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v

JOSEPH PEERS, SEAN ZEISZ, NIALL BARRY & JAMES WITHAM

SENTENCE NOTE

1. At 11.40pm on the 20th August last year, a Hyundai car drove into Leinster Road, in Old Swan, Liverpool. Inside were two men, James Witham and Joseph Peers. They drove there as a result of a criminal agreement with Niall Barry and Sean Zeisz, to kill the occupants of 40, Leinster Road using a Skorpion sub-machine gun. They each knew that Lee Harrison lived there with his partner, Ashley Dale; it was their home. The car had been acquired in the days leading up to what happened, with false number plates ready to use when hiding of the car followed.
2. In an attempt to bring the occupants out of the house, Witham and Peers stabbed the car tyres of the car parked outside. That set off the car alarm. Inside the house was Ashley Dale, in her pyjamas watching television. When she heard the alarm she believed it was caused by heavy rain and so she stayed inside. Outside Witham and Peers waited for their moment for this planned killing.
3. What followed was a murder of such seriousness that it shocked both the local community and many in this country. The use of a military grade sub-machine gun to kill a young woman in her own home at night in a planned shooting of the occupants of that house, is beyond any understanding.
4. At just after 12.30am Witham got out of the Hyundai car, wearing a balaclava to hide his face. He carried that Skorpion sub-machine gun, loaded with 15 bullets. He broke through the locked front door and walked into the dining room. Ashley was in that room alone, moving towards the kitchen back door to escape, and there were lights on so she was visible. Witham wickedly fired 10 bullets towards her as she was vulnerable

and defenceless. One of those bullets passed through her abdomen and killed her. Her screams were heard by neighbours. Leaving her to die, Witham went upstairs looking for Lee Harrison. In a bedroom he fired a further 5 bullets into the wall, as a clear statement: that if had been in the house, he would have been killed also.

5. After the shooting, Witham and Peers drove away. The car was parked elsewhere, out of view, later that day to be hidden on the driveway of a property in St Helens. A week later it was driven by Peers and Zeisz to be hidden on another driveway in St Helens, until it was discovered by the police on the 9th October.
6. Ashley Dale died very shortly after she was shot. Lee Harrison has refused to cooperate in the police investigation into her murder, so involved with criminal drug dealing gangs is he. For the family of Ashley Dale, this must have been a cruel twist to the tragic loss of their daughter and sister. Not only was she brutally killed in her own home, but Lee Harrison has refused to assist the police to bring her killers to justice. Yet, despite this, Ashley's family have shown remarkable dignity as they have listened to the evidence in this trial.
7. This court has heard the most moving Victim Personal Statements of Ashley's mother, father and grandmother. The harm that has been caused to them and their family is profound and will last forever. Ashley Dale was in the prime of her life and she was gunned down in her own home, where she should have been safe.
8. This murder and the criminal conspiracies, to murder and to possess the prohibited firearm and ammunition, were planned by the four of you. The motive concerned a deep seated drugs feud between Barry and Lee Harrison, who was also associated with a drugs criminal group, called the Hillsiders, dealing in Kilo quantities of Class A and B drugs and with access to guns. Barry also had access to guns, particularly military grade Skorpion sub-machine guns. Witham, Zeisz and Peers were part of the gang with Barry and in violent competition with the Hillsiders, one of whom discharged a firearm in public and threatened Zeisz.

9. I am sure on the evidence that Barry and Witham played the lead roles in this murder, which was discussed and carried out from Barry's flat at 267, Pilch Lane in Huyton. Barry directing and providing the gun and ammunition, whilst Witham agreed to carry out the shooting with Peers assisting Witham driving in the car to the scene. They travelled in the Hyundai car, jointly puncturing the car tyres to activate the car alarm and remained together as they returned to the flat in Pilch Lane. It was there that Barry and Zeisz waited, anxiously calling Witham and Peers to hear how they were progressing in the planned killing.
10. In the days that followed, Barry planned to leave the country but was arrested before he could do so. Witham and Peers stayed in a hotel in St Helens, away from their homes in Liverpool and also stayed in Scotland before they were arrested.
11. Upon the arrest of Barry and Zeisz, evidence was also discovered of other offences by them amounting to very serious organised crime. It was revealed in EncroChat conversations, in which both Barry and Zeisz were part of a Conspiracy to Supply large quantities of illicit drugs over a 6 month period in 2020 in both the north and south of this country.
12. In Barry's case, over 40kg of cocaine, ½ kg of heroin, 28kg of cannabis, 1kg of ketamine and 1kg of amphetamine, represented in Counts 1 – 5 of the second Indictment. A cautious estimate of the value of those drugs is over £1.5 million. Count 7 of that Indictment also concerned a Conspiracy to Possess Prohibited Weapons and ammunition, including a Scorpion sub-machine gun identical to the one used to Murder Ahley Dale. Count 8 concerned a Conspiracy to Sell or Transfer a Prohibited Weapon and ammunition. Those offences were also in 2020. Barry was convicted of them after a trial on the 8th June this year. He must now be sentenced for those offences in addition to the offences with which this trial was concerned.
13. Zeisz pleaded guilty to the Conspiracy to Supply drugs, being 14.5kg of cocaine, 6kg of heroin, 13kg of cannabis and 2kg of ketamine over the same 6 months period in 2020. A cautious estimate of the value of those drugs is over £680,000. I shall give him full credit for his guilty plea to those offences.

14. The Defendants' Antecedents are as follows:-

- a. Joseph Peers is aged 29 and has previous convictions for 11 offences, including driving offences, drugs possession and public order offences. Those convictions do not significantly aggravate the seriousness of these offences.
- b. Sean Zeisz is aged 28 and has previous convictions for 6 offences, including for possession of Class A and B drugs and Handling Stolen Goods. In 2016 he was convicted of Assault Occasioning Actual Bodily Harm and Common Assault. The victim was his girlfriend at the time. Whilst noteworthy, those convictions do not, in my judgment, significantly aggravate the seriousness of these offences.
- c. Niall Barry is aged 26 and has 4 previous convictions (in addition to those he was convicted of after trial in June of this year). They were for drugs possession in relation to cocaine and cannabis. Of themselves, they do not significantly aggravate the seriousness of these offences.
- d. James Witham is aged 41, the oldest of the defendants. He has 37 previous convictions, including for drugs possession and drugs supply, dishonesty offences and one for Assault Occasioning Actual Bodily Harm in 2002. Of themselves, they do not significantly aggravate the seriousness of these offences.

15. There is little that can be said in mitigation of sentence for any of the defendants.

16. In sentencing the defendants and assessing their culpability for Counts 1 – 3, Murder, Conspiracy to Murder and Conspiracy to Possess a Prohibited Weapon and Ammunition with Intent to Endanger Life, I am satisfied that Witham and Barry must be treated as equally the most culpable. Witham carried out the shooting and it was Barry who provided the gun with the ammunition and was the protagonist in the planning. He had the greatest motive and had threatened violence to Lee Harrison previously. Peers

assisted Witham in the shooting and Zeisz actively and intentionally encouraged the shooting.

17. The sentence for the Murder of Ashley Dale, Count 1, must be Imprisonment for Life for each of you. I am required to fix the minimum term that must be served in custody, before any of you may seek release on licence, which will be decided on whether you remain a danger to the public, as I find that you currently do. The Starting Point for the determination of that minimum term must be 30 years, because this was a Murder with a firearm. That term must be adjusted upwards substantially, to reflect the aggravating factors of seriousness and your overall offending.

18. I have concluded that those aggravating factors include:- firstly, that this Murder involved a significant degree of planning; secondly, that you are each to be sentenced for the Conspiracy to Murder Lee Harrison; thirdly that Ashley was murdered in her home; fourthly, the highly dangerous firearm used in the murder, a sub-machine gun which was used to discharge 15 bullets in the home of Ashley Dale and Lee Harrison; fifthly, the efforts to dispose of evidence, including hiding the Hyundai car used in the shooting and the firearm, which has never been recovered; sixthly, these offences were carried out against the background of violent drugs gang rivalry.

19. In addition, in the cases of Zeisz and Barry, you must also be sentenced for the separate offending on the second Indictment, for which Barry was convicted earlier this year and Zeisz pleaded guilty.

20. I must make it clear that sentencing you all is not a mathematical exercise of adding up all the sentences to arrive at a final sentence. I shall impose Imprisonment for Life with a single minimum term on Count 1 Murder, which will reflect all of the defendants offending. I shall impose concurrent sentences for Counts 2 and 3 and also for the drugs Indictment, which concerns Zeisz and Barry.

21. On Count 2, Conspiracy to Murder Lee Harrison, I am satisfied that a concurrent sentence of Imprisonment for Life under s.285 of the Sentencing Act 2020 is necessary for each of you. The Conspiracy to Murder is a Schedule 19 offence under the Act, each

of you is over the age of 21 and I have concluded that the circumstances of this offence and the Murder mean that each of you is a dangerous offender. Whilst there is no sentence guideline for Conspiracy to Murder, the Attempt Murder Guideline is appropriate because this conspiracy whilst in action involved driving to the victims' home, breaking in and shooting Asley Dale. Had Lee Harrison been at home, I am sure that he would also have been murdered.

22. As Conspiracy to Murder, Count 2 involved very high culpability, with the use of the Prohibited firearm, and Category 3 harm. That provides a Starting Point of 25 years imprisonment, with a sentence range of 20 – 30 years. Many of the aggravating factors for Count 1 apply to Count 2 and necessitate an increase in the sentence to 27 years. I find no significant mitigating factors. Accordingly, the notional sentence on Count 2 is 27 years, which I discount to 18 years as the minimum term. Therefore, the sentence on Count 2 will be a concurrent sentence of Imprisonment for Life, with a minimum term of custody of 18 years.

23. On Count 3, Conspiracy to Possess a Prohibited Firearm and Ammunition with Intent to Endanger Life, I impose a concurrent sentence of 14 years imprisonment on each of you. That offence is one of high culpability under the Firearms guideline, and in Category 2 with a high risk of severe harm.

24. On the second Indictment against Zeisz and Barry, I impose concurrent sentences with the Count 1 Murder sentence. For the drugs offences (Counts 1 – 5) the culpability and harm categories are mostly agreed between the prosecution and defence. I accept that Barry's offending in Count 2 was Category 2 harm and not Category 1, being 0.5kg. Also, Zeisz is entitled to a one-third discount for his early guilty plea:-

- a. On Count 1 Possession with Intent to Supply cocaine, 15 years imprisonment for Barry and 8 years for Zeisz after his guilty plea.
- b. On Count 2 Possession with Intent to Supply Heroin, 10 years for Barry and 10 years for Zeis after his guilty plea.

- c. On Count 3 Possession with Intent to Supply Cannabis, 4 years imprisonment for Barry and 4 years imprisonment for Zeisz after his guilty plea.
- d. On Count 4 Possession with intent to supply Amphetamine, 4 years imprisonment for Barry.
- e. On Count 5 Possession with Intent to Supply Ketamine, 4 years imprisonment for Barry and 4 years imprisonment for Zeisz after his guilty plea.

25. On Counts 7 and 8 of the second Indictment, the firearms offences for which Barry was also convicted, I impose consecutive sentences to the drugs offences, but they will all be served concurrently with the Murder sentence.

- a. On Count 7 Possession of a Prohibited Weapon, a sentence of 8 years; this was a culpability Category A with a Type 1 firearm and Category 1 harm.
- b. On Count 8 Conspiracy to Sell or Transfer a Prohibited Weapon, a sentence of 15 years, concurrently with Count 7 but consecutively with the drugs sentences.

The total sentence on the second Indictment is, therefore, 10 years imprisonment for Zeisz and 30 years imprisonment for Barry. As I have already stated, those sentences will be served concurrently with the sentence on Count 1 Murder.

26. I return now to the minimum term to be served as part of the sentence of Imprisonment for Life for the Murder of Ashley Dale. I must adjust the 30 years Starting Point to reflect the aggravating and any mitigating factors. Also, I adjust that term to take into account the different roles played by each of you. Finally, I have made a significant downward adjustment of the term to reflect the principle of totality of sentencing.

27. Stand Up - I sentence each of you to Imprisonment for Life on Count 1 for the Murder of Ashley Dale:-

- a. **Niall Barry**, on Count 1 Murder your minimum term is increased to 35 years, but must be further increased to reflect your offending in Counts 2, 3 and in the second Indictment. Your minimum term is 47 years, less 433 days served on remand.
- b. **James Witham**, on Count 1 Murder your minimum term is also increased to 35 years, but must be further increased to reflect your offending in Counts 2 and 3. Your minimum term is 43 years, less 295 days served on remand.
- c. **Joseph Peers**, on Count 1 Murder your minimum term is increased to 33 years, but must be further increased to reflect your offending in Counts 2 and 3. Your minimum term is 41 years, less 295 days served on remand.
- d. **Sean Zeisz**, on Count 1 Murder your minimum term is increased to 32 years, but must be further increased to reflect your offending in Counts 2, 3 and in the second Indictment. Your minimum term is 42 years, less 448 days served on remand.

28. On Count 2 Conspiracy to Murder, I impose a concurrent sentence of Imprisonment for Life on each of you, with a minimum term of 18 years custody. On Count 3, Conspiracy to Possess a Prohibited Firearm and Ammunition with intent to e, I impose a concurrent sentence of 14 years imprisonment on each of you.

29. The sentences on the second Indictment of 30 years imprisonment for you Barry and 10 years for you Zeisz, will be served concurrently. You will each be required to pay the appropriate Statutory Charge, but in your cases Zeis and Barry, I postpone the making of the order until the conclusion of the Confiscation Proceedings under the Proceeds of Crime act 2002. In your cases Peers and Witham, I make the order now.