



# **Judiciary of England and Wales**

---

## **R v Morgan Kiely**

### **At Chelmsford Crown Court**

### **The Sentencing Remarks of Mr Justice Jay**

**Morgan Kiely,**

**Please remain seated until I ask you to stand.**

**You have been found guilty by this jury of the manslaughter of your child Harry Kiely by gross negligence.**

**This is undoubtedly a tragic case. In many ways you are at the very centre of that tragedy although your responsibility for what happened on that hot July day needs to be spelt out.**

**On 13 July 2022 you together with Harry went with your friend Stevie Steel to Aldi in Clacton to buy three bottles of rose. You travelled in her car. Whether Harry was properly strapped into the child seat and whether that child seat was properly strapped into the car we will never know, but I must proceed on the basis that Harry was. I give you the benefit of the doubt.**

**You were on the beach with Stevie for the best part of three hours. I imagine that Harry was taken out of his pram so that he could enjoy the beach and that you both could enjoy his company.**

**How much the two of you drank is not clear. It may well have been over two bottles but I will work on the basis of the back calculations carried out from samples taken later that evening, and draw common sense conclusions from those. Also, Stevie's ex-partner Mitchell Bassett says that he did not think that the two of you were drunk; just tipsy and happy.**

**Mitchell did offer you both a lift. I accept that his primary concern was that Stevie the driver would carry on drinking, which was the plan. It was Stevie who turned down the lift but alarm bells should have been ringing in your head at that point. You knew how much she had drunk. You could and should have taken up Mitchell's offer and left it to Stevie to worry about the parking arrangements for her car.**

**So, you got into Stevie's car knowing that her judgment was impaired by drink. Your judgment too was impaired by drink, and Harry's safety was your responsibility. It should have been your primary concern that day.**

**The intended journey to your nan's was just over a mile and would not have taken very long but you never arrived.**

**Harry was not secured into the child seat at all. The internal harness was simply not attached. Nor was the child seat properly strapped into the car using the rear seat belt. I am satisfied so that I am sure that you simply draped the seat belt around the back of the child seat and plugged it in.**

Given that I am applying the criminal standard of proof here, I find that this was a one-off failing. I cannot be sure that it was your practice to do this. Indeed, the evidence is that you normally travelled with Harry in your nan's car where the Iso fix base was left. That is easy to use. You told the police at interview that you did know how to use the child seat without the iso fix base. Either you did, and failed to follow the correct procedure on this occasion, or you did not, and failed to take steps to find out how to use it. Your responsibility is the same either way.

The accident happened probably two minutes or so after the car left its parking space on one of the roads perpendicular to the sea front. Stevie lost concentration, hit a parked vehicle, and the geometry of the accident, in circumstances where Stevie's speed was not excessive, led to the car rolling over onto its roof. Harry was thrown out of the rear car window and probably died instantly from catastrophic head injuries.

It could of course be said that you, Stevie and Harry were desperately unlucky. This was not an accident that was likely to happen. Maybe 99 times out of a 100 the car would not have rolled over at this sort of speed and Harry would have survived.

It is a sad and tragic fact that accidents like this do happen in unusual circumstances and as a result of what some would call bad luck. However, the reason why precautions need to be taken is precisely because one cannot assume that luck will always turn out to be good. That is why we have child seats which are designed to protect their occupants in circumstances such as these, and why they have to be used properly. That is also why, putting to one side Stevie's

responsibility for all of this, a mother should not agree to travel with a drunk driver, and – through fear that her judgment might be impaired through drinking herself – alternative travel arrangements should be made in advance to avoid the risk.

In my judgment, the risk of death was in these circumstances obvious and serious, as the jury found. That having been said, I am sure that the risk and its severity was not obvious to you that day.

The jury found that your breach of duty was so exceptionally bad and reprehensible that it should attract a criminal sanction. It is my duty to decide what that sanction must be. I am satisfied that I am able to make that decision without a pre-sentence report. That would tell me nothing that I do not already know.

I must apply the Sentencing Council's Gross Negligence Manslaughter Guideline to your case.

In my judgment, your case falls within Category D, namely lower culpability. This is because your negligent conduct was a lapse in your otherwise good standard of care towards Harry (I will be coming back to that) and your lack of maturity at the time; you were only 19.

The Starting Point under the Guideline is 2 years' custody with a category range of 1-4 years. I do have discretion to go outside these guidelines, but it is obvious to me that the custodial threshold has been passed.

The lapse I am focusing on relates to your failures in relation to the child seat at about 18:30 on 13 July 2022.

The offence is aggravated by your alcohol consumption that afternoon which you knew must have been impairing your judgment as well as

your decision to travel with Stevie knowing that she had been drinking. You knew more or less how much she had drunk.

There is very substantial mitigation here. I have already taken into account your youth and relative immaturity when placing this case within Category D, being the lowest category available to me. I think that it is obvious to everyone in this court room that you were a very good mother to Harry in all respects, and that this was singleton failure. Aside from this incident, you are a person of otherwise good character who at the time looked after old, sick and vulnerable people as a carer. Harry's death has had a devastating impact on you, and on your family, even if it would not be unfair to say that you have not publicly accepted both what you did and failed to do that day. However, I can tell from your demeanour that you do not seriously question the expert evidence in this case.

I do not doubt that this whole experience, starting on 13 July 2022 and not concluding until I finish these sentencing remarks, will never be forgotten by you.

Balancing the aggravating and mitigating features of this case, the sentence is 2 years' custody.

I must now decide whether to suspend that sentence. In making that decision, I take into account the Sentencing Council's guideline on the Imposition of Community and Custodial Sentences.

The factors in your case weighing against the imposition of an immediate custodial sentence are in my judgment that there is a realistic prospect of rehabilitation, there is strong personal mitigation, and immediate custody would have a harmful impact on others, including in particular your 4-month old baby.

As for the countervailing factors, you do not pose a risk to the public or, I think, to your baby; and I am not satisfied that appropriate punishment can only be achieved by immediate custody.

All the factors in the Guideline point towards a suspended sentence.

It follows in my judgment that the right course in your case is to suspend the sentence of imprisonment which I am duty-bound to impose.

I am required to warn you that if you re-offend during the suspension period the Court may activate this suspended sentence in whole or in part. In ordinary language, that means that you would have to serve the activated part of this suspended sentence as well as any sentence the Court imposes on the future occasion to which I am referring. I would like to think that this warning is purely hypothetical.

Morgan Kiely, the sentence in your case for the manslaughter of your son Harry is 2 years' imprisonment suspended for 2 years.