



JUDICIARY OF
ENGLAND AND WALES

CENTRAL CRIMINAL COURT

28 NOVEMBER 2013

R

-v-

BHAYANI and KUTNER

R

-v-

EASTMAN

SENTENCING REMARKS OF MR JUSTICE WILKKIE

MURDER - Count 1

BHAYANI

Rakesh Bhayani you have been convicted of the murder of Carole Waugh. By its verdict of Guilty in respect of you, but not in respect of Nicholas Kutner the Jury has made clear its conclusion that you murdered Carole Waugh, on the night of 16/17 April as you, Bhayani, admitted to witness X, arising out of an argument about money but not as a necessary precursor to the fraud upon which you then embarked. It follows that it was not premeditated or preplanned and I cannot assume that you had as your intention an intention to kill

It is nonetheless clear to me, on all the evidence, and I so find, that, though not required by your fraudulent plan, you did murder her for gain. You had, ruthlessly and without compunction, targeted her, a woman who, though self made, successful and independently wealthy, was a risk taker and manifestly vulnerable

to the machinations of professional con men such as you and your co-fraudster Kutner.

Money was the occasion of the argument out of which you killed her and then, without a second thought, you and Kutner, to whom I will turn in a moment, calmly and comprehensively set about: stealing her identity; using it to defraud banks and other institutions, within three months, of over £250,000 worth of assets; set in train processes which would have realised much greater rewards for you in the near future, and in the course of that emptied an account specifically set up for the benefit of her niece and tried, as far as you could, to denude her estate at the expense of her family. You took steps to ensure that her body would not be found for a sufficient time not only to give you the best chance of evading detection for having killed her, but also, and additionally, to enable you and Kutner to embark upon and complete, if you could, the asset stripping of her persona. You dumped her body in a bag in the boot of an old car, you then left it in various car parks and latterly left her body to rot in a bag, in a car, in a lockup garage. These actions, dismissive and disrespectful of the remains of a woman who regarded you as a friend demonstrated your utter greed, callousness and total lack of any regard or respect for your victim.

Your actions in persisting with your fraud after killing her were breathtakingly wicked and none the less so because you were almost bound, eventually, to be identified as the perpetrator. Your compulsion to feed your addictions to risk taking and gambling and your amorality and selfishness overwhelmed any notion of decency or restraint.

As you know the only sentence I can pass on you for the offence of murder is one of life imprisonment and I do so.

I must fix a minimum term before the expiration of which you will not be considered for release on life licence. The starting point where, as here, the killing

has been motivated for gain is 30 years. The concealment of her body in the way and for the purposes to which I have alluded is an aggravating feature.

As I have indicated, by the verdict of the jury, I recognise that I may not regard Carole Waugh's death, as a premeditated, essential, part of the fraud so as to require her to have been killed , but must regard it as unplanned and committed on the spur of the moment. It nonetheless remains the case that, as I find, you did kill her in the course of, or in anticipation of, the fraud with which you carried on despite her death and having taken prompt steps to conceal her body to enable you to continue to do so.

Having regard to these matters the minimum term which you must serve before you can be considered for release on licence is one of 27 years.

There will be deducted from that term the number of days you have been remanded in custody which will be calculated administratively.

The effect of this is that until the expiration of the minimum term from today you will not be considered for release on licence. Even then you will only be released, if at all, when the Parole Board has been satisfied that it is safe and in the public interest for you to be released. After any such release and for the rest of your life, you will be on licence and liable to be recalled to prison if you were to breach any of the terms of the licence to which you were then subject.

I also have to pass sentences on you on the offences in counts 2 and 3 and I will do so. These sentences will run concurrently to this life sentence. I have taken elements of them into account in determining the appropriate minimum term for this offence.

PERVERTING THE COURSE OF JUSTICE - Count 6

You Rakesh Bhayani have pleaded guilty to, ***and you Nick Kutner have been found guilty of***, perverting the course of justice. On the evidence I have heard I am satisfied, of each of, you that you did, and/or encouraged and assisted in, each of the following: disposing of the dead body of Carole Waugh, by putting it in a bag, purchased for the purpose, removing it from her flat, depositing it in the boot of a car, purchased for the purpose, leaving it in various car parks for about a month and then leaving it to rot in a lock up garage in New Malden having investigated the possibility of disposing of her body at the site in the Cotswolds which you visited together.. Thereafter you arranged for clearing her flat of the vast majority of her personal possessions and you, Nick Kutner, arranged for the flat to be cleaned and her remaining possessions removed and dumped.

All of this, I am satisfied, you both undertook well knowing that Carole Waugh was dead and that, by your actions, you would obstruct and impede the search for Carole Waugh and for the person who was responsible for her death.

In your case, Kutner, I am satisfied, from all of the evidence, that you were present in the flat when Bhayani murdered Carole Waugh, though you were not a party to it and did not encourage or assist in its commission. Nonetheless, you were immediately on board with the actions taken to conceal her death, and thwart the investigation into her murder, by assisting Bhayani in the removal and disposal of her body and clearing up the flat which I have described.

Putting her body in the bag, then removing it from the flat and putting it into the boot of the car, was a job for two people and I am satisfied you both did it. You, Kutner, assisted Rakesh Bhayani in doing what he could not have done on his own, and, a month or so later, you made the arrangements for the trip to the Cotswolds. I am also satisfied that you were instrumental in assisting Bhayani find the lock up in New Malden though you fought shy of accompanying him when he first drove there and then later transported the body there. Later you organised the clearing and cleaning of the flat well knowing that she had been murdered though those

actions were also in part motivated by seeking quickly to realise the value of her flat one way or another by remortgage, sale, or renting to multiple tenants.

I am satisfied in both your cases that not only were you motivated by the desire to conceal what Bhayani had done and to thwart the investigation of her disappearance and murder but also, and I regard this as a substantial aggravating factor, you were both motivated by sheer greed. So greedy were you for what the fraud would bring you that you did not allow the fact that Carole Waugh had been murdered to stand in your way. You, Kutner, were already enjoying the fruits of it on 17 April at the Hilton Hotel and on the 18 April by gambling at the casino funded by the proceeds of the fraud, her jewellery and the gold purchased with her money held by the bank. Thereafter you took the steps I have described to enable you to continue to plunder her estate with impunity for a number of months, thereby gaining for yourselves several months of spending her money on what you, no doubt, regarded as the high life.

The offence, which you knew you were covering up, and were obstructing the investigation of, was murder. Your course of conduct was not only persistent, over a period of months, and comprehensive but it went to the heart of the investigation. The effect of moving and abandoning the body meant that, by the time it was found, it was in such a state of decomposition that the forensic pathologist was unable to say with certainty what the mechanism of death had been and vital clues as to who the murderer might have been were irretrievably lost. Your wholesale removal and destruction of her possessions similarly robbed the investigators into her murder of a potential source of important evidence.

As a result, I have no doubt, of what you did, the investigation into her death was so delayed and hampered that there was a risk, happily not realised, that no one would be convicted of her murder. In any event, your actions caused Carole's family to suffer the agonies of not knowing what had happened to her for several months which have been so eloquently described by Christopher Waugh, Carole's brother, in his statement to this court.

As between the two of you, I find that you, Bhayani, took the lead and had the greater motive, namely to cover up your murder of Carole Waugh. You organised the purchase of the bag, purchased the car, stored it in car parks and drove the body to its temporary resting place in New Malden.

However you, Kutner, assisted and encouraged all this in order to ensure that the flow of gold from plundering Carole Waugh's estate would not stop until it was all gone and played a part, not far short in culpability, to that of Bhayani. No wonder you could not sleep, showed signs of strain and, eventually, you, effectively, blew it all by your multiple renting scam which was bound to be discovered.

Having regard to the authorities to which I have been helpfully referred, but taking account, in both your cases, of the aggravating features to which I have referred, the dismissive and disrespectful way you dealt with her body over a period of months and the additional motivation of greed which drove you both, the sentence upon you Rakesh Bhayani for this offence would, had you contested it, have been one of 9 years imprisonment. In light of your timely plea of guilty I sentence you to 6 years

To reflect your slightly lesser role and the fact that it was not you who was the murderer whose crime you were covering up, but also to reflect the fact that you were convicted after a trial, I sentence you Nick Kutner to 7 years imprisonment for this offence.

CONSPIRACY TO DEFRAUD - Count 2

BHAYANI AND KUTNER

You have both pleaded guilty to this offence. In your case Nick Kutner on the basis that you only became involved from the 16th May long after Carole Waugh had been killed.

I reject that contention. I am satisfied that you were involved in the fraud from the moment it swung into action. You were spending the fruits of the fraud as early as the 17th April when you stayed in the Hilton Hotel, whereas previously you had no money to speak of. You were gambling on the 18th April with a stake far above what had previously been your norm. In both these instances the irresistible inference is that you were using money obtained from the fraud, from your sale of jewellery on the 17th and the sale of gold obtained in the fraud on the 18th.

I find that you, Bhayani, were the instigator and chief organiser of the fraud but you, Kutner, were intimately involved as confidant and adviser. The extent to which each of you substantially benefited financially from the fraud as evidenced by your pattern of spending on hotels, casinos and escorts reflects the leading role of each of you.

I emphasise that, in determining the appropriate sentence for each of you on this conspiracy, I leave out of account the fact that you well knew that the victim was dead. That aspect of the matter is reflected in the sentence I have passed in respect of perverting the course of justice.

This was a complex, serious, fraud committed over a period of months in a sophisticated way involving a number of individuals playing various roles and orchestrated carefully. As a result the identity of Carole Waugh was taken over and stripped of all her assets in a number of different ways as well as saddling her identity with new debts from new sources of credit and, for the vast majority of the time.

The goal of the fraud was to realise all of her assets, including her flat which was worth £650,000. The total potentially realisable was estimated by you Bhayani as of the order of a million pounds. Whilst that is, in my judgment, an exaggeration, but for Kutner's act of greed, or desperation, in letting her flat to two tenants at the same time, a sum well in excess of half a million pounds might have been realised. As the crown points out, however, it is an aggravating feature that the

intended subject of the fraud was no less than the entirety of Carole Waugh's worldly goods including the provisions she had made for her niece.

I have regard to the sentencing guideline applicable to banking and insurance fraud to which I have been referred, as well as to the fact that each of you has an appalling record for offences of dishonesty the majority of which are for offences of fraud

Bearing in mind all these matters but also bearing in mind, particularly in your case Kutner, the principle of totality, in my judgment the appropriate sentence for you Bhayani after a trial would have been one of 9 years imprisonment and for you Kutner 7 years imprisonment.

Bhayani, you are entitled to full credit for your plea of guilty, the sentence I pass is 6 years which will run concurrently to the sentence for perverting the course of justice and to the life sentence which I have passed. In your case Kutner, your plea of guilty was on a specific and limited basis which I have, after hearing the evidence in this trial, rejected. You are not therefore entitled to full credit for a plea of guilty, though you are entitled to some credit. As a result I sentence you to 6 years imprisonment for the conspiracy to defraud. That sentence will run consecutively to the sentence of 7 years for perverting the course of justice.

I also have to sentence you Kutner for the three specific offences of fraud to which you have pleaded guilty in respect of the prospective sale of Flat 6 (count 3) and the renting of that flat to two different tenants who paid you respectively £3,900 and £7,000. (counts 4 and 5).

In respect of each of these you are entitled to full credit for your pleas of guilty. I apply the guidelines in respect of confidence fraud. For the fraud in respect of the prospective sale of the flat the starting point after a trial is 5 years, the sentence I pass is 40 months count 3. For the other two frauds, for each of them the starting point after a trial is 2 years, the sentence I pass is 16 months counts 4 and 5. Each

of these sentences will run concurrently to each other and to the sentence I have passed for the conspiracy to defraud.

Thus the total sentence on you Nicholas Kutner is one of 13 years. You will be released on licence after you have served half of that term less the days you have been remanded in custody. Thereafter when released on licence you will be liable to recall if you were to be in breach of the terms of the licence to which you will then be subject.

DEREK EASTHAM

I have to sentence you for two offences counts 10 and 24 to which you have pleaded guilty Possessing criminal property namely counterfeit currency, a small number of euros and £50 notes which you never attempted to pass on as they were so poor, and money laundering, namely allowing your bank account to be used to pass £4,500 through it and to translate it into cash when you knew it represented the proceeds of a fraud, though you were unaware of its nature or extent.

I have had regard to the helpful note on sentencing prepared by the prosecution on the appropriate levels of sentence for offences of this nature and seriousness and note, in particular, that as a result of your involvement, far from gaining from it, you were put to considerable inconvenience and difficulty because the bank froze your account through which your benefits were paid leaving you for a time potentially without any financial support.

You not only pleaded guilty to these counts but you supported the prosecutions of Bhayani and Kutner by giving evidence which, I accept, was honest and helpful to the court.

I have read your letter to the court and the pre sentence report. At times you have been a person of great promise and achievement but you have also had very hard

times to an extent exacerbated by your weakness for alcohol. You accept that when persuaded to commit these offences you were gullible and were duped into involvement with something that was totally out of your league. You have a number of previous convictions for minor offences of dishonesty and have served a number of short sentences. You are clearly easily led and susceptible to be drawn into schemes of dubious legality.

However I note that there is presently an element of stability in your life both in terms of your accommodation and the work you have, selling the Bug Issue. I am persuaded that, although your offences, coupled with your record, cross the custody threshold, no benefit would be served by making those sentences immediate. You should be given the opportunity to consolidate the positive elements in your life and, with the support of the probation service, to seek to resist the types of temptation which led you to be here.

The sentences I pass are for the offence of possessing criminal property count 10 a sentence of 6 months imprisonment, for the offence of money laundering count 24 a sentence of 12 months imprisonment. Those sentences will run concurrently and will be suspended for a period of one year. There will be a suspended sentence supervision order for a period of one year. If you avoid offending during that period of a year then no further action will be taken. If you were to offend again during that year, however, any court dealing with you for that further offending may also activate all or part of this sentence.