



# Judiciary of England and Wales

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**Daniel Hardcastle**

## **Sentencing Remarks of Mrs Justice Hill DBE**

**Preston Crown Court**

**11<sup>th</sup> July 2024**

### **Introduction**

1. Daniel Hardcastle, you are now 31 years old. I have to sentence you for the murder of your 2 year old son, Damion, of which you have been found guilty by the jury. Damion died on Monday 21<sup>st</sup> August 2023 as a result of a traumatic head injury which had caused fatal injuries to his brain. The head injury had occurred while Damion was in your sole care on the morning of Saturday 19<sup>th</sup> August 2023.
2. The sentence for murder is fixed by law under section 322 of the Sentencing Act 2020. As you are over 21 years at the date of conviction, the mandatory sentence is imprisonment for life. I am not required to make a whole life order. I therefore make a minimum term order. This means I make an order determining the minimum term of imprisonment you must serve before the relevant release provisions apply. In setting the minimum term I have taken into account only those facts of which I am sure, having been the trial judge in this case.

## The facts

3. Damion was an otherwise healthy two year old boy. He was born on 9<sup>th</sup> July 2021. He was taken into care when he was just over 10 months old as his mother was unable to look after him. He was placed in the care of foster parents.
4. To your credit, when DNA testing identified you as Damion's father, you stepped up to look after him. You visited him under the supervision of the local authority at a contact centre. Your parenting was then assessed at a residential centre over 14 weeks from 6<sup>th</sup> February until 18<sup>th</sup> May 2023. You worked hard to learn the art of parenting. You enjoyed a playdate with your friend Sophie and her child of a similar age to Damion. Damion sustained some bruises, but these were understood to be the usual bruises that toddlers suffer while finding their feet. Damion was particularly prone to falls, and thus bruises, as he was developmentally challenged: his mobility and balance were equivalent to that of a typical child about half his age.
5. The residential placement was successful and it was concluded that you could go home with Damion, with a strong and robust support plan. You found a flat in Blackpool and the two of you moved in together. A family worker from the local authority visited you every week and a social worker every four weeks. The local authority provided funding for Damion to go to nursery two afternoons a week. You were signposted to and welcomed at another local playgroup in a church hall opposite your house. You were supported by Dad Matters, a mental health charity overseen by Home Start, which provides support to fathers. They assisted you in providing the fridge/freezer and washing machine you needed for the flat. Your mother, Linda Hardcastle, also helped you. She said she went round nearly every day in May and June to help look after Damion. Text messages between you showed that she would look after him overnight so you could go out.
6. Initially you tried hard to be a good father. There were good times when you took Damion to the parks, the beach and the pier. You had days out to an owl sanctuary and Fairhaven Lake. Your friend Sophie saw happy photos of you with Damion on Facebook. The analysis of your phone showed you taking selfies of yourself with him

on various dates in late May and June. You also took Damion to the playgroup and nursery a few times.

7. However over time, for whatever reason, you stopped accepting the support that was offered to you. You did not take Damion to playgroup after 9<sup>th</sup> June or to nursery after 3<sup>rd</sup> July. Sophie offered to have playdates with you, or look after Damion so you could go out, but you did not take her up on these suggestions. Instead you borrowed her lawnmower and became involved in an angry squabble with her about your failure to return it to her. Your mother sadly became unwell throughout July. On 3<sup>rd</sup> August she collapsed in the street; and on 13<sup>th</sup> August she was admitted to hospital having suffered a stroke. She was therefore unable to help you with Damion.
8. You were seen on CCTV going to your local shops, without Damion present, on 3<sup>rd</sup>, 6<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup> and 17<sup>th</sup> August. On many of these occasions you bought alcohol. You were in touch with several women on social media. You stayed up all night on Thursday 17<sup>th</sup> and Friday 18<sup>th</sup> August on a video call with one such woman, Charlotte. The call with Charlotte ended at around 5 am on 19<sup>th</sup> August. At one point you turned the video camera on your phone around so that she could see Damion sleeping in his bed. The room was dark. She saw him face down, in a starfish shape. She said what she could see was like “drawing a shape on paper”. She said how cute he looked.
9. In reality, you had already caused significant physical injuries to Damion.
10. You called 999 just a few hours later, at 11.09 am on 19<sup>th</sup> August. Damion was taken to Blackpool Victoria Hospital and then the Royal Manchester Children’s Hospital. The hospital staff saw that he was covered in injuries from top to toe, front to back. The amount of bruising was too extensive to fully record in a primary survey and full body mapping took place at a later stage. The bruises appeared to be of different ages. CT scanning showed features of raised pressure and multiple injuries within the cranium, the bony dome that houses and protects the brain. These were unsurvivable and Damion passed away at 6.22 pm on 21<sup>st</sup> August 2023.

## **Damion's injuries**

11. Dr Medcalf, the forensic pathologist, identified some 80 separate injuries to Damion's body at post-mortem. He had injuries to his head, face and neck, his chest and abdomen, the back of his trunk, both his arms, both his legs and both his feet.
12. The combined effect of the pathology evidence and the expert blood pattern evidence from Helen Jones is that you injured Damion on at least one other occasion before you inflicted the fatal injuries on the morning of 19<sup>th</sup> August.
13. There were significant marks on Damion's right thigh. This consisted of two symmetrical bone or arch shaped components: one measuring 5 x 5.3cm positioned more towards the front of the thigh and the other measuring 5 x 3cm towards the outer aspect of the thigh. Towards each end there were small abrasions. Dr Kouble, the forensic odontologist, classified this a definite human bite mark. It was not possible for him to say when this bite mark had occurred, other than that it was "relatively recent". However your evidence was that it occurred around a week before 19<sup>th</sup> August, and so on around 12<sup>th</sup>.
14. There was a very serious injury to Damion's mouth. Dr Medcalf identified an extensive and complex collection of deep lacerations to the inner aspect of Damion's upper lip. Damion's frenulum - the tissue that attaches the top lip to the teeth – had been effectively destroyed. You had forcefully rammed the bloodstained sippy cup found in your flat into Damion's mouth, on more than one occasion, and caused this injury. Histological samples showed a well-developed healing process, such that the oldest part of this injury occurred at least 3 days before death.
15. An area of bruising just above Damion's nose and a bruise above his left eyebrow had also occurred at least 3 days before his death.
16. 'O' and 'C' shaped bruises to the back of Damion's left arm and a 'bow shaped' area of bruising to Damion's left leg were also around 3 days old. The distinct patterns of these injuries made Dr Medcalf suspicious that they were further bite marks.

17. There were a series of bruises around Damion's lower jaw and on the upper neck seen externally; and some bruising in the deep soft tissues of the neck found internally at post-mortem. The clinicians suspected that you had tried to strangle Damion but further evidence of that was not found at post-mortem. However the lack of such evidence in the form of fractures to the neck structures might simply have reflected Damion's young age and the consequent flexibility of the cartilage and bones in that area.
18. Damion had fractures to seven of his posterior ribs and one anterior "floating" rib. Dr Annavarapu, a consultant specialising in paediatric and perinatal pathology, especially bone pathology, explained that these could not be attributed to CPR: they must have been caused by some element of side-to-side compression or squeezing. These injuries occurred 24-60 hours before Damion's death. Accordingly they must have occurred at some point after 6.21 am on 19<sup>th</sup> August.
19. On the morning of 19<sup>th</sup> August you inflicted the injuries that led directly to Damion's death. You subjected him to a traumatic head injury, which led to him suddenly deteriorating into a state of unresponsiveness with respiratory arrest followed by cardiac arrest. After he went into cardiac arrest, his circulation was not restored for around 17-20 minutes, and that period of "downtime" caused a permanent brain injury from which he eventually died just over two days later.
20. Dr McPartland, the consultant paediatric pathologist, examined Damion's eyes. Her findings were consistent with a severe traumatic head injury, at the most severe end of the spectrum. She reached this conclusion because Damion had severe, multi-layered retinal haemorrhages in both eyes, extensive haemorrhagic retinal detachment and disruption to the photoreceptor layer of the retina in both eyes, peri-macular folds and extensive haemorrhagic retinoschisis (retinal splitting) in both eyes; severe optic nerve sheath haemorrhages on both sides; peri-papillary bleeding into the sclera at the point where the optic nerves join the eyes on both sides; and orbital soft tissue haemorrhages on both sides.
21. Dr Du Plessis, the clinical neuropathologist, examined Damion's brain, spinal cord, cervical spine and dura. He described the "triad" of injuries as being (1) a swollen or damaged brain due to a hypoxic-ischaemic injury; (2) multicompartmental thin

subdural bleeds; and (3) extensive bleeds within the eyes. In this case, all three characteristic features of the triad were present and there was a “wealth” of additional findings which made him certain that this was a non-accidental death. These included injuries in and around the eyes other than the retinal bleeds, extensive bruising, possible bite marks, the tearing of the frenulum, the spinal subdural haemorrhage and the evidence of spinal nerve root damage.

22. Only you know exactly what you did to cause this traumatic head injury. Dr Du Plessis’ opinion, which I accept, was that it most likely resulted from forceful shaking of Damion (causing excessive oscillatory movement of the head on the neck forwards and backwards) in combination with a head impact; a head impact, allied with some form of rapid oscillatory movement of the head; or his head impacting against a surface and effectively rebounding a few times causing the same outcome.

#### **Your attempts to cover up and conceal evidence**

23. You called 999 in relation to Damion at 11.09 am on 19<sup>th</sup> August 2023. A paramedic arrived very shortly thereafter followed by colleagues and police officers very soon after that.

24. While the first paramedic who attended was working on Damion you removed your blood-stained t-shirt. On your account it was at this time that you also placed a heavily bloodied adult duvet cover into a bin liner in your bedroom. That was found by police concealed in the bin liner underneath pieces of polystyrene of the sort that accompanies a delivery of appliances. You said that it was at this point in time that you also put a blood-stained child’s duvet cover into the washing machine. After the police arrived you changed your jogging bottoms and tried to wipe the sofa clean until told to stop.

25. In fact, you had already tried to clean up the flat more extensively before the emergency services arrived.

26. Helen Jones’ forensic team found that the floor and several of the other surfaces in the bathroom were damp and there were signs of blood in the liquid on top of the basin, a yellow sponge on the side of the basin, on the inflatable rings of the paddling pool

which you used to bathe Damion, on a mop in the corner of the bathroom and on the inner surface of the door adjacent to the handle. These findings show that at some point you had tried to clean blood from an object or surface which contained Damion's wet blood; and that you had used the mop to clean blood from a surface or surfaces within the flat. In addition, the presence of visible blood staining within the textured surface of the laminate flooring in the kitchen/living room area shows that you had tried to clean the blood from that area.

27. The flat remained heavily bloodstained. Damion's blood was found on the mattress and top rail of his cot, the mattress, pillowcase and bed frame of his toddler bed, on his chest of drawers and on a grey flat sheet that was folded up at the base of the toddler bed. There was also bloodstaining in your bedroom, in the hallway and on the living room sofa.

28. The laundry basket in front of the washing machine and the floor area near the machine contained a large amount of clothing from Damion and yourself as well as towels and a tea-towel. These were all stained with Damion's blood. Various bloodstained items were also found in the kitchen bin, underneath items of household rubbish, with other bloodstained items on top.

### **Victim Personal Statements**

29. Damion leaves a grieving family. The impact of his death on your mother, Damion's grandmother, and his foster parents was clear from their powerful Victim Personal Statements.

30. Damion's grandmother Linda Hardcastle gave evidence during the trial by video link due to her significant health issues. They prevented her saying goodbye to Damion properly and she continues to have many unanswered questions about what you did. She described how Damion loved to play and loved being on his bike which his uncle bought him. He liked to sing at the animals in her cabinet. He had an amazing laugh when he laughed out loud. She was enjoying teaching him to count and he would count the buttons on her cardigan. She said Damion was her only grandchild and he made her happy and proud. She now feels sad and heartbroken and thinks about him every single day. When she sits outside and closes her eyes she just sees him running around and calling her "manma".

31. Damion's foster parents Michelle and Shaun Allan have shown great dignity and forbearance in attending court. Mrs Allan said in her statement that they have done so as they felt they had to represent Damion and honour him. She has described how he positively impacted their lives in the 10 months he lived with them. She said he was a "delight" who would "light up any room with his smile and his chuckle". She said he loved bathtime and was a very sensory child, mesmerised by light and crinkle toys. She felt sure he would have continued to explore and marvel at the world around him if given the chance to do so. She has said that realising the force and brutality that must have been inflicted on him breaks her heart. Noting that it would have been Damion's third birthday earlier this week she has said how heartbreaking they find it that they, and his three biological siblings, will not get to celebrate his further milestones and achievements.

#### **Approach to sentence**

32. The minimum term is such part of your sentence as I consider appropriate taking into account the seriousness of the offence, the effect of the period of time you have been remanded in custody, the provisions of Schedule 21 to the Act and the relevant Sentencing Council Guidelines.

33. Both counsel have submitted that in your case the starting point for determining the minimum term is 15 years imprisonment under paragraph 5 of Schedule 21. I agree. This is because you were over 18 when you committed the murder and the case does not fall within paragraphs 2(1), 3(1) or 4(1) of the schedule.

34. I next have to consider and balance the aggravating factors and mitigating factors which may justify departure from that starting point, to the extent that I have not allowed for them in choosing the starting point.

35. Paragraph 9 sets out a series of aggravating factors that may be relevant. Several apply here, as do two other general aggravating factors.

36. First, and most obviously, Damion was particularly vulnerable due to his very young age.



37. Second, by assaulting Damion in this way you grossly abused your position of trust. You were Damion's father, and he was in your sole care. He was a helpless child. It was your duty as his father to protect him, especially given the difficult start he had had in life and his inability to rely on his mother to care for him.
38. However as both these factors derive from the relationship of father to child I have been careful not to "double count".
39. Third, I am sure that you inflicted mental and physical suffering on Damion prior to his death.
40. The prosecution invite me to consider whether you subjected Damion to mental and physical suffering throughout the whole of August 2023. This is on the basis that no family, friends or social workers saw him after 2<sup>nd</sup> August. Even when your mother saw him on the date, he was in a darkened room and fully clothed.
41. I accept your counsel's submission that it would not be safe to sentence you on this basis, not least because the lovely photographs you took of Damion on 8<sup>th</sup> August do not show any serious injuries to his face.
42. However they do not reflect the whole story because in your own evidence you said that you inflicted the bite mark on Damion's right thigh around a week before 19<sup>th</sup> August, and so around 12<sup>th</sup>. You said you bit him accidentally, in an act of rough play that went too far and that Damion did not respond other than to "jolt". I reject that account. Dr Kouble said that you must have had your jaw open quite wide to inflict this kind of a bite; and that to leave a bite mark with abrasions, a significant amount of force will have been used. This is especially so given that you have said you bit him through not only a sheet but also his pyjama bottoms. He said it would inevitably have been painful for Damion. He would have been distressed and screaming.
43. As I have explained, based on Dr Medcalf's evidence, the very serious injury to Damion's mouth, certain bruising above his nose and left eyebrow and the suspected bite marks on his left arm and left leg had all occurred at least 3 days before his death and so by 6.22 pm on 18<sup>th</sup> August.

44. The assaults that led to all of these injuries would have been frightening and confusing for Damion. Dr Medcalf explained that the frenulum injury in his mouth, in particular, would have been very painful for him and would have bled profusely. He said it would account for the majority of the blood in the flat. It appears likely you used some of the bloodstained clothing found in the flat to stem the flow of blood from the frenulum injury.
45. There are a raft of other injuries which you caused to Damion in the 2-3 days before he died, including serious bruising to the back of his scalp, the soles of both his feet, his neck/jaw area and his right forehead.
46. You caused the eight fractures to Damion's ribs at some point after 6.21 am on 19<sup>th</sup> August. Whether these were caused during the assault that led to the head injury is unclear. Only you know how long it took for the fatal head injury you inflicted on Damion to render him unconscious. It seems likely that he suffered significant pain at least for a short time.
47. For these reasons I sentence you on the basis that you subjected Damion to mental and physical suffering for around a week before his death. That timeframe accommodates your own evidence about the timing of the bite to Damion's right thigh and the pathology evidence about the dating of other injuries.
48. Fourth, there were delays in you summoning medical care for Damion. Dr Medcalf was clear that the frenulum was an injury that required medical treatment not only to treat the pain Damion would have been in but to prevent permanent scarring. Yet you did not call the paramedics for at least 16-17 hours overnight from 18<sup>th</sup> to 19<sup>th</sup> August, and even then, only when you had inflicted the more serious fatal injury to Damion's head. It is also clear that even on your own account you delayed calling 999 for at least 3 minutes when Damion collapsed due to the head injury on the morning of 19<sup>th</sup>.
49. Fifth, actions after the event - including but not limited to attempts to cover up and conceal evidence - can be a factor which aggravates the seriousness of the offence. In my judgment this applies here.
50. Your actions after the event involved telling the emergency services trying to assist your son that he had injured his head by falling on to a coffee table, an account the

jury has rejected. You suggested to police officers at the scene that Damion had had a febrile convulsion of the type he had had in June 2023, another untruth. When interviewed by the police you tried to explain some of the injuries by reference to Damion's own developmental delay and him falling in the normal way that toddlers do. That could only have explained a miniscule amount of the extensive bruising to him. These accounts did not affect the care that Damion received because the paramedic who treated him and the hospital staff were immediately suspicious of what you had done. I therefore afford this factor some, but limited, weight.

51. However I regard your extensive and persistent attempts to cover up and conceal evidence as a powerful aggravating factor. As I have explained, some of your actions in this regard occurred while a paramedic was working on Damion, or in front of a police officer. However it is clear that your attempts to clean up in the bathroom and the laminate flooring occurred before the emergency services arrived, at a time when Damion was already seriously injured and not receiving medical treatment. You clearly placed a higher premium on trying to protect yourself than on trying to help your son.

52. The prosecution invite me to consider the evidence of you going to local shops to buy alcohol, without Damion present. You said Damion was with friends on these occasions and that you were buying alcohol for someone else. I reject those accounts. It is clear to me that you had left Damion alone on these occasions. I afford this factor some weight, but it is far outweighed by the serious injuries you caused to him when you were with him in the flat.

53. I have to balance these aggravating factors against the following mitigating factors.

54. First, I accept your counsel's submission that I should sentence you on the basis that your intention was to cause serious bodily harm rather than to kill. That is a distinction Parliament has drawn and it is appropriate to recognise it in this case. That said, I attach relatively limited weight to it, given that the risk of Damion dying from the serious head injury must have been obvious to you, even if that was not your intention.

55. Your counsel eloquently invites me to conclude that there was no premeditation to cause serious harm. I cannot accept that, given the repeated nature of these serious

injuries which you inflicted on Damion over several days. It cannot be said that the fatal injuries were inflicted in a moment of spontaneous and unforeseen anger, given that you had assaulted Damion before, and in many parts of his body.

56. Second, you are a man of 31 years of age with no previous convictions.

57. Third, you had clearly fought hard to secure custody of Damion and were a doting and caring father to him, before these events. I reiterate what I said earlier, that when you left the residential facility there were clearly happy and positive times for you and Damion.

58. Weighing and balancing all these factors, I have concluded that the aggravating factors significantly outweigh the mitigating ones, such that the starting point needs to be adjusted upwards. Weighing up all these factors the appropriate minimum term is **22 years**.

59. It is important that you and everyone concerned with this case should understand what this means. The minimum term is not a fixed term after which you will automatically be released. It is the term which you must serve before the Parole Board can undertake their first view of the case. They will review the risk that you present at that stage and will consider whether you can properly be released from custody subject to licence and if so on what terms. If you are released you will be subject to licence for the rest of your life. If for any reason your licence is revoked you will be recalled to prison to continue to serve your life sentence in custody. It follows that unless and until the Parole Board consider that your release is appropriate you will remain in custody.

60. I am required to order you to pay the statutory surcharge under section 42 of the 2020 Act and I do so.

61. The days you have already served in custody on remand will automatically count towards sentence. The total number of such days is 325. If this calculation is mistaken, the court will order an amendment of the record with the correct period.

62. Daniel Hardcastle, stand up please.

63. For the murder of your son Damion I sentence you to life imprisonment with a minimum term of 22 years. Go with the dock officer please.

64. Finally, I would like to extend my condolences to Damion's grandmother and his foster parents. I would like to thank the team at Lancashire Constabulary in particular Detective Inspector Darren Irving and Detective Constable Catherine Ramsden, and all counsel and solicitors involved in this case for their hard work, professionalism, compassion and assistance.