



R. v JOHN DOAK

CHELMSFORD CROWN COURT

9 NOVEMBER 2020

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SENTENCING REMARKS OF  
MR JUSTICE CAVANAGH

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1. John Doak, you come before me for sentence having pleaded guilty to the manslaughter of Jack Doak, also known as Jack Mitchell.
2. Jack was your son. He was born on 19 January 2001 and died aged 15 on 13 March 2016. However, the cause of his death was a shaking-type assault that you inflicted on Jack, many years previously, on 22 May 2001, when he was only four months old.
3. In the intervening period, Jack suffered from brain damage and from other very serious health problems that were the direct result of your assault on him.
4. When Jack was born, you were 17 years old. You are now 37 years old. At the time of the assault you were aged 18, and were in a relationship with Jack's mother, Katy Harris, and you lived together with her and with Jack in Laindon, in Essex.
5. I have seen pictures of Jack as a baby and he was a lovely little boy. Tragically, he did not have sufficient time for his personality to develop before the assault that led to his severe disabilities.
6. You were only in sole charge of Jack on four occasions. These were on 28 March, 31 March, and 18 May 2001, and then on 22 May 2001 itself. On each of those occasions, Jack stopped breathing or was struggling to breathe and had to be rushed to hospital.
7. Jack was only discharged from hospital, after the episode on 18 May 2001, on 22 May 2001 itself.

8. On the afternoon of 22 May 2001, you were on your own at home with Jack. Katy had gone out to visit a friend in hospital. You called an ambulance because Jack had stopped breathing. You told the ambulance crew that you had been giving Jack a bottle. You said that you had been on the phone to Katy. She said that she could hear crying over the phone. You told the ambulance crew that you had put the phone down and then noticed that Jack was going white. He had stopped crying and his heart was beating fast. You said that you put Jack over your shoulder and flicked his toes. You called for an ambulance. Jack then went blue and you could not find a heartbeat. You were advised how to do CPR on Jack whilst the ambulance was on its way.

9. This was essentially the same story that you told in your police interview later in 2001.

10. The story that you had told the ambulance crew and the police was not true. You now accept, by your plea of guilty to manslaughter, that you assaulted Jack whilst you were alone with him on 22 May 2001, and that this was what had caused his injuries.

11. When the ambulance crew arrived, they found Jack unresponsive, with slow breathing and a low heart rate. Jack was taken to hospital where he was found to have suffered an irreversible brain injury. He suffered a triad of intracranial injuries consisting of encephalopathy, subdural haemorrhages, and massive retinal haemorrhages. Jack survived his injuries at that time, but was left severely disabled. He had no pre-existing conditions that could have led to these injuries.

12. I have seen the reports that were prepared by the Prosecution and Defence medical experts as part of the trial preparation. Those experts agreed that the absolute degree of force required to cause the injuries that Jack was suffering from when he arrived at hospital on 22 May 2001 is not known, but that it would be likely to be viewed as being an obviously inappropriate way of handling a baby if seen by an independent witness.

13. Only you know exactly what form the assault on Jack took on 22 May 2001, or how severely you shook him, or why you did so. However, I sentence you on the basis that you did not intend to kill him or to cause him really serious harm. This is why you are being sentenced for manslaughter, rather than for murder.

14. In your police interviews in 2001, you emphatically denied that you had shaken Jack or caused any harm to him.

15. On 27 November 2002, you were convicted at Basildon Crown Court of inflicting grievous bodily harm upon Jack on 22 May 2001, with intent to cause grievous bodily harm, contrary to section 18. You had pleaded not guilty. At the trial in 2002 you attempted to blame Jack's mother, Katy, for his injuries.

16. You were sentenced to 4 years in a young offender's institution. You served approximately 2 years and 8 months in custody. I will take this sentence into account when I sentence you for manslaughter, as it arises from the same incident.

17. At the same trial, you were acquitted of three other counts of grievous bodily harm with intent to cause grievous bodily harm, under section 18 of the Offences Against The Person Act 1861, and also of three alternative counts of grievous bodily harm under section 20 of the same Act. These related to the three earlier occasions when Jack had become seriously ill whilst in your sole care. I stress, therefore, that I do not sentence you on the basis that you had assaulted Jack on these previous occasions, or on any other occasions. I sentence you only for the assault on 22 May 2001 which led to his death. However, these previous incidents when Jack had to be rushed to hospital are relevant to the extent that they mean that you will have been aware of how fragile and vulnerable small babies are.

18. Your assault on him left Jack severely disabled. As a result of it, he suffered from severe brain damage. He suffered from four limb cerebral palsy, epilepsy, scoliosis, and from dislocated hips.

19. During his short life, Jack was cared for, devotedly, by foster carers. I want to pay tribute to his foster parents for the love, selflessness, and kindness that they showed towards Jack in very difficult circumstances.

20. Jack required 24-hour care because of his injuries. He had very severe learning difficulties with minimal ability to interact with the surrounding environment. He had a very limited ability to move. He was blind and was unable to talk, or care for or feed himself. He was fed directly through a tube into his stomach. To begin with, he had many fits a day, and episodes of vomiting. He suffered from recurrent respiratory tract infections. It is plain to me that, as a result of the attack, Jack's quality of life was very poor indeed, if not non-existent.

21. In February 2016, Jack developed respiratory symptoms and pyrexia. His condition deteriorated and, on 13 March 2016, the medical team and Jack's foster father decided that the treatment was merely

extending his suffering with no hope of recovery. He died that day. There is no doubt, in light of the medical evidence, that the cause of Jack's death nearly 15 years' later was linked to the consequences of the injuries that you caused on 22 May 2001. Had he not sustained the injuries in 2001, he would not have died in 2016.

22. You voluntarily attended a police interview on 20 September 2017 and answered "no comment" to the questions that were asked of you. You were charged with murder on 12 September 2019.

23. At your trial in 2002, you had denied that you shook or assaulted Jack on 22 May 2001. You maintained that denial in these murder proceedings, right up until you pleaded guilty to manslaughter at the start of this trial.

24. Indeed, at that first trial, though not in these proceedings, you blamed Katy for assaulting Jack.

25. There is a Sentencing Council Guideline for the offence of manslaughter, which I must apply unless I am satisfied that it would not be in the interests of justice to do so.

26. In my judgment, your offending comes within offence Category C. This category falls between high and lower culpability. High culpability is where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of grievous bodily harm or where death was caused in the course of an unlawful act which carried a high risk of death or grievous bodily harm which was or ought to have been obvious to the offender. Low culpability is where there was no intention by the offender to cause any harm and no obvious risk of anything more than minor harm. Neither of these describes your culpability in this case. You were the only person present on 22 May 2001, apart from Jack, but you have never come clean about what happened. You have not described the assault, or what your intentions were. As a result, I have to do the best I can with the remainder of the material available to me. The two key matters are the medical evidence that I have already referred to, and the fact that you had already had experience of three medical emergencies involving Jack. This was a single incident, probably involving a temporary loss of control, but the fact remains that you shook a small and defenceless baby in a way that you must have known was a rough and inappropriate way to treat him, and which might cause him real harm. I am satisfied that your case comes at the top end of Category C.

27. For Category C cases, the starting point is 6 years' imprisonment, and the category range is from 3 to 9 years' imprisonment.

28. The most important aggravating feature in this case is the great suffering and low quality of life that Jack endured for nearly 15 years as a direct result of the assault. This is a highly significant factor and must be reflected in your sentence.

29. Other major aggravating features are that you were in a position of trust, and, which is really a different way of saying the same thing, Jack was particularly vulnerable. Moreover, you were, as I have said, aware of how fragile and vulnerable small babies can be as a result of your experience of calling for medical help when he stopped breathing in your sole care on three previous occasions. Although you were a young man at the time, you could not have failed to understand how vulnerable Jack was.

30. Were it not for the mitigating features that I am about to come to, and the special and unusual features of this case, these aggravating features would be reasons for passing a sentence, in the interests of justice, which was higher than the top of the range for Category C.

31. On the other hand, there is substantial mitigation in your case.

32. The offence was of short duration, and, as I have said, involved temporary loss of control. The offence was not premeditated. You called the emergency services on 22 May 2001 and you performed CPR on Jack.

33. You were very young when the offence took place, only a few months over the age of 18, and you were of previous effective good character.

34. Moreover, since then you have turned your life around. You were convicted of one offence of possession of cannabis in 2002 which I will disregard for the purposes of this sentence. You have not been convicted of any offence in the 16 years or so since you were released from custody after the sentence that was imposed in 2002 and have just had one caution during this period, for a minor public order offence, which again I will disregard. You have lived a law-abiding and productive life, as a worthwhile member of the community. This is important mitigation.

35. You have been in regular employment as a lorry driver. You do charity work. You have a supportive wife and wider family and friends. You are father to three children and step-father to three more, and you have a close and loving relationship with your family. You and your family

have faced serious challenges since news of your murder charge came out, and your family will be adversely affected by the sentence for this offence.

36. I have taken account of the character evidence from your wife, and the positive character references that I have been provided with.

37. You have lost your son and you will also have to live with the guilt of what you have done. I am satisfied that you genuinely mourn his loss. However, I am not satisfied that you have shown significant remorse, as you maintained the denial that you had assaulted Jack until a few days ago.

38. I do not regard the very fact that nearly 20 years have elapsed from the date of the assault to your conviction for manslaughter as leading to very substantial mitigation. It is some mitigation, and I have made allowance for it, but not very much. I accept that this has made your eventual prosecution all the more stressful for you. However, the delay is principally because Jack took nearly 15 years to die, and, during that period, as I have said, Jack suffered a very poor quality of life.

39. The next step is to consider a reduction for your guilty plea. You pleaded guilty at the start of trial and, in accordance with the Sentencing Council Guideline for guilty pleas, I will make a slightly more than 10% reduction from the sentence that I would otherwise have imposed to take account of your guilty plea. I do not consider it appropriate to make a larger reduction in all the circumstances of your case. You maintained your denial that you carried out any assault at all on Jack on 22 May 2001, until last week. You did not offer a plea to manslaughter at any earlier stage. You did not need medical evidence before accepting that you carried out the assault.

40. Manslaughter is an offence listed in Part 1 of Schedule 15B of the Criminal Justice Act 2003 and so I must consider whether you are dangerous, and, if so whether that I should impose an extended sentence upon you.

41. I am fully satisfied that you are not dangerous. An offender is dangerous if the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences. The fact that you have not been convicted of any offences, of any sort, since 2002, and have, during that period, participated safely and constructively in the upbringing of your three children and your three step-children fully satisfies me that you are not dangerous. The prosecution did not positively submit that you are dangerous.

42. There are two further matters that I should mention, before coming to your sentence.

43. The first is that you will effectively be serving your sentence in two stages, consisting of the sentence that you already served for grievous bodily harm and the sentence that I am about to impose for manslaughter. I have taken this into account. The overall sentence that you serve for the events of 22 May 2001 will not be greater than it would have been if you had never been convicted for grievous bodily harm. In fact, because of the sentence in two stages, plus changes to sentencing law over time, the maximum total length of time that you will spend in custody, before being released on licence, will be somewhat less than if your only sentence for those events was a sentence of the same overall length today.

44. The second matter is that, in my judgment, it would be wrong to reduce your sentence to take account of an estimate of what it might have been before the Manslaughter Guideline came into force. The Guideline applies to offences that were committed before the Guideline came into force and, in any event, having read the authorities placed before me by the Defence, I am not persuaded that sentences imposed after applying the Guidelines to this type of offence will be manifestly higher than sentences that would have been passed before the Guidelines came into force. I also bear in mind that the offence was not complete until Jack's death in 2016.

45. I now come to the sentence.

46. Taking account of all of the circumstances of the case, I have decided that the appropriate starting point for the sentence, having taken account of culpability and mitigation, is a sentence of 8 years' imprisonment. I will reduce this starting point to 7 years for your guilty plea.

47. I then have to take account of the fact that you have already served a 4-year sentence for this assault. I have decided that I should deal with this by reducing the 7-year sentence that I would otherwise have imposed by 4 years, to a sentence of 3 years' imprisonment.

48. This is the least possible sentence I can impose, having regard to the seriousness of this offence.

49. Accordingly, you will go to prison for 3 years. You will serve up to one half of your sentence in custody. You will serve the remainder on licence. You must keep to the terms of your licence and commit no further offence or you will be liable to be recalled and you may then serve the rest of your sentence in custody.

50. The appropriate statutory victim surcharge will be applied.

51. In light of the custodial sentence that I have imposed, and your means, I will not make an order for costs in favour of the Prosecution.