JUDICIARY OF
ENGLAND AND WALES

The Queen

-v-

CHRISTOPHER BARNES

Lewes Crown Court

Sentencing remarks of Mrs Justice Simler DBE

22 March 2019

You may remain seated.

Christopher Barnes, you have been found guilty by unanimous verdicts of the Jury of the manslaughter of your son Harry Barnes, and of an earlier assault causing him serious bodily harm.

Harry Barnes was born on 14 April 2017, a son to you and Laura Millins. The birth was straightforward and he was a normal, healthy baby.

Until 12 June 2017 there were no problems or concerns. In the week of 12 June Harry had two overnight stays in hospital. He was reported on 12 June as having been poorly, with symptoms diagnosed by the GP of bronchiolitis (coughing and a blocked nose), for a few days before that. By 12 June he was struggling with his breathing and this was affecting his feeding. Although he was discharged on 16 June and was, by then, feeding better and on his way to recovery, he remained less content in himself. As you, Christopher Barnes, said in evidence, he cried more and didn't sleep so well; it took longer to settle him to sleep and this continued; he was growing bigger and when he cried, the crying was louder and longer. After feeding, you said he would be uncomfortable, crying and wriggling and being tense in his tummy. I have no doubt that looking after Harry was harder.

On 24 June, having spent the morning with your mum and step-father, you Christopher Barnes returned home between 11.30am and 12. Harry was his normal self that morning when you left to go out; and he was no different when you returned home. You described him in police interviews as being normal – crying, feeding and at times smiling. Harry was fed by you or Laura, and then taken upstairs to his crib.

Your evidence was that in the next 10-15 minutes while you were with him upstairs, he became very unsettled and was crying. Laura Millins went to take a shower. You took him downstairs and put him in his bouncy chair in the hope that this would distract him. The crying didn't stop.

I am sure that you wanted it to stop. You stood over him as you said in evidence, and then you must have lost control through frustration, exasperation or anger. You picked him up again and shook him to stop the crying. When you put Harry back in the bouncy chair, his eyes rolled back, he became floppy and unresponsive. He struggled to breath and lapsed into unconsciousness. Although significant efforts were made by you, Christopher Barnes, following instructions from the 999 operator to revive him and get his heart beating, he was in cardiac arrest, having suffered irreversible brain damage. The treating clinicians and doctors did all they could, but life support was switched off the following day. Harry Barnes died at 7.30pm on 25 June 2017, just 10 weeks old.

This is a distressing and tragic case. I am sure that you loved your son, Harry. You did not mean him to die. You did not mean to cause him really serious injury. But you did unlawfully assault him causing his death. Moreover, the expert medical evidence and the Jury's verdict show that you assaulted him on an earlier occasion at least four days before his death, causing a sub-lethal shaking injury (sub-dural bleeding over the brain and into the retinas of both eyes) from which he was able to recover without medical intervention.

Until this happened, no one would have thought of you as a criminal or bad person. You have been law abiding, hard-working, contributed positively to society and been kind and considerate. You are a loving, caring son, friend and work colleague to those around you. That is evident from all the character references I have read this morning which speak movingly about what has happened. The devastating effect of your conduct though is clearly the death of Harry, a vulnerable, innocent baby. There are also consequences for those who knew and loved him on both sides of the two families involved. That is inevitable. And although I have no Victim Impact Statement from Laura Millins, her pain and loss was plain to see throughout this trial; there will be a lifelong impact on her too. No sentence I pass can bring Harry back or compensate for the life lost, and nor is it intended to do so.

In sentencing you I am required to and do have regard to the Sentencing Council Manslaughter Definitive Guideline. I also have regard to all that was said on your behalf.

The first step is to assess your culpability. This is not a mechanistic exercise, but requires a careful assessment of the facts to determine your overall culpability. A very highly culpable defendant may have intended harm at a level only just short of that required to sustain a murder charge. At the other extreme, there may have been no intention to cause any harm and no obvious risk of anything more than minor harm. Your case is plainly not at either of these ends of the spectrum and I have to consider the medical and other evidence to form a judgment where on the spectrum (whether category B or category C) your assault on 24 June on Harry lies.

The expert medical evidence at trial showed there was bleeding over the brain, brain damage and bleeding in both retinas and optic nerves, all typical of movement trauma; and this conclusion was reinforced by the finding of fractures to two vertebrae in the cervical spine. These findings were evidence of trauma close to Harry's collapse on 24 June. Although Dr Carey said the precise levels of force necessary to cause the changes found in the brain and eyes is unknown, he concluded that the presence here of injuries to the cervical spine indicated that the forces involved were severe. However, he also acknowledged that fatal injuries of the sort sustained by Harry can be caused by a very short, single, episode of shaking (which involves a single action of acceleration and deceleration). Such an episode could last a matter of a few seconds only; though of course it can be longer lasting.

The Crown say that you are highly culpable because death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to you. Reliance is placed on your acknowledgment in police interview that you knew the consequences of baby-shaking would be severe. I have given anxious consideration to this issue. While it is true that you said this in interview a year after Harry's death, it would have been surprising if you said anything different when questioned by police in the circumstances you were in. I do not consider that answer is simply to be equated with your knowledge at the time. In evidence, understandably, it was never put to you that you knew any more than that there was a risk of harm to a baby from shaking or movement trauma, and there was nothing in your evidence that led me to conclude that it was or ought to have been obvious to you at the time of the shaking on 24 June that it carried a high risk of death or really serious injury. It is also relevant that Harry's presentation after the earlier episode bore all the hallmarks to the medical profession of bronchiolitis. I am persuaded that this could have affected your appreciation of the risk inherent in shaking when on 24 June you shook Harry fatally. Equally, I acknowledge that the severity of the injuries may correlate with the force used, but does not correlate with intent. I cannot be sure that this was more than a single action of head movement backwards and forwards, although I am sure it was done with force. It seems to me as the Crown put it, you lost control in a moment of frustration, exasperation or anger, and shook Harry. I am sure, in light of all the evidence that you acted recklessly as to whether harm would be caused without intending harm at the critical time. In these circumstances, and in light of the other indicators in the evidence, I have concluded that your culpability falls into category C (medium culpability).

In all manslaughter cases whatever the degree of culpability of the offender, the harm is, necessarily, of the utmost seriousness since death is caused. Reflecting that, the starting point for this offence within category C is 6 years and that is the appropriate starting point in this case.

I must next consider the aggravating and mitigating features of your case. In doing so I have considered carefully the points made in submissions on both sides.

The following features of this case make your offending more serious:

(1) Harry Barnes was particularly vulnerable because of his age. This is a significant aggravating feature.

(2) You have not accepted responsibility for Harry's collapse on 24 June, and in interviews and in evidence you have given what are necessarily untruthful accounts of how you held Harry before his collapse and what you did. That does not of course operate as a factor that could increase your sentence in any way. Nor it is true, did you at any stage positively place the blame on Laura Millins, or attack her handling and care of Harry. That may well have been how your evidence was perceived by Laura Millins. It must have been distressing for her. Though this is a factor identified as potentially aggravating seriousness it is not a factor that I place much weight on in all the circumstances.

(3) There was a grave abuse of trust by you as a parent vested with responsibility for keeping your child safe. That is different from abuse of trust involving third parties, but nonetheless increases the seriousness in your case.

I accept the submissions made on your behalf that there is no history of violence here in circumstances where the earlier episode in count 2 is separately charged and will be considered in the overall offending by me when passing sentence on count 1. There is no other evidence of a history of violence. I have not therefore treated this as an aggravating feature. Nor is it appropriate in the circumstances to have regard to any suffering from the earlier episode since this will be reflected too in count 1.

There are, on the other hand, also mitigating features in this case:

(1) You are a man of previous good character. There is nothing to your discredit in your past. You were, until this incident, a loving partner, and a good father to Harry. You are a hardworking man and contributed positively to society.

(2) The offences were plainly not premeditated. I am sure that you would never previously have dreamed of harming Harry. The offending was out of character as the character references make clear.

(3) You alerted Laura Millins immediately you realised there was a problem with Harry, and the emergency services were called. You did all that you possibly could to try to save Harry. You acted as a caring father would, apart from not telling the truth about what had happened.

(4) Although you did not tell the truth at the time or in this court, you have expressed sadness and remorse. I have no doubt that was genuine and heartfelt.

(5) Finally, you have lost your son. You will have to live with the consequences of your actions on 24 June, knowing that you caused the death of your son, for the rest of your life. I have no doubt that this will be a considerable burden.

I must also deal with the earlier assault in count 2. I have had regard to the Assault Guideline. There was greater harm but lower culpability. On its own this offence would attract a starting point of 1.5 years. That Harry Barnes was particularly vulnerable would lead to an increase in the starting point to 2 years. Further aggravating and mitigating features would balance each other out.

I do not consider you to be dangerous on the facts of this case and in light of your previous good character and all that I know about you. It is therefore unnecessary to consider the imposition of either a life sentence or an extended sentence.

I must have regard to totality. I do that by reflecting the whole of your offending behaviour in the sentence I impose for manslaughter, ensuring that it is just and proportionate to the overall offending in your case; and by imposing a concurrent sentence for the assault on count 2.

Having regard to the overall offending behaviour on both counts, and reflecting the aggravating features I have identified, takes the sentence up from 6 to 9 years. I must then reflect the strong mitigating features in this case by making an appropriate reduction. Reflecting all of your mitigation, I have come to the conclusion that the shortest period of imprisonment I can impose on you that meets the seriousness of your total offending is one of 6.5 years.

Stand up please, Christopher Barnes. The sentence of the court for the manslaughter of Harry Barnes on count 1 is 6.5 years imprisonment. There will be a concurrent sentence of 2 years on

count 2. You will serve half the total sentence of 6.5 years in custody and the remainder on license.

The statutory charge applies and should be dealt with administratively.