



JUDICIARY OF  
ENGLAND AND WALES

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-v-

NATHAN PICK

NOTTINGHAM CROWN COURT

10 MAY 2013

SENTENCING REMARKS OF MR JUSTICE FLAUX

1. Nathan Pick on 8 May 2013 you pleaded guilty to the manslaughter of your 7 month old son James Pick who died a year ago on 9 May 2012. At the time you lived with the baby's mother, your then partner Hannah Goldby in Chaddesden, Derby. The background to this tragic death is as follows. James was born on 5 October 2011 with a number of medical problems requiring surgical treatment, including corrective heart surgery. A little over three months of his early life were spent in hospital. These medical difficulties meant he had to be fed through a naso-gastric tube. I accept that you helped with this task. Despite these problems once settled at home he was reported as growing well and developing normally.
2. Up until about March last year your relationship with your son appeared normal, but around that time it changed for the worse. Whenever you went near James he would become distressed and scream or cry. As soon as his mother took him he would settle down. You clearly found this reaction of your son frustrating and upsetting and described it to a cousin of Hannah's in April 2012 as breaking your heart. The problems you had of bonding with James and the demands of caring for him put a strain on your relationship with Hannah. You told her you could not cope with the crying and wanted to give up.
3. On Sunday 6 May 2012 Hannah left you alone for the day with James and went to her mother's. You rang up clearly stressed saying James would not stop screaming and could Hannah come home. She said she would return in an hour but you asked her to come straight away such was the stress. When she walked into the house he stopped crying and you said "thank fuck for that".
4. On Tuesday 8 May 2012 in the afternoon the three of you went into Derby city centre. On arrival you went off on your own to chill out with friends whilst Hannah and James went shopping then went home where she fed him.

You got home about 5.30. Hannah's mother came round with some medication for the baby shortly before 6.15. You and Hannah decided to have fish and chips and her mother drove her to the local fish bar to buy the food. At the time she left James was asleep in his swing chair. Almost on arrival inside the shop at about 6.26 so only some ten minutes after she had left you alone with the baby, she had a telephone call from you asking her to come back quickly, saying he's fitting and I think he's dead. She came back having told you to dial 999 which you did. The ambulance came and James was taken initially to Royal Derby Hospital then to the QMC here in Nottingham. A CT scan and subsequent MRI scan revealed extensive brain injury with haemorrhaging, brain swelling and bleeding into the spinal cord and examination by an eye specialist revealed extensive injuries to the backs of the eyes including haemorrhages and retinal detachment. It became clear to all the treating doctors that further intensive care was futile and James was taken off life support and died at 10.26pm on 9 May 2012.

5. The post mortem examinations by Dr Stuart Hamilton and other specialist pathologists found numerous head injuries and extensive brain injury and catastrophic bleeding to the eyes and retina all indicative of severe blunt trauma and inconsistent with an accident or with accidental impact with the baby's swing chair which is what you were suggesting had happened. Despite the weight of that medical evidence pointing to deliberate infliction of these injuries upon the baby, until your plea of guilty two days ago you were maintaining you were not responsible, that the injuries had arisen accidentally or that James' mother was in some way to blame.
6. As you now accept by your plea of guilty to manslaughter, you had caused those injuries which led to James' death. When Hannah went out to fetch fish and chips, as always happened when the baby was left alone with you, he started screaming. The stress and frustration that generated in you caused you to snap and in momentary anger you hit James with the back of your hand so that he hit his head on the chair. You did not intend to kill him or cause him serious physical injury, but again, as your guilty plea demonstrates, you now accept that this blow was an unlawful act which any reasonable person would have realised would cause James some physical harm. How could it be otherwise with a small vulnerable baby?
7. This is a tragic case in which a moment of anger and frustration caused the death of your baby son, a senseless act of violence with the consequences of which you will have to live for the rest of your life. It has ruined the life of your ex-partner Hannah who had already previously lost another baby Zoe in a cot death and it has devastated her family. I have considered the moving impact statement from Hannah. Inevitably as people do in such situations she asks herself over and over what she could have done to stop you and blames herself, when the stark reality is that only you are to blame for the death of your son. I have also borne in mind in sentencing you the effect on your other child, your 12 year old son.

8. Manslaughter is a serious offence for the purposes of the dangerousness provisions of the Criminal Justice Act 2003 but I am satisfied that you are not dangerous within the meaning of those provisions. Nonetheless the case is of such seriousness that it passes the custody threshold and clearly only a substantial custodial sentence would be appropriate to meet the seriousness of the offence you have admitted.
9. The authorities on sentencing for manslaughter since the enactment of the Criminal Justice Act 2003 have emphasised that whilst there is no express link between the guidance in Schedule 21 to that Act as it applies to murder and sentencing for manslaughter, the Act has increased the punitive element in the sentence for murder and the intention of Parliament is clear that other crimes which result in death such as manslaughter should be treated more seriously and dealt with more severely than before. That point was made expressly in the context of diminished responsibility manslaughter by Lord Judge CJ in *R v Wood* [2010] 1 Cr App R(S) 2 at [23]. Precisely the same point was made by the Lord Chief Justice in the context of unlawful act manslaughter arising out of street disorder in *Appleby* [2010] 2 Cr App R(S) 46 at [22].
10. In *R v Burridge* [2010] EWCA Crim 2847 at [137] to [139] Leveson LJ considered those authorities and concluded the principles set out in those authorities applied equally to unlawful act manslaughter of babies and children. In that case the defendant was convicted of the murder of his baby son, but on appeal the Court of Appeal allowed the appeal on the grounds of fresh evidence and substituted a verdict of manslaughter. In those circumstances the defendant fell to be sentenced by the Court of Appeal for manslaughter. The Court of Appeal substituted a sentence of 10 years imprisonment for the original sentence for murder of life imprisonment with a minimum term of 13 years.
11. Your counsel Mr Smith QC relies upon the subsequent decision of the Court of Appeal in *Draper* [2011] EWCA Crim 640 as setting *Burridge* in context. That was an Attorney General's Reference in respect of a sentence of three and a half years imprisonment in fact by the same trial judge as *Burridge* where, as in this case, the defendant had killed his baby son and had been originally charged with murder but a plea of manslaughter was eventually accepted by the prosecution. The Court of Appeal found the sentence was too lenient and substituted one of 5 years imprisonment. It is to be noted that in his judgment the Lord Chief Justice endorsed the conclusion by the Court in *Burridge* that the principles in *Wood* and *Appleby* applied equally to cases of unlawful act manslaughter of babies and children.
12. In *Draper* the Court of Appeal imposed a lesser sentence than in *Burridge* in part because as Mr Smith emphasised some of the aggravating features in *Burridge* were absent in that case, specifically that, in *Burridge*, the

defendant's intention fell just short of what would be the requisite intent for murder, that in that case the defendant had committed previous proven violent acts against the child, that he had been warned previously to seek help about his bad temper and that he lied to the authorities about his care of the child. With the possible exception that in this case you have lied about your responsibility until this week I agree with Mr Smith that those aggravating features in *Burridge* are equally absent in your case.

13. However, as the Court of Appeal made clear in *Draper* the sentence of 5 years imprisonment was substituted on the basis that the defendant was entitled to a full one third credit for his plea of guilty so that sentence equated to one of 7 and a half years after a full trial. Furthermore, as with all Attorney General's references one has to recognise that where the Court of Appeal increases the sentence it has in mind the principle of double jeopardy and imposes a lower sentence than would have been imposed at trial. Applying that principle it seems to me *Draper* should be approached on the basis that the appropriate sentence by the sentencing judge would have been 8 and a half years following a trial.
14. Whilst I agree with Mr Smith that the aggravating features identified by the Court of Appeal in *Burridge* are absent here as they were in *Draper*, nonetheless there are aggravating features. As in *Draper* this is not a case of a parent driven to the end of his tether by the child. You were alone with James for no more than ten minutes and so it is difficult to see how that kind of end of your tether situation could have developed in that short a time frame. The reality is that for whatever reason your baby son would not bond with you and cried whenever he came near you. No doubt that was upsetting and frustrating but it could hardly be said to be something for which a seven month old baby could be to blame and Hannah had urged you to be patient and to persevere, which clearly you did not do.
15. Equally, as in *Draper*, until the moment earlier this week when you pleaded guilty to manslaughter, you have lied about your responsibility for what happened to your baby son, even to the extent of seeking to attribute to his mother the violence you inflicted on the child. On any view that is an aggravating feature justifying a greater sentence than you would otherwise receive. Furthermore, although in *Draper* the defendant sought to explain the baby's injuries as attributable to some accident in the baby bouncer as you have done here, he did not seek to blame the baby's mother as you did, with all the agonising consequences for Hannah in this case. That accusation albeit no longer pursued is an additional aggravating feature absent in *Draper*. Having said that, I accept that this is not a case in which, as in *Draper*, there was some prior warning of what might happen if the child's head hit the chair.
16. In sentencing you I take into account everything Mr Smith has said on your behalf in mitigation, including the genuine remorse you have shown together

with your previous good character, from which I conclude that as the prosecution fairly accepts, you are not a bad or violent man. I accept also that this is not a case of an unwanted child but of a child you wanted and loved and that you had never previously shown violence towards James or towards your other son.

17. Nonetheless as the Court of Appeal decisions to which I have referred emphasise the court has to focus on the fact that a victim, here a defenceless and vulnerable baby who was your own child, has died as a consequence of your unlawful act. In my judgment if this matter had gone to a trial and the jury had convicted you of manslaughter the appropriate sentence would have been one of 8 and a half years imprisonment.
18. Unlike in *Draper* there is no question of your being entitled to a full credit for your plea of guilty. In the light of the overwhelming medical evidence that the injuries suffered by baby James were deliberate and not accidental you could and should have pleaded guilty at a much earlier stage. You did not in fact do so until 8 May 2013 the day when the trial was due to start although ultimately some week and a bit before the actual trial date. However, exceptionally I take into account that the plea you have entered has been under consideration with Mr Smith QC for about a month. In the circumstances you are entitled to more credit than the one tenth you would normally get for a guilty plea just before the trial. The sentence is one of 7 years imprisonment, so a credit of just under 20 per cent.
19. Of that sentence, you will spend one half in custody, after which you will be released on licence for the remainder of the sentence. If, during your licence period you commit any other offence you are likely to be returned to custody. The days spent on remand will count towards the sentence. The statutory surcharge provisions will apply.