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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 21/067334

Delivered: 04/04/2024

IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT NEWRY COURTHOUSE

THE KING

v

AMANDA FULTON
and
CHRISTOPHER FULTON

SENTENCING REMARKS

IRVINE HHJ KC

Introduction

- [1] The defendants were convicted after a trial of the following offences:
- (i) Christopher Fulton was convicted on count 1 of grievous bodily harm with intent, contrary to section 18 of Offences Against Person Act 1861; Count 3 of cruelty to a child, contrary to section 20(1) of Children and Young Persons Act (Northern Ireland) 1968 by way of willful neglect; Count 4 of Cruelty to a child, contrary to section 20(1) of Children and Young Persons Act (Northern Ireland) 1968 by way of willful neglect.
 - (ii) Amanda Fulton was convicted on Count 2 of causing or allowing a child to suffer physical harm, contrary to section 5(1) Domestic Violence, Crime and Victims Act 2004; Count 3 of cruelty to a child, contrary to section 20(1) of Children and Young Persons Act (Northern Ireland) 1968 by way of willful neglect.

Background

- [2] P was born in October 2019.

[3] On 7 November 2019, Christopher Fulton made a phone call to the GP surgery at Armoy which is recorded as having been made at 13:11 hours. He informed the receptionist that P had a raw throat and was not drinking his bottles. At approximately 13:50 hours the receptionist phoned him back and informed him that an appointment had been arranged with the GP for 16:10 hours that afternoon. During the telephone conversations with the receptionist, Christopher Fulton did not express any sense of urgency in relation to the obtaining of the medical appointment.

[4] P was brought to the surgery and Christopher Fulton informed Dr McDonnell that P had been feeding well until around midnight but that his feeding had reduced, and he and his wife had been struggling to get food into him. Fulton suggested that P might be tongue tied but that otherwise he seemed well. Dr McDonnell upon examination of P observed that he was unresponsive to sound or physical stimulus to his face or sternum. His right eye was open, and his left eye was closed, and the pupil did not respond to light. P's fontanelle was bulging and firm. Dr McDonnell formed the view that P was very unwell and possibly had a serious head injury. He arranged for P to be transported to hospital urgently.

[5] Upon the arrival of paramedics, P was immediately taken to the Causeway Hospital in Coleraine. He was described by one of the paramedics as being "frighteningly pale, like a dead body." P was unresponsive to a heel prick test. His Glasgow Coma Score was 4/15 and he was in a coma. Christopher Fulton accompanied P to the hospital. The paramedics remarked that Fulton appeared unconcerned about P's condition enroute to the hospital.

[6] A CT scan revealed that P had a fracture to the skull and bleeding in the subdural space. The scan also showed a build up of fluid and pressure in the brain. P was transferred to paediatric intensive care at the Royal Belfast Hospital for Sick Children for emergency neurosurgery.

[7] The surgery included the removal of part of his skull in order to release pressure and to clear the blood that had collected. P was gravely unwell and there was a fear that he would not survive.

[8] Medical investigations have revealed that P sustained a catalogue of injuries as a result of the assault:

- Lacerations to his liver.
- 27 rib fractures.
- A fracture in each of his thigh bones and each of his shin bones.
- Extensive retinal hemorrhages in both eyes.
- Severe traumatic brain injury.

He was in intensive care for 10 days and required deep sedation during this period.

[9] During the course of this trial the court heard from a number of medical experts who had reviewed P's medical records.

[10] Dr Morrison, Consultant Paediatric Ophthalmic Surgeon, reported that P had hemorrhages covering the retina of both eyes. The systemic findings across the entirety of P's injuries were highly suggestive of a shaking incident in which P had been shaken so rapidly as to cause the blood vessels within the eyes to rupture.

[11] Dr Williams, Consultant Paediatric Neuroradiologist, identified P as having sustained a fracture in the left parietal bone of the skull vault with significant overlying soft tissue swelling with resulting bleeding over the brain and with widespread intracranial injury. The skull fracture was at the severe end of the spectrum and would require a force comparable to a fall from several storeys or a road traffic collision where the child was hit by a car. His opinion was that P had suffered an impact to the left side of his head either by striking something or being struck by something and was also shaken.

[12] Dr Jayamohan, Consultant Paediatric Neuroradiologist, concluded that the brain injury had been caused between six to twelve hours prior to the CT scan which meant it had occurred between 06:00 hours and noon on 7 November. He concluded that there was an impact to the left of P's skull, caused by something hitting it or his skull hitting a fixed hard object. P had also suffered a shaking injury in conjunction with the impact injury. Following the infliction of the injury, P's presentation would have obviously been abnormal and one of "obviously a sick child." In his opinion, had immediate medical treatment been sought, P "may well have been left with a better outcome than he's going to get."

[13] Dr Halliday, Consultant Paediatric Radiologist, stated that in her opinion the fractures to the metaphyses were caused by pulling, twisting or violent shaking. She also commented on the fact that various stages of healing were discovered in the rib fractures which indicated they were caused on at least two separate occasions. In her opinion, the distribution of the rib fractures was indicative of squeezing P very hard to the front and back and the fractures would have been very painful to the child.

[14] Dr McGowan, Consultant Paediatrician, concluded that the liver laceration could only have been caused by trauma and a very severe blow or being forcibly gripped and squeezed. It would have been very painful, and she would have expected the child to cry. She concluded that P had been subjected to a "significant degree of shaking" and something that caused his head to impact against a hard object. In her view it was "not possible for a child to sustain these injuries without a person in the child's presence being aware of them."

[15] As a result of his traumatic brain injury P has been left with the following:

- (i) Severe dystonic cerebral palsy affecting all four limbs.

- (ii) Severe visual impairment (blind).
- (iii) Severe intellectual disability. He is unable to speak and communicates mainly by crying.
- (iv) Epilepsy.
- (v) Cerebral irritability which causes spells of prolonged crying during which he cannot be comforted.
- (vi) His nutrition is given artificially by means of a feeding tube.
- (vii) He is unable to eat or swallow safely due to his brain injury.
- (viii) He has a life limiting condition.

The consequences for P have been devastating in nature for him.

[16] The trial heard from a number of witnesses who were able to give evidence about the interaction of the defendants with P in the days and weeks leading up to the events which took place on 7 November.

[17] Ester McCook described how Christopher Fulton had blown up P's nose. This form of activity had not occurred on one occasion but had taken place on three separate occasions. It occurred in the presence of Amanda Fulton who had reacted by saying "don't be doing that."

[18] Savannah Light told the jury that she had witnessed Christopher Fulton smacking P really hard on his back whilst winding him. Amanda Fulton was also present on this occasion but did nothing about it. Savannah Light then challenged Christopher Fulton about this matter.

[19] Amanda Fulton in her evidence in chief also referred to an incident when her husband bounced P on his knee so roughly that the child's limbs were flapping about.

[20] Stephen McCook gave evidence regarding the events of the 6th and into the early morning on 7 November. He indicated that he was in the Fulton's house until around 02:00 hours. He gave evidence to the effect that P was unsettled and crying and that Christopher Fulton was struggling to feed him. His evidence was in stark contrast to the case made by both defendants which was identical in nature both to medical staff and to police in interview. They both made the case that P had been feeding well before midnight and was settled with no issues. Both defendants claimed that P had taken a feed at midnight, and both had fed him in the bedroom. They both claimed to have gone to bed and fallen asleep. Neither of them in

interview made any reference to internet searches on behalf of Christopher Fulton or the fact that P was suffering from a sore or raw throat. They both claimed that P woke up around 04:00 hours, was alert and moving his limbs but that he would not take any milk. They then claimed that P woke at 07:00 hours but again would not take his milk. When he woke just before 10:00 hours he was sleepy and would not feed and, in those circumstances, they then contacted the GP.

[21] I am entirely satisfied that both defendants jointly concocted a false account of the events on 6/7 November, and both were fully aware of P being in a serious condition for a number of hours before any phone call was made to the GP and any attempt was made to obtain medical assistance. Whilst Amanda Fulton did not either assault or encourage her husband in his actions nonetheless, she took no action on her own behalf to ensure that P obtained timely medical assistance when he was clearly in need of it.

[22] Amanda Fulton told the jury that when P woke at 10:00 hours he was not himself, he was very sleepy, and his eyes were not opened fully. He did not have bright eyes; he didn't cry, and she was worried. Amanda Fulton confirmed that she left the phoning of the doctor to her husband as she was looking after the other children.

[23] During police interviews they both claimed that they had no idea how P had come by his injuries, and neither could believe that the other one would have caused such injuries.

[24] It is totally inconceivable that with such a sick child both defendants would not have ensured that P got immediate medical help. The failure to contact the GP for such a lengthy period of time as happened here and in the knowledge that P was so unwell, was a dereliction of their obvious responsibility to the child and his wellbeing.

[25] When giving her evidence, Amanda Fulton stated for the first time that she believed that her husband had caused the injuries to P. Under cross-examination she claimed that when she saw all the medical reports that had been obtained for the criminal case, she came to the realization that he had caused them. She also asserted for the first time to have witnessed her husband blowing up P's nose and bouncing him on his knee in a rough manner. She denied that her husband had ever lost his temper and asserted that he was not a controlling person,

[26] Christopher Fulton in giving evidence denied having caused the injuries to P. He claimed for the first time that his wife must have caused them. He was unable to account for why he claimed to have called the GP around 10:00 hours when the undisputed telephone records clearly indicated that the first call did not take place until 13:11 hours. He claimed that between those times he was cleaning the house and getting dinner prepared for his children. He claimed to have conducted Google searches about raw throats not because P was crying but because it sounded like a

sore throat when he was drinking from his bottle at midnight. His demeanor in hospital was explained by claiming he was distressed and being in shock. Evidence had been given by a nurse that Christopher Fulton was distracted and laughing at videos on a mobile phone when at the hospital and had indicated that he would not be staying with P at all times as he had two children at home to look after.

[27] I have concluded this is a high culpability case. Also, this is a case of high harm. There are a number of aggravating features common to both defendants. P at the time was a four-week-old baby and small for his age. He was exceptionally vulnerable and entirely reliant on the defendants to care for him and to protect him. The failure to obtain timely medical attention on behalf of both defendants signifies a higher culpability and according to Dr Jayanmohan may ultimately have resulted in a higher level of harm to P.

[28] The repeated and inappropriate physical conduct directed to P by Christopher Fulton prior to the events of 7 February is relevant not only to his culpability but also to Amanda Fulton's culpability. She was present on a number of occasions when he handled P in a rough and unacceptable manner and also in the presence of friends. Whilst there is no suggestion that she handled P in a similar fashion she took no steps to remove the baby from an obviously dangerous situation and made no attempts herself to seek medical attention for him. She was in complete dereliction of her duties to P in failing to ensure his safety at all times both before the events of 7 November and following on from those events.

[29] In addition to these matters Christopher Fulton's attitude whilst at the hospital displayed a total disregard for the wellbeing of the child and is also capable of being considered as an aggravating factor. Furthermore, all offences were committed within a domestic setting which adds to the aggravating features in the case.

[30] There are no mitigating factors identifiable in this case. No remorse has been demonstrated by either defendant. Both defendants maintain their denial of guilt.

Victim statement

[31] In my discretion and in the exceptional circumstances of this case, and with no objection from either senior defence counsel, I permitted upon application by the prosecution, the foster mother of P to read a victim personal statement to the court, she having been sworn before me. She was clearly the best person to outline to the court the day-to-day interaction that she has with P and the devastating effects that his injuries have had upon him. His foster mother outlined in graphic detail how the injuries sustained have affected P. She has devoted her life to P and despite all his problems has shown the love and care which he clearly deserves, and which is in stark contrast to the manner in which P was treated by both defendants.

Pre-sentence reports

[32] The court has received two comprehensive reports on the defendants.

[33] Christopher Fulton is 35 years of age and has no diagnosed mental health issues and has no relevant convictions. He is assessed by probation as presenting a high likelihood of reoffending and the risk factors are as follows:

- Escalation in offending use of violence and evidence of pattern of behaviour.
- Extent of non-accidental and life limiting injuries to a vulnerable child.
- Absence of internal controls.
- Risk taking behaviour.
- Lack of victim insight.

[34] Probation state as follows:

“Given the level of violence perpetrated against an infant, the pattern of violence over the timeframe in which he had access to the child, the absence of insight into his behaviour or acceptance of responsibility, PBNI consider Mr Fulton to pose a significant risk of serious harm at this juncture.”

[35] Amanda Fulton is 36 years of age. She has no mental health issues. She has no previous convictions. She describes her marriage as relatively stable during this period. She continues to assert her innocence and does not believe she committed any offence.

[36] She is assessed as presenting a low likelihood of reoffending and she is not considered to meet the threshold for significant risk of serious harm.

[37] I have considered the issue of potential delay in disposal of this case as a factor which might be taken into consideration on behalf of the defendants in determining the ultimate sentence in this case. Whilst this case dates back to 2019 in respect of the offences I do not consider that there has been a culpable delay in this case reaching its ultimate conclusion and there will be no reduction in the penalty imposed on the defendants in respect of this factor.

Dangerousness

[38] Both defendants have been convicted of offences that potentially trigger a finding of dangerousness under the provisions of the Criminal Justice (Northern Ireland) Order 2008. Under Article 15 of the Order when a person has been convicted of a specified offence it falls to the court to assess under Article 13 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences. Under

Article 14 if the court is so satisfied then the court shall impose on the offender an extended custodial sentence. The extension period shall not exceed five years in the case of a specified violent offence. An extended custodial sentence is a sentence of imprisonment the term of which is equal to the aggregate of the appropriate custodial term and a further period (the extension period) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

[39] The guideline case in this jurisdiction on the issue of dangerousness is *R v EB* [2010] NICA 40. The court approved the approach of the Court of Appeal in England & Wales in *R v Lang* [2005] EWCA Crim 2864:

“The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and could be taken to mean noteworthy, of considerable amount or importance.

In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence ... and whether the offending demonstrated any pattern ...”

[40] The court has also received a report on the issue of dangerousness as prepared by Dr Philip Pollock, Consultant Forensic Clinical Psychologist, relating to Christopher Fulton which accepts that he is a significant risk of serious harm to a vulnerable group of the public namely children.

[41] Having considered all relevant material, I accordingly find that Christopher Fulton is indeed dangerous to children and that an extended custodial sentence is appropriate in his case.

[42] In respect of Amanda Fulton, I do not find her to be dangerous principally on the basis that her offending does not involve any act of physical violence directed to P and any pattern of violence.

Sentencing of Christopher Fulton and Amanda Fulton

[43] The guideline cases involving shaking and other serious assaults on young children are *R v Darren Fegan* [2018] NICA 2 and *R v ZB* [2022] NICA 69. In the case of *Fegan*, Morgan LCJ stated at paras [22] and [23] as follows:

“[22] In section 18 cases involving very young children the focus has to be on the vulnerability of the child. First, the child has absolutely no defence mechanism against the person who intends to inflict grievous bodily harm

upon him. Secondly, because of the child's stage of development the harm likely to be caused by the application of severe force is greater than that which would be expected in relation to an adult.

[23] Sentencing policy must, therefore, reflect vulnerability. Where significant force is applied to a young child with intent to cause that child grievous bodily harm, the increased likelihood of significant damage to the child renders the conduct itself highly culpable. In general, therefore, we consider that a range of 7 to 15 years for such conduct is appropriate."

[44] The defendant in that case ultimately pleaded guilty to the offence. The trial judge set the starting point at 16 years' imprisonment and the Court of Appeal whilst describing the starting point as stiff did not regard it as manifestly excessive.

[45] In the case of *ZB* the court was dealing with a defendant who had pleaded guilty to a section 18 assault on a 12-day old baby in addition to sexual assault by penetration. The court approved a global sentence in that case of 22½ years before the reduction for a plea. The trial judge had imposed concurrent sentences and had properly taken into account the principle of totality in imposing the global sentence. Keegan LCJ stated:

"Upon considering the case as a whole we think that a judge could justifiably get to 22½ years before reduction for a plea. We accept that this makes for a very stiff sentence outside of the usual range. However, to our mind it is just and proportionate on the facts of this case which we consider exceptional." [para71]

[46] In terms of cases of child cruelty by neglect the following principles of sentencing were referred to in the case of *R v CD* [2021] NICA 45 in the Court of Appeal at para [15]:

"[19] The sentencing authorities stress that sentencing in cases of neglect and child cruelty necessitates a careful consideration of the entire factual context. In *R v Orr* [1990] NI 287 the Court of Appeal stressed that it is necessary for the courts to protect children and to deter those who might cause them injury. Cases of repeated actions are more serious than a simple incident. The English Court of Appeal in *R v Bereton* [2002] 1 Crim App Reports (S)63 pointed out that sentencing authorities in child cruelty cases are distinctly limited as each case of this type turns on its own facts. The courts must ensure

punishment and deterrence (*R v Durkin* [1989] 11 Crim App Reports (S) 313). There can be an immense variety of facts in such cases and the degree of seriousness with which they will be regarded (*Attorney General's Reference (No 105 of 204)*) [2005] 2 Crim App Reports(S) 42). It is thus clear that no two cases in this field will be the same and the precedent value of other sentencing decisions in different factual context will be limited."

The court determined that the appropriate sentencing range in that case was three to seven years' imprisonment prior to applying any appropriate discount.

[47] In terms of causing or allowing a child to suffer physical harm there are no specific guideline cases that I have been referred to as the facts of each case are specific to that particular set of circumstances. However, as previously indicated the culpability and harm in respect of this count is high in relation to Amanda Fulton.

[48] I intend to deal with the two defendants as follows in terms of sentence.

Amanda Fulton

[49] You failed to protect P knowing that your husband was quite capable of causing him physical harm. Knowing that he was seriously ill, you neglected his wellbeing and did not attempt to obtain medical treatment yourself for him. Your dereliction of duty and care to P was unforgiveable. You are highly culpable for all your omissions towards P. The harm caused to him is irreversible.

Count 2: I sentence you to four years' imprisonment. (two years custody, two years licence).

Count 4: I sentence you to four years' imprisonment (two years custody, two years licence).

These sentences will be concurrent with each other.

Christopher Fulton

[50] I have found you to be dangerous to young children. On two separate occasions you failed to get medical treatment for P. You inflicted the life-threatening injuries sustained by P and the resulting devastation to his life. You displayed aggressive behaviour towards him before these dreadful events occurred and even after the assault took place you displayed a total disregard for his wellbeing.

[51] I have considered the appropriate disposal in your case and have determined that in respect of count 1 the only appropriate sentence in an extended custodial sentence with the maximum extension period to the custodial element to reduce the

risk of such reoffending in the future, I have decided that I am able to impose determinate sentences in respect of the two cruelty offences which I make concurrent with each other. Due to the fact that you have been convicted of two such offences, the sentence imposed on each which reflect that fact and will therefore be in excess of the sentence imposed upon Amanda Fulton, in respect of her sentence relating to the offence of child cruelty that she was convicted of. I have considered the totality of the sentences imposed in your case to reflect the appropriate overall sentence.

[52] In respect of Count 1, you will receive an extended custodial sentence of 22 years' imprisonment with an extended licence period of five years.

[53] In respect of Count 3, you will receive a sentence of seven years' imprisonment (3½ years custody 3½ years licence).

[54] In respect of Count 4, you will receive a sentence of seven years' imprisonment (3½ years custody 3½ years licence).

[55] Counts 3 and 4 will be concurrent with each other and concurrent with count 1.

[56] I also impose a Restraining Order in respect of each defendant in the following terms:

“Amanda Fulton and Christopher Fulton are prohibited from contacting P, either directly or indirectly, to include any contact with P's designated Foster Carer, save any contact which has been given prior approval and permission by Social Services, or which has been provided by a Court Order.”