

The King

-v-

Owen Herbert

Sentencing Remarks of Mr Justice Fraser

Winchester Crown Court

10 February 2023

1. These sentencing remarks will be made available in writing immediately after I have handed down sentence, and they will also be placed on the Judicial Office website. Although you attended your sentencing this morning, during this morning's proceedings you had to be returned to Broadmoor Hospital for your own welfare. I will proceed in your absence.
2. Any criminal trial that involves the murder or unlawful killing of any person is a tragedy. This case particularly so, because what unfolded in the early hours of 27 November 2021 when you, Owen Herbert, killed Mr Richard Laversuch and also attacked Mr Peter Knight, was so entirely avoidable. I will return to the failures on the part of Parklands Hospital in Basingstoke that allowed these dreadful events to occur later in these sentencing remarks, having explained the facts in more detail. You were charged with the murder of Mr Laversuch, the attempted murder of Mr Knight, and the assault of Ms Bright, an emergency worker. All three of you, Mr Laversuch and Mr Knight were patients at Parklands, which is a hospital with a variety of adult mental health wards.
3. You pleaded guilty to three offences on your arraignment on 19 January 2023. These offences were the manslaughter by reason of diminished responsibility of Mr Laversuch; the assault occasioning actual bodily harm of Mr Knight contrary to section 47 of the Offences against the Person Act 1861; and the assault by beating of an emergency worker contrary to section 1 of the Assaults on Emergency Workers (Offences) Act 2018 and section 39 of the Criminal Justice Act 1988 in respect of the attack upon Ms Bright. The charge of attempted murder of Mr Knight was ordered to lie on the file.
4. I will commence these remarks by saying that although the focus of them may appear to be upon you, the defendant, the court is acutely aware that no sentence that is passed upon you can bring Mr Laversuch back, or diminish the pain and anguish suffered by

those who knew him, particularly his friends and especially his family. Mr Laversuch was 63 years old when he died, and he was a patient on Juniper ward at Parklands Hospital, a low risk ward. The court has heard a victim personal statement from his eldest sister, Mrs Bridget Ryan, who bravely delivered this to the court in person. She describes him as a much loved brother to her and his other two siblings, Catherine and Michael, and how he made an enormous contribution to all their lives. Although he had struggled with his mental health for some time, he had a lengthy and good employment history throughout his life, which was important to him, and of which he was rightly proud. She describes him as:

“a very kind and empathic man who was always firstly concerned about other people’s feelings and wellbeing. He always started conversation by enquiring about anyone he knew had difficulties. He acted with thoughtful kindness toward anyone in need. He was interested in politics, enjoyed creative writing, music, supported Bath rugby and was a valued member of his pub quiz team.”

5. Tragically for him, he was a patient at Parklands Hospital on the night he was killed, waiting for a placement so he could be discharged. This was a place where he was entitled to feel safe, to be safely looked after, and where his family were entitled to believe that he was safe. I commend the dignity and restraint with which his family have conducted themselves as the circumstances of his violent death have become clear.
6. You were only 18 years old at the time of the offences, and a young man with significant mental health issues. In the autumn of 2019 you started at 6th form college in Winchester, having obtained your GCSEs that summer. In May 2020 you took an overdose of paracetamol and attended hospital. In August 2020 you were referred to the Early Intervention in Psychosis team (“the Early Intervention team”). You reported hearing voices and had other symptoms of mental health issues. However, you were considered as failing to engage with that team and so you were discharged by them in September 2020.
7. Moving forwards into 2021, your mental health problems continued and increased. You called the NHS via the 111 service and told them that you had laid down on railway tracks and wanted to kill yourself. You also reported smoking cannabis, which the experts agree can have a detrimental impact upon someone’s mental health. Particularly in its stronger forms, cannabis can have this effect and there is a wealth of medical evidence to support this. The use of illicit drugs for those pre-disposed to mental health problems is very problematic, as they are used in an attempt to alleviate symptoms, but also make such conditions worse.
8. You had a mental health assessment in July 2021 when you described hearing voices in your head that were giving a running commentary, saying negative things to you; you also thought you could read the thoughts of others, and you believed that God had contacted you. You also believed that you were on a mission from God. Your parents called the police on occasion when you became violent, and threatened to cut your own throat. In August 2021 you continued to be abusive and violent, and had delusions. You attempted to hang yourself at one point.
9. You were displaying both auditory and visual hallucinations, as well as having delusional thoughts. These included thoughts of harming your father, thoughts of harming yourself, and claiming to have powers of telekinesis and telepathy. You

displayed worsening erratic and unpredictable behaviour during this time. I wish to record that throughout this entire period both your parents were doing their very best to support you, and to obtain for you suitable care. You were living at home with them, and they regularly reported what was happening to the Early Intervention team, and became increasingly concerned about your deteriorating mental state.

10. You were treated with antidepressant medication without success and due to your worsening symptoms, you were subject to a mental health assessment on 8 September 2021. Your parents did not feel you were safe to be at home, where you were smashing items and had become increasingly pre-occupied with the Bible. You were taken to the A&E department by ambulance on 10 September 2021 as a result of your behaviour, and were detained under section 2 of the Mental Health Act 1983, what is colloquially called “being sectioned”, on that day. On that same date, 10 September 2021, you were admitted to Elmleigh Hospital. You were diagnosed as acutely psychotic. On 12 September 2021 you were transferred to the Psychiatric Intensive Care Unit at Parklands Hospital. There is no doubt that at that stage you were very ill.
11. You were diagnosed with schizophrenia and prescribed medication. Detention under section 2 is for 28 days only but in any event you were released from detention on 5 October 2021. You returned home, and your parents again regularly reported the problems that you were having, such as failures to take your medication, drinking, smoking cannabis, and the increase in the voices you could hear in your head, together with the communications you said you were having with God. On 29 October 2021 you said that 60 to 70% of the day was taken up with hearing voices. This continued throughout November 2021. You were behaving very irrationally.
12. On 24 November 2021 your behaviour and the extent of your symptoms deteriorated yet further. Your mother contacted the health authorities that day, and described your increasingly bizarre and concerning behaviour.
13. You were given a home visit at 1.00pm on 26 November 2021 after your parents again contacted the authorities, and the medical professionals who attended were told that you had left the house with assorted weapons, that you had told your mother that the voices had told you to kill a pupil at your school, and that you felt you were in a game and if you did not kill someone you would be tortured. The doctor who attended adjusted your medication and told you to stay at home. That doctor also said that if you did not, you would be subject to another Mental Health Act assessment.
14. At 3.30pm that same afternoon your father called again to report that you had tried to leave the house with a 4 inch knife which he had taken off you, but you had managed to leave the house with a claw hammer and were missing. Your father said that it was not safe for you to be at home. Your mother phoned the Early Intervention team again at 4.20pm and said that you were still missing and the police would have to be notified. A member of the public saw you partially clothed at 4.30pm in the park, engaged in bizarre and erratic behaviour, and you returned home at 4.45pm when the police and another doctor arrived at your parents’ house. You told them that you “might have to do a massacre” and that you were “going to murder everyone”.
15. At 9.15pm that evening, a Mental Health Act assessment was done at your parents’ home by two doctors and an approved mental health practitioner, usually referred to as

an AMHP. All three of those medical professionals agreed that you needed to be detained in hospital both for your own safety and for that of others. As a result of this you were sectioned, again under section 2 of the Mental Health Act. Your parents expressly told these doctors that the risk of you harming someone was very high. They were fully supportive of the decision to section you again, and did all they could to assist the medical professionals. Your parents plainly did all they could to avoid such dreadful consequences as occurred in this case. They could see that you were becoming increasingly violent, and that someone may well come to harm at your hands. Both doctors considered you a high risk and both of them believed you were going to be admitted to the Psychiatric Intensive Care Unit at Parklands Hospital, where you had so recently been detained before. An ambulance was already standing by near the house to take you to Parklands Hospital, arranged by the AMPH. After the assessment was done, you were taken to Parklands.

16. However, the Psychiatric Intensive Care Unit at Parklands refused to admit you; and you were instead admitted to the Juniper ward at Parklands, a far less secure ward with a lower staff ratio. That ward is for patients with mental health issues who are deemed to be at low risk of harm to themselves or others. Additionally, you were not seen by the on-call doctor on your arrival at Parklands. One does not need the benefit of hindsight to see how this combination of circumstances was likely to unfold.
17. Both Mr Knight, who was 61 years old, and Mr Laverchurch who was 63, were existing patients on Juniper ward. I will deal with the following timings precisely because they are important. At 3.41am on the early morning of 27 November 2021, which is effectively the middle of the night following your admission late the night before, you entered Mr Knight's room; this is captured on CCTV. He was woken by you attempting to strangle him. You did this with your hands first, and you then put a pillow over his face. He struggled and could not get you off. His witness statement states that he could not breathe and he thought he was going to die. Another patient, whom I shall refer to as MW, heard a commotion and came to Mr Knight's room. You stopped strangling him, and left the room at 3.42am. Both Mr Knight and MW immediately reported the incident at the control centre area of the ward, where the staff were. However, all that occurred thereafter was a check that everyone was in their rooms, which you were. Other than that, nothing appears to have been done.
18. Then, at 3.55am, 13 minutes *after* you had left Mr Knight's room, you entered Mr Laversuch's room. Again, this is captured on CCTV. You strangled him as he lay in his hospital bed. As you did so, MW again realised what was happening and raised the alarm. He tried to help Mr Laversuch, and members of staff tried their best to save him and pull you off him. They found this extremely difficult and describe how very strong your grip was around Mr Laversuch's neck. Eventually, they succeeded, but despite their efforts to revive him, you had killed him. The compression injuries Mr Laversuch had suffered to his neck and face demonstrate that you used significant force to kill him. He was a physically frail man of 63 years of age who was asleep when you attacked him, and he was powerless to fight you off. Once you had entered his room in your disordered psychotic state, he was, to all intents and purposes, doomed.
19. Ms Bright worked on another ward, not Juniper, and she was a staff member who responded to the alarm call in the immediate aftermath of the killing. She describes seeing you with a fixated stare and having a dazed and blank expression. She spoke to

you and you punched her in the face causing a nosebleed. You have been detained since then, initially under medium security in Ravenswood Hospital and then, because the risk you presented to others was sufficiently grave and imminent, in conditions of high security at Broadmoor, which is where you now remain. You have what is called treatment resistant schizophrenia, and your condition has deteriorated yet further since then.

20. These facts essentially speak for themselves in terms of the numerous failures that occurred in November 2021. Mr Knight and Mr Laversuch, as patients in a mental health setting in a ward for those of low risk, were exposed to the high level of risk presented by you, someone with schizophrenia, who was in the midst of a florid psychotic episode, and who had been clearly identified as constituting a high risk of causing harm to others. They were exposed to these risks because you were placed in the same ward as them. Another opportunity to protect the patients there was missed after the attack on Mr Knight was interrupted by the other patient. The result of this litany of failures is that Mr Laversuch was killed by you, using your bare hands, and Mr Knight was seriously assaulted, and could also have died. Ms Bright also suffered injury.
21. I turn therefore to the sentencing exercise. All of the expert psychiatrists instructed in this case are agreed that you were suffering from a psychotic illness, namely schizophrenia, in the months prior to and at the time of these offences. These are Dr White for the prosecution, and Dr Bacon and Dr Sandford for the defence. They are all highly qualified consultant psychiatrists.
22. They agree that you had an abnormality of mental functioning which arose from a recognised medical condition, and which substantially impaired your ability both to understand the nature of your conduct and to form a rational judgement and exercise self-control. They are also all agreed that this provides an explanation for your conduct in that it caused or significantly contributed to the killing of Mr Laversuch. You are therefore entitled, on the charge of murder, to what is called the partial defence of guilty of manslaughter by reason of diminished responsibility. You have pleaded guilty on that basis. You have also pleaded guilty to the other offences. I take those pleas fully into account.
23. I shall deal firstly with the most serious offence, that of manslaughter by reason of diminished responsibility. The Sentencing Guidelines for this offence require me at Step One to determine your retained culpability. Although you did not always take your medication fully as prescribed, the experts have explained in their evidence today that this is a feature of schizophrenia. You did from time to time running up to these events drink alcohol and smoke cannabis, but the evidence is this had minimal impact upon the offending. You did commit three separate offences that night, and that has to be considered, but they were all part of the same sequence of acts on your part, and your florid psychotic state and delusions all played the same part in them occurring. You believed that you were in a game and were being commanded to take someone's life by voices in your head that were increasingly difficult for you to ignore. You had only just been sectioned, you were taken to a hospital for treatment and protection. It had been identified that you required mental health care specifically because you did present as a high risk of causing harm to others. I conclude that on the highly unusual facts of this case, your retained culpability is low.

24. Step Two then requires the court to choose a starting point and category range for a custodial sentence. There were no statutory aggravating factors, and you have no previous convictions. It should be recorded that Mr Laversuch was particularly vulnerable given where he was, his health conditions and the fact he was asleep when you attacked him in the dead of night. There was no planning or premeditation, other than what you told a number of people, including your parents and the doctors, you thought you had to do, namely kill someone. I consider those are factors that reduce seriousness and reflect your personal mitigation, in addition to the fact that you had been sectioned once before under the Mental Health Act, merely weeks before these events. You were only 18 at the time, and in my judgment also have significant lack of maturity.
25. Step Three requires consideration on my part of whether to find you dangerous under the terms of the Sentencing Act 2020, namely whether there is a significant risk to members of the public of serious harm being caused by you by the commission of further specified offences. I conclude that you are indeed dangerous within the meaning of that section. This assessment is agreed by all of the psychiatrists. This would be reflected in the sentence that I would pass, were I to do otherwise at Step Four than I am about to do, namely impose a mental health disposal. Were it not for that, I would have imposed an extended sentence upon you, rather than a life sentence. But consideration of the Step Three analysis is effectively subsumed in what I am going to do under Step Four in any event.
26. Step Four requires consideration of mental health disposals under the Mental Health Act 1983. I have received evidence from all of the psychiatric experts for sentencing, Dr White giving his evidence in person, as did Dr Nabi, who is your responsible clinician and treating psychiatrist at Broadmoor. I also have had written evidence from Dr Sandford. Dr Nabi has confirmed that there is a bed available for you, which is a pre-condition under the Act before the court can make such an order as this.
27. All of these experts are agreed that the correct disposal in your case is a Hospital Order under section 37 of the Act with a restriction under section 41. That order is necessary for the protection of the public from serious harm. I am satisfied that the conditions under section 37(2) are all satisfied, which is a pre-condition for making such an order, and I have given full consideration to all of the factors in section 37(2)(b) – as I am required to do - to enable me to reach the opinion necessary that a Hospital Order is the most suitable method of disposal in this case.
28. I do not impose an order upon you under section 45A of the same Act (what is sometimes called a hybrid order) for two reasons. Firstly, you are only 19 years of age and such an order is not available in your case. However, secondly and even if it were, given the extremely unusual circumstances of this case it is not appropriate to impose a penal element upon you. No adjustment is necessary under Step Five of the Guidelines.
29. Given the nature of the Hospital Order under section 37 with a restriction under section 41, none of the matters under each of Steps Six, Seven, Eight, Nine and Eleven of the Guidelines arise. I have fully explained the reasons for the sentence which is required under Step Ten.

30. Finally, there are some other matters that need to be expressly addressed. If I were passing a determinate sentence upon you – or even a life sentence with a minimum term – I would have granted you full credit for your guilty pleas. These pleas were offered very promptly as soon as the psychiatric evidence was available. However, a reduction for your pleas of guilty does not arise given the nature of the Hospital Order that I am making and its effect. No surcharges are payable or imposed given the nature of the disposal which I am adopting.
31. Further, I turn to deal with the two other offences for which you fall to be sentenced. The assault upon Mr Knight I would categorise as Category 1 for harm with culpability C for lesser. The offence against Ms Bright I would categorise as Category 2 for harm with culpability C for lesser, were I to be considering a conventional sentence of detention. Under section 37(1) of the Act a Hospital Order is available for any offence punishable with imprisonment, and I could make such an order in respect of either of the other two counts. However, it is necessary and desirable only to impose one such Hospital Order, rather than three identical orders.
32. This should not be taken as minimising the effect of those offences upon each of Mr Knight and Ms Bright respectively. Mr Knight was attacked in the middle of the night and almost strangled whilst he was asleep in his hospital bed; Ms Bright was assaulted at work by being punched in the face by a patient who was known to be a high risk of causing harm to others, but who had been admitted to a low risk ward. Each of them have been affected by these offences. Formally, the sentences for those offences will be recorded as no separate penalty on either count, but that is only because of the effect of the Hospital Order I am imposing upon you today on Count 1.
33. However, the full effect of the Hospital Order must be explained. An ordinary prisoner who is sentenced to a determinate term of imprisonment or detention is released on licence at some point, and they can only be returned to custody if they breach their licence conditions or commit a further offence. An offender who is under a section 37 Hospital Order with a restriction under section 41 will only be released when the First Tier Tribunal (Mental Health) considers this to be safe and the Secretary of State consents. This applies in your case, and it is not possible to say when that will be, or if it will occur at all. You will require many years of treatment in Broadmoor, which is the highest level of secure hospital in the country, before you can even be considered for a transfer to a medium secure hospital. Even if you are released at any stage in the future, you may be returned to a secure hospital for any breaches of the medical conditions imposed upon that release, such as a failure to take prescribed medication. This is how protection of the public is achieved. That regime will apply to you indefinitely.
34. I therefore sentence you to a Hospital Order under section 37 of the Mental Health Act 1983 with a restriction order under section 41 of the same Act, which is unlimited in time. This is because I have concluded that it is necessary, for the protection of the public from serious harm, for you to be subject to the special restrictions which flow from a restriction order.
35. Finally, Mr Laversuch's sister Mrs Ryan, in her victim personal statement today, referred to the treatment that her brother had received over the years from, to use her

exact words, the “wonderful, dedicated mental health professionals who know the enormous importance of the quality of their work. We now feel that the least we can do for Richard, as well as in support of those excellent mental health professionals and their patients, is to ask for rigorous questions and effective learning from what went wrong.”

36. I can only endorse those views. I am today therefore writing to the Secretary of State for Health and Social Care, the Rt Hon Steve Barclay MP, drawing the facts of this case to his attention so that he can consider what steps to take, whether in terms of an investigation or otherwise, to help ensure that nothing like this can happen again.