him.

10. CCTV shows Y outside and walking to her neighbour's car at around 9.46 pm. The two of them left for the supermarket at around 9.50 pm.
11. Y said that when she left Remari with you, you seemed unusually irritated; and that Remari's crying appeared to get to you a little bit quicker than it ought to. She thought it was as if you had been caring for him all day and not a matter of minutes. You do not accept you were irritable when Y left. However, by your guilty plea to manslaughter and by the limited account advanced on your behalf in mitigation, you now accept that shortly after Y left, being unable to settle Remari, you lost your temper and shook him with sufficient force to cause the injuries that led to his death.
12. You accept the prosecution expert evidence as to the injuries you caused to Remari. Dr Daniel Du Plessis, a Consultant Neuropathologist, conducted various examinations on Remari and reviewed the reports from other medical experts. He identified that Remari had suffered a variant of the so called "triad" of injuries often seen in cases of this nature: he had acute encephalopathy-related brain swelling, bilateral thin subdural bleeds over his brain and bleeds within the optic nerve sheaths and orbital soft tissue of his eyes. In addition, he had suffered various other injuries to his eye structures, central nervous system and ribs. Dr Du Plessis concluded that Remari's initial head injury most likely resulted from what he described as "forceful shaking", namely "excessive repeated oscillatory movement of the head on the neck forwards and backwards" with "sustained loading force". Remari's head injury precipitated a rapid respiratory collapse and cardiac arrest, which in turn caused an extremely severe hypoxic-ischaemic brain injury.

13. The injuries to Remari's ribs are important. Professor David Mangham, a Consultant Histopathologist, identified that he had five rib fractures, all on the right side, and all of which occurred between 7 and 14 days before his death. Three were anterior or front fractures. It is possible that these were caused by CPR involving front to back pressure, as this happens in around 10% of cases. I therefore ignore them for the purposes of sentencing. However, the other two were posterior or back fractures. These cannot be explained by resuscitation, but rather by non-accidental injury in the form of chest compression. I am sure that you fractured these two ribs.
14. You immediately realised you had seriously injured Remari. X was upstairs in the toilet while this was happening. She heard you saying Remari's name repeatedly. She ran downstairs. She saw you shaking Remari and trying to make him "come back to life", but nothing happened. You told her to get help and she ran to a neighbour's address. Your neighbour came to help, ran back to his house, asked someone to call 999, and returned to assist you. Together, you performed CPR on Remari.
15. Your neighbour's stepdaughter called 999 at 9.51 pm. Pausing there, it is notable that this was just over half an hour after X had first handed Remari to you after returning from the fair. It was just five minutes after Y was seen outside, leaving for the supermarket, at 9.46 pm. Your shaking of Remari, his rapid medical deterioration, X coming downstairs, and the to-ing and fro-ing before the 999 call was made, must all have taken place in that five-minute window.
16. At 9.54 pm paramedics arrived. Remari was eventually transferred to Bristol Children's Hospital. In the immediate aftermath, you gave untrue and differing accounts of what had happened to Remari to the paramedics, police and to Y. Remari remained at the hospital where his condition deteriorated. Sadly he passed away at 1.36 am on 21<sup>st</sup> August 2020. Since Remari's death you have lived with your mother in Wolverhampton.
17. Remari leaves a grieving family. The devastation which his death has caused to his mother and the wider family is plain from the intensely personal and moving statements provided by Y and Remari's auntie. In the account she read so graphically to the court, Y described in harrowing detail listening to Remari gasp for air, feeling helpless, while she sat with him in hospital as he fought for his life. She spoke of her

pain at knowing of the invasive examinations performed on Remari after he died and the delay until she was able to bury him. She described the loss of her son as a “living nightmare” and “torture”. She said her heart “aches every day” but that she has to carry on for the sake of her daughter. Remari’s auntie said he was a beautiful baby who was loved by everyone in the family, who was never put down because everyone just wanted to hold and cuddle him.

18. In determining the inevitable custodial sentence to be imposed on you I have followed the Sentencing Council guideline for unlawful act manslaughter. The first step requires me to determine the offence category. This involves an assessment of your culpability.
19. The expert evidence shows that you took and maintained a firm grip on Remari with sufficient force to break a number of his ribs and, holding him up, forcibly shook him, with his head unsupported, causing the fatal injuries.
20. The prosecution contend that to shake a baby of that age, in that way, is an act which, at the very least “carried a high risk of death or [grievous bodily harm] which was or ought to have been obvious” to you. Accordingly, they submit that this case falls within category ‘B’ within the guideline, as there are factors indicating “high” culpability. If the proper categorisation is B, the starting point under the guideline is 12 years’ custody, with a range of 8 to 16 years.
21. It is argued on your behalf that your actions are more accurately classified within category ‘C’, or “medium” culpability, because Remari’s death was caused “in the course of an unlawful act which involved an intention by [you] to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower culpability”. If the proper category is C, the starting point under the guideline is 6 years’ custody, with a range of 3 to 9 years. Category D, “lower” culpability includes cases where “there was no intention by the offender to cause any harm and no obvious risk of anything more than minor harm”.
22. The guideline cautions against an overly mechanistic application of the factors which determine the level of culpability. It also advises that where a case does not fall

squarely within a category, adjustment from the starting point may be required before further adjustment for aggravating and mitigating factors.

23. In terms of case-law, I have considered the Attorney General's Reference (No.125 of 2010) (Graeme Draper) [2011] 2 Cr App R (S.) 97 to which the prosecution have referred me, but as this pre-dates the guideline I have found it of limited assistance. I have also considered the more recent case of R v JD [2021] EWCA Crim 536, albeit with the caveat that the culpability categorisation is inevitably fact specific.

24. You were an experienced parent, having helped care for three other children. You had been actively involved in Remari's care. I am sure that you knew of the need to support Remari's head. I am also sure that you knew of the risks of shaking Remari, and that if you shook him this might cause him real harm.

25. As I have said, Dr Du Plessis' evidence makes clear that your actions involved "forceful shaking" with "sustained loading force".

26. Dr Roger Malcolmson recognised that certain types of eye injury that are often associated with more extreme head traumas were not present in Remari's case. However sufficient force had been used – by you – to cause bilateral optic nerve sheath haemorrhages in Remari's eyes. These are the sort of injuries that would not typically be expected in "ordinary domestic accidents, including simple low level gravitational falls from standing adult chest heights or less".

27. Professor Mangham's evidence shows that the force required to fracture Remari's two posterior ribs – and thus the force you used - was "significant". This is an important factor in assessing how obvious to you the risk of really serious harm ought to have been.

28. That said, it is clear that you had otherwise been a reasonable and caring parent. Your actions involved a momentary loss of control.

29. In my judgment your case is properly classified as between Categories C and B for culpability, but closer to Category B. I therefore propose to take a starting point of 10 years' imprisonment, mid-way between the starting points for each category, but closer to that for Category B.

30. I next have to consider and balance the aggravating factors and mitigating factors which may justify departure from that starting point.
31. Under the guideline I have considered the following aggravating factors.
32. First, and most obviously, Remari was extremely vulnerable due to his very young age. I bear in mind, however, that it is because he was such a tiny baby that there was such a high risk of injury to him by your shaking of him. This was because he had not yet reached the age where he could support his own neck. Therefore, to an extent, this aggravating factor has already been taken into account in determining your level of culpability; and the guideline cautions against double counting.
33. Second, by assaulting Remari in this way you grossly abused your position of trust. You were Remari's father, and he was in your sole care, while his mother left for a matter of minutes. He was a helpless baby. It was your duty as his father to protect him. Instead, you shook him and squeezed him hard enough to fracture two of his ribs. Again, however, to some extent this factor has already been taken into account in determining your level of culpability.
34. Third, your actions after the event involved you giving untrue and inconsistent accounts to the paramedics at the scene and medical professionals at the hospital. You were not forthcoming about what you had done. However there is no evidence that this made any difference to the treatment Remari received, not least as it is apparent that the hospital staff already suspected that Remari had been shaken. I therefore afford this factor limited weight.
35. Fourth, the offence was committed while X, who was just 9 years old at the time, was at home. The evidence suggests that she did not witness your initial shaking of Remari, and thus the acts that make out the offence of manslaughter. To that extent the aggravating factor as defined by the guideline of an "offence" committed in the presence of a child is not made out. However X did experience the immediate aftermath of the offence. She saw the lifeless body of her little brother. She witnessed your attempts to save him. She was directly involved in calling for help. In my

judgment this is an aggravating factor within the spirit, if not the precise wording, of the guideline.

36. I have to balance these matters against the following mitigating factors.

37. First, I accept that there was no premeditation in your actions. You had never previously injured a child. You had been a “hands on” parent in Remari’s care, including helping care for him the night before, when his crying went on into the night. Your actions on the evening of 10<sup>th</sup> August 2020 involved a single and momentary loss of control, due to your inability to settle him. As I have already explained, the entire incident from your shaking of Remari to the calling of 999 took around five minutes. You will live with the consequences of those five minutes for the rest of your life.

38. Second, you instantly realised what you had done and promptly sought to assist Remari by genuinely carrying out CPR to the best of your ability. Your neighbour describes you giving Remari rescue breaths and performing chest compressions on him before the 999 call was made. The transcript of the 999 call makes clear that you continued to give Remari CPR under the direction of the ambulance call handler. You are recorded as saying, “Come on Remari, come on” and then, “he’s got a heartbeat, he’s got a heartbeat...oh no, not breathing”. You continued with CPR until the paramedics arrived.

39. Third, although you are not put forward as a person of good character, you have no relevant previous convictions. The evidence suggests that you have been in regular employment throughout your adult life, other than for short periods of a few weeks or months. These included jobs in a chemical factory, as a forklift driver and for a company providing pre-packaged food to care homes and hospitals during the pandemic.

40. Fourth, the reports of Dr White and Dr Nabavi provide some evidence of the impact of Remari’s death on you. Dr Nabavi has diagnosed you with a recurrent depressive disorder. You told Dr White that you have a picture of Remari in a crystal that you kiss each morning. You spoke lovingly about Remari to the writer of the pre-sentence

report. You said that you consciously try to avoid thinking about him as it makes you feel worse. I am therefore satisfied that you genuinely mourn him. However this is tempered by the fact that in speaking to the writer of the pre-sentence report, you still did not accept responsibility for causing Remari any harm. It cannot therefore be said that you have shown genuine remorse.

41. I bear in mind that for the first few months of your sentence at least, it is likely that prison conditions will be harder for you, as for all prisoners, due to the ongoing impact of the pandemic.
42. Weighing and balancing all these factors, I have concluded that the mitigating factors outweigh the aggravating ones. This is to the extent that the least sentence I would have been able to impose for this offence if you had been convicted after trial would have been 9 years' imprisonment.
43. However, you have pleaded guilty and are therefore entitled to credit for that. Your guilty plea was entered on 16<sup>th</sup> January 2023. This was the date of the Pre-Trial Review, four weeks before your trial that was due to start today. You had indicated that you would enter such a plea on the previous working day.
44. As you entered your guilty plea after the first stage of the proceedings, the relevant guideline indicates that the maximum level of reduction is one-quarter. However, this should be decreased, to a maximum of one-tenth for a guilty plea on the first day of trial. The deduction should have regard to the time when the guilty plea was first indicated to the court, relative to the progress of the case and the trial date. This is subject to the exceptions in section F of the guideline. It is not suggested that any of those exceptions apply. In my judgment you are entitled to a discount that reflects the fact that you pleaded guilty relatively close to the trial date, but not as late as the first day of trial. The discount I apply is just under 15%.
45. As required by the guideline I have considered the various provisions relating to dangerousness.
46. Section 283 of the Sentencing Code, which requires a life sentence to be imposed for a second "listed offence", does not apply in your case.

47. Section 285 of the Code would require me to impose a life sentence if I was satisfied that there was a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences, in other words that you were “dangerous” within the meaning of section 308; and that the seriousness of the offence was such as to justify the imposition of a life sentence.
48. I do not consider you to be dangerous in this sense. I say this having regard to your lack of relevant previous convictions, what is known about your treatment of your other children, what is known about your treatment of Remari before the fatal incident and the circumstances in which you committed this offence. I also take into account the contents of the pre-sentence report, to the effect that you are statistically at low risk of re-offending; and that although you pose a high risk of causing serious harm to others, especially other children, in the future, this risk is not imminent. Further, the report explains that the risk could be managed or lowered if your contact with children is monitored and supervised, if you reduce or abstain from substance misuse, and if you engage in work to address victim empathy, temper control, problem solving and impulsivity. You are likely to undertake such work during your term of imprisonment. I also do not consider that the seriousness of this offence is such as to justify the imposition of a life sentence.
49. As I do not consider you dangerous within the meaning of section 308, an extended sentence under section 279 is not appropriate.
50. The appropriate sentence is a determinate one.
51. The sentence I impose is therefore one of 7 years and 8 months, that equating to a sentence after trial of 9 years, from which 16 months, just under 15%, has been deducted, to reflect your guilty plea.
52. The days you have already served in custody on remand will automatically count towards sentence. In addition, you are entitled to credit for one-half of the number of days when you were on bail, but your liberty was curtailed by an electronically monitored curfew. The total number of such days is 192 and you are entitled to credit for half of that figure, namely 96. I therefore declare and direct that those 96 days will

count towards sentence. If this calculation is mistaken, the court will order an amendment of the record with the correct period.

53. Marcus Carter, stand up please:

54. For the manslaughter of your son Remari I sentence you to imprisonment for a term of **7 years and 8 months**. You will serve two-thirds of that sentence in custody. Under current arrangements you will then be released on licence to serve the remainder of the sentence in the community. If you breach the terms of your licence or commit any further offence you will be liable to be returned to prison to serve the remainder of your sentence. The statutory surcharge will be imposed. I make no order for costs or compensation.

55. You may go down.