



JUDICIARY OF
ENGLAND AND WALES

**Sentencing remarks of
The Honourable Mr Justice Fraser**

**The Queen
v
Zak Bennett-Eko**

**Manchester Crown Court
Sitting at the Nightingale Court at the Lowry Theatre**

1 December 2020

1. Zak Bennett-Eko, the jury convicted you unanimously yesterday of Manslaughter by Reason of Diminished Responsibility. The victim of that crime was your baby son, Zakari, who was only 11 months old. I must now sentence you in the light of that verdict. I am sentencing you in your absence because you are not well enough to attend. Other than the first day when you were arraigned, you have not attended your trial at all. You are currently in Ashworth Hospital, a high security mental health hospital.
2. This case is very tragic. Any case involving the unlawful death of a small baby is extremely sad, but this one is particularly so. You took your son, Zakari, out on the afternoon of 11 September 2019 for a walk in his pushchair. Your son's mother, your partner Emma, never suspected that there was any risk to the child from you. Indeed, all the evidence is clear that he was a well cared-for baby. However, at about 4.20pm that afternoon you took him down to the River Irwell at Radcliffe near to where you lived as a family. You picked the baby up out of his pushchair; held him in your arms; swung him from side to side as any parent might, if they were playing with their small child; hesitated; and then you threw him over a 5 foot high fence and into the fast flowing river.

3. Members of the public clearly saw you do this – indeed, you made no effort to hide it. They were extremely shocked. Two teenagers raised the alarm almost instantly. Another person, Mr Russell, bravely went into the river from the bridge to try and rescue your son, but by the time he got into the water he had lost sight of the child. The police and emergency services did their best, but even using the police helicopter could not find and rescue the baby. Your son was not found until approximately one hour later, much further down the river by the weir. The first Emma knew of any of this was when the police called at her house, and explained to her what had happened. By 7.30pm that evening she found herself identifying the body of her small son at the hospital. He had died through a combination of drowning and hypothermia. Emma was 8 months pregnant at the time with your second child.
4. Immediately after the offence you went to a nearby public house. Your behaviour there was sufficiently unusual that people realised the incident must have something to do with you. You told a member of the public what you had done, and indeed explained it to the police once they arrived and spoke to you. You were immediately arrested. You were later assessed at the police station by two psychiatrists and found well enough to be interviewed. You were also found well enough to be held in HMP Forest Bank. You were later transferred to Ashworth Hospital, a high security hospital for mentally ill offenders, where you remain.
5. Your background and medical condition are as follows. You have a mental illness, namely paranoid schizophrenia. You have had this since a young age – you were first diagnosed at about 12 years of age. At the time of these events, you were 22. You have some minor convictions from when you were a juvenile but none that are relevant to this offence. When you were 15, you were sectioned under the Mental Health Act and admitted to a secure adolescent mental health institution called the Gardiner Unit. Upon discharge from there in 2016, you were made subject to a Community Treatment Order, with certain conditions. That Order was made for a 12 month period, and when it came to an end in February 2017, you were discharged from the community mental health team and put under the care of your GP. Dr Crosby, your treating clinician at Ashworth, describes that transfer from the community mental health team as a mistake. It clearly was.

6. However, it is not the only failure of the system in your case. You seem to have slipped through the net in terms of care for your mental illness, which with hindsight was far more serious than was realised at the time. You were on two types of medication, and had regular appointments with your GP. However, in the months leading up to this offence, you stopped picking up your prescriptions, and efforts made by your GP to contact you failed. You also failed to take your medication regularly in any event. You had also used cannabis on a regular basis and this exacerbated your mental illness, although I accept that you stopped using this about 3 weeks before the offence.
7. From August 2019 onwards you began to relapse in terms of your mental illness. There is a picture of attempts both by you, and Emma, during this period to seek professional help for your obviously deteriorating mental state. You attended A&E at the North Manchester General Hospital no fewer than 4 times in the couple of weeks leading up to the offence, and 6 times in all. You were extremely ill, and becoming more ill.
8. However, your rapidly deteriorating mental state went unnoticed on each occasion you presented at A&E. You expressly asked to be sectioned. The notes of one of those visits positively states “no emergency, no urgency” and you were again simply referred back to your GP. One on occasion you left the hospital before you could be seen and advised. It will be no consolation to Emma that she did her best, whilst 8 months pregnant and also looking after Zakari, to look after you as well, and to try and obtain the help for you that you needed. The text messages she sent to her friends and family at the time paint a picture of increasing desperation on her part. She was plainly trying her hardest to help you. However, she never thought there was any risk that you could harm Zakari, her baby and your son. She thought you might harm yourself, but she did not think you could hurt your baby, still less kill him by throwing him into the river. She had no concerns about leaving you alone with him. He was a well cared-for child.
9. The court heard the evidence of three expert psychiatrists, all from Ashworth, which is one of the most secure mental health hospitals in the country. Dr Higgins, the Head of Clinical Care there, made it clear that nobody could have predicted what was to happen. She also explained, as did the other experts, that you are

amongst the most ill of the patients even at Ashworth. The psychiatrists were not agreed upon whether you knew what you were doing at the time was wrong by the standards of reasonable ordinary people. The opinion of both Dr Higgins and Dr Crosby – your treating clinician – is that you met the legal test for insanity. It was for this reason that the defence contended for the special verdict on the count of murder you faced at trial, namely that you were Not Guilty by Reason of Insanity. Dr Qurashi disagreed with them and considered that you did know that what you were doing was wrong.

10. However, they were all agreed that you were in an extremely disordered state at the time of the offence, and that your responsibility for your actions was diminished as a result. You also have an extremely low IQ, namely one of 56, which is in the bottom 0.2% percentile of the population.
11. All three experts were agreed that you met the relevant test that you were entitled to be found Guilty of Manslaughter by Reason of Diminished Responsibility. The Crown did not seek a verdict of Guilty on the charge of murder. The jury rejected the defence of Not Guilty by Reason of Insanity and convicted you as I have explained. That means that the jury considered that you knew what you were doing was wrong by the standards of reasonable ordinary people. You were suffering from both delusions and hallucinations at the time of the offence, but it is difficult, if not impossible, to explain why you did what you did, other than it was something brought on by your psychosis.
12. I have heard the Victim Personal Statement from Emma, which was read to the court. It is a moving account of the devastation she has experienced as a result of her first born child being killed by you in the way that I have described.
13. In approaching the matter of sentence, I must have regard to the Sentencing Council's Manslaughter Definitive Guideline. This requires me, first, to determine what level of criminal responsibility you should be treated as having retained in circumstances where, as pointed out in the Definitive Guideline, a "conviction for manslaughter by reason of diminished responsibility necessarily means that the offender's ability to understand the nature of the conduct, form a rational judgment and/or exercise self-control was substantially impaired".
14. It is an aggravating factor that Zakari was particularly vulnerable. Indeed, it is difficult to imagine anyone more vulnerable than a small baby. You were trusted

by Emma to look after your son. However, all the signs are that you had always done so well in the first 11 months of his life, and indeed it is a central feature of the psychosis that you were experiencing at the time of the offence that you acted in the way that you did. You were experiencing both hallucinations and delusions in the days leading up to the day in question, and indeed on the day itself, and during the walk down to the river.

15. I have heard all the psychiatric medical evidence which was given in the trial. You are plainly extremely ill now, and were very ill at the time of the offence. You were not so ill that you did not know what you were doing was wrong. However, in my judgment your mental illness at the time means that you were at the lower end of the scale in terms of culpability. You did not always take your medication, but given the lack of insight you had this does not increase your culpability. Those with paranoid schizophrenia often do not take their medication, as was explained to the court by all the doctors.
16. The second step for me to consider is factors that reduce seriousness. The regular trips you made to A&E show that you made genuine and sustained attempts to seek professional help. You were trying, as best you could in this respect, and you expressly asked to be sectioned. Your difficulties in communicating would have made it a lot more difficult for doctors in a busy A&E department to recognise your mental state, and sadly, on each occasion you presented at the hospital the help you needed was not available. You have serious medical conditions requiring urgent, intensive and long-term treatment. You have shown remorse, and what you did to your son was not premeditated. You are young, 22 at the time, but with a low IQ and a mild learning disability.
17. I have also again heard from the same three psychiatrists in court after the jury returned their verdict. All three of them are approved by the Secretary of State under s. 12(2) of the Mental Health Act 1983. It is apparent from what these experts say that you are an extremely dangerous individual. The test for admission to Ashworth is that a person must pose an immediate and grave danger, a condition you satisfied last year and continue to satisfy. Indeed, you remain in the highest dependency ward at Ashworth, and attempts to move you to a less secure part of the hospital have failed. The defence accept that you are properly characterised as

dangerous, and this conclusion is an inescapable one in your case. Dr Higgins explained that in order even to be admitted to Ashworth, you have to present a grave and immediate danger, and I unhesitatingly conclude that you are dangerous.

18. It is plainly envisaged in the Definitive Guideline that there will be cases where a penal element is not appropriate and that those will be the cases where the level of responsibility is at its lowest because the level of impairment was at its highest. I am of the view that, considering the circumstances of this case in the round (in particular the factors which I have already identified as reducing seriousness or reflecting personal mitigation) and taking into account the agreed expert evidence, this is a case in which the level of your responsibility is low and such an element is not justified.
19. I have to consider the obvious question of mental health disposals given the severity of your mental illness.
20. All the psychiatrists are agreed that you are extremely dangerous and require long term treatment in a highly secure environment. The agreed view is that you are likely to remain in Ashworth for many years, before you will even be fit to be released into a medium security mental health hospital, where you are likely to remain, again, for some years. I have to decide whether a mental health disposal is appropriate. If it is, I have to decide whether to impose an order under section 45A of the Mental Health Act, a Hospital and Limitation Direction, or what is called a hybrid order, or an order under section 37 of the same Act with a restriction under section 41 without limit of time, which is called a Hospital Order with a restriction.
21. All of the doctors are of the view that making a section 45A order in conjunction with a determinate term would not be the correct way to deal with your case, due to the lack of protection for the public upon expiry of that determinate term. I am satisfied that this case does not justify an indeterminate term, and therefore it is agreed by the psychiatrists that an order under section 45A would not provide the necessary regime for your release, including importantly the necessary degree of protection for the public. I do not therefore propose to make a hybrid order.
22. Section 41 of the Mental Health Act permits me, when making a Hospital Order under section 37, to impose what is called a restriction order when it appears to the court, having regard to the nature of the offence, your antecedents and the risk

of you committing further offences if set at large, that this is necessary to protect the public from serious harm. I have concluded that such a restriction is necessary. That restriction is without limit of time. In your case, and this is accepted by your treating clinicians, there is the prospect that you may never be well enough to be released. By making an order under sections 37 and 41 of the Mental Health Act, the question of whether you are released is a matter for the Secretary of State.

23. I am satisfied, after very careful consideration, the appropriate way of dealing with your case is by making an order under s. 37 of the 1983 Act. I am also satisfied that it is necessary to protect the public from serious harm and that it is not possible to say for how long that will be so, and so that it is also appropriate to order that you will be subject to the special restrictions set out in s. 41 of the 1983 Act without limit of time.
24. I, therefore, make a Hospital Order under s. 37 of the 1983 Act ordering that you will be detained at the Ashworth Hospital where you have been for the past 14 months.
25. I am satisfied that the necessary arrangements have been made for you to be held there, in any event, within the time period required under the Act.
26. I also make a Restriction Order under s. 41 of the 1983 Mental Health Act ordering that you will be subject to the special restrictions set out in s. 41 without limit of time.
27. I would also like to pay tribute to the way this trial has been managed by all of those involved, in particular the members of the jury, in the unusual surroundings of this Nightingale Court.