

LONDONDERRY CROWN COURT

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R

-v-

ROBERT JOHN ANDERSON
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*There are Reporting restrictions in force in this case
Therefore I intend to refer to the injured party as "X" and to his mother as
"Y".*

HIS HONOUR JUDGE BABINGTON

- [1] The defendant has been convicted by a jury after a lengthy trial on two charges. He was found guilty by majority verdict (10-1) of unlawfully and maliciously causing grievous bodily harm to "X" (Section 20). He had originally been charged with causing grievous bodily harm with intent (Section 18) but after the prosecution evidence had been heard I granted a direction on this charge and the indictment was amended.
- [2] He was also convicted unanimously by the jury of child neglect, contrary to Section 20(1) of the Children and Young Persons Act (Northern Ireland) 1968. The details of that charge are that having the custody of "X" the defendant wilfully neglected "X" in a manner likely to cause him unnecessary suffering or injury to health.
- [3] The defendant, who is now 27 years of age, is the father of "X". He was and, I am told, still is in a relationship with "X's" mother - "Y".
- [4] These offences arise out of matters that occurred in mid-December 2008. "X" was born to "Y" on 14 July 2008. In mid-December "X" was some five months old. He was born 14 weeks premature. During the

trial some of the medical witnesses described "X" as 6 weeks corrected at the time of these incidents. After his birth "X" remained in hospital for some time. He was discharged on 5 November 2008.

- [5] "Y's" mother assisted her daughter and the defendant looking after "X" and described him as being a very healthy youngster. The consultant paediatrician said that he had done very well. It seems that the defendant, his partner "Y" and all of their children lived with "Y's" mother until their own house was ready and then moved to their own house which was only a matter of yards away.
- [6] On 16 December 2008 "Y" had a driving lesson and it appears that she was away from the house for a couple of hours or so. When she returned she telephoned her mother who came to their house and found "Y" standing in the door with "X" in her arms. Her mother said "X" gave what she described in her evidence to the jury as "a terrible cry", and said that she had heard nothing like it in her life before. She realised that "X" needed medical attention and she told the jury that she knew he was very very ill. She intended to take him to Magherafelt Hospital but on the way noticed deterioration and diverted to the local health centre. Fortunately the family GP was in the reception area and immediately took "X" under her care. She told the jury that clearly he was a sick baby needing immediate intervention. She thought that "X" would have a cardiac or respiratory arrest and that he was possibly having seizures. He was given oxygen but there was minimal response from him. She arranged a transfer to the Mid-Ulster Hospital where there were more facilities.
- [7] At the Mid-Ulster Hospital resuscitation techniques were employed and "X" was stabilised for a further journey to Antrim Hospital where there was a full paediatric care unit. The consultant at that time felt there was three possible reasons for his condition either an overwhelming infection such as septicaemia or meningitis, or a metabolic problem or some sort of trauma.
- [8] He was transferred to Antrim Hospital where a CT scan was carried out which indicated that "X" had a haemorrhage, in other words there was bleeding into his brain, and other indications showed that he was very ill. It was apparent to the consultant paediatrician on duty that he needed intensive care.
- [9] A search was carried out for a paediatric intensive care bed but unfortunately none were available anywhere in Ireland or Scotland but there was one available at King's College Hospital in London. "X" was taken there by air ambulance.

- [10] At King's College Hospital "X" was under the care of a Dr Deep and there was also involvement by the named doctor for safeguarding - Dr Ford-Adams. She spoke with the parents and told them that in her view there were four possible reasons for "X's" condition namely a clotting problem, some inborn metabolic problem, trauma or accident or a non-accidental injury. I will return in a moment to the defendant's attitude in this discussion.
- [11] An MRI scan at King's College Hospital carried out on 19 December revealed extensive subdural collections of blood in three different areas namely the two sides of the brain and also at the rear of the head. The scan also showed significant damage to the brain itself. Dr Ford-Adams told the jury that after seeing the MRI scan she felt all the blood was of the same age and therefore there had been one incident.
- [12] "X" was transferred from King's College Hospital back to the Royal Victoria Hospital in Belfast on 24 December and later transferred to Antrim Area Hospital from whence he was discharged home to "Y's" mother on 3 February 2009. He had brain surgery in June 2009 to take away old subdural blood and membranes.
- [13] "X" is now nearly three years old. He is now under the care of a consultant community paediatrician. She gave evidence as to his present medical condition which is as follows:
- (a) He is now permanently blind.
 - (b) He has severe developmental delay.
 - (c) He has quadriplegic cerebral palsy meaning that all four limbs are affected and that he cannot control those limbs in any way due to damage to his developing brain. I am told that he is now in a wheelchair.
 - (d) He has epilepsy.
 - (e) He has cerebral palsy.
 - (f) It is difficult to predict with any confidence whether he will be able to walk, sit or speak in the future.
- [14] He will require the intervention of a team of people for his care.
- [15] The Defendant was involved during this period as follows. Whilst "X's" mother was having her driving lesson - in other words between approximately 9.00 am and 11.00 am "X" together with his siblings was in the sole care of the defendant. Before leaving for the hospital "Y's" mother asked whether "X" had been hit or dropped, "Y" asked the defendant who was upstairs and his reply was "No - I don't know what's wrong with him". The defendant was present at the Mid-Ulster Hospital in Magherafelt when staff were working with "X" but the

evidence from Mrs McCracken was that the defendant did not speak or ask any questions – she described his demeanour as normal. The defendant was present when the consultant at the Mid-Ulster Hospital demonstrated what to do if one had to resuscitate a child. The defendant said “That’s good to know that ...”

- [16] The consultant at Antrim Area Hospital, Dr Stewart, together with her registrar spoke with “Y” and the defendant. She said that she was the one who had to tell them that there was bleeding in the brain of “X”. She said that both parents were shocked and that “Y” started crying. The defendant asked how did this happen and Dr Stewart said she did not know but it was important to find out why. She said that she hoped for an explanation from the parents but there was no explanation from either of them. The defendant did ask whether crying could cause a haemorrhage but was told no. The defendant said nothing further by way of explanation at Antrim Area Hospital.
- [17] Dr Ford-Adams spoke to both “Y” and the defendant on 18 December at King’s College Hospital. He told Dr Ford-Adams that at one stage as he was holding “X” he had thrown himself against his arm and he was worried that “X” might have hurt his neck. He then told Dr Ford-Adams that he had put “X” down on the bed beside him, but after 20 minutes or so “X” had woken up crying, he gave “X” his dummy and “X” went back to sleep – this had happened on two occasions.
- [18] At this meeting Dr Ford-Adams had told the parents that she needed to know why there was bleeding in his brain and outlined various possibilities. She told the jury that when she was doing this she remembered the parents as being very calm and she felt that this was unusual. She said she asked the defendant directly had the baby fallen or been in an accident such as a car accident. The defendant’s reply was no. The doctor felt that she had given the defendant ample opportunity to give an explanation for what had happened.
- [19] Some two hours or so after this meeting “Y” rang the hospital and spoke to one of the nurses. She said that shortly after the meeting the defendant had broken down and said that when “X” had thrown himself back the defendant had dropped him.
- [20] On 20 December the defendant was spoken to by Metropolitan police officers. For legal reasons what was said during that discussion was not placed before the jury.
- [21] On 9 January 2009 social workers from the Northern Trust spoke with “Y” and the defendant to update them on what was happening with the children. Although the defendant was told that he should not

discuss what had happened as it was the subject of a criminal investigation he told the social workers that day that he noticed that "X" had trouble breathing and he had put pressure on his chest with his hands. He said that "X" still had difficulties and tried to blow into his mouth but the difficulties continued. The defendant said that he then shook "X" after which he breathed normally. He was asked during that meeting why he did not seek medical attention and he said there was no credit on his mobile phone and he did not think he could leave the other children unattended. He said during that meeting that he knew that he had given "X" the injury. He was asked during that meeting why he had not told the medical staff and he said he was worried what would happen to him and he wanted to tell "Y" from his own mouth.

[22] The defendant was later interviewed by PSNI officers on 12 February 2009 and throughout those interviews did not make any admissions regarding the charges.

[23] It is difficult to say exactly what happened to "X" whilst he was in the care of the defendant on 16 December 2008. The defendant did not give evidence at his trial and therefore did not put any explanation in front of the jury. Evidence was given that he said to "Y" and her mother that he had neither hit or dropped "X", he later told "Y" and then she told the medical staff in London that he had dropped "X" and he told the social workers that he had shaken "X" in the context of trying to resuscitate him. What actually happened on that day is known only to the defendant.

[24] Expert medical evidence was placed before the jury. Dr Neil Stoodley, a consultant neuro-radiologist, said that the injuries that he saw on scans were typical of a non-accidental injury. He said the mechanism of causing those injuries would be shaking and by shaking he meant a repetitive back and forwards movement with the head pivoting on the neck. He pointed out that babies have no neck control. He was asked about the degree of force and he described it as one if an independent witness saw it they would immediately realise it to be inappropriate and say "stop". He said that there would be an immediate change of behaviour on the part of the child and that any perpetrator should be able to recognise this immediately.

[25] Further evidence was placed before the jury from Dr Jayamohan who is a consultant paediatric neurosurgeon. He also felt that the mechanism of causing the injury was shaking. He said that it could occur, in his experience, when a carer reached the end of his or her tether and lifted up a baby and shook it. He also described the scenario of the child being resuscitated, being put down beside its father

because it was alright and then later deteriorating to the extent that it had to be rushed to hospital as very unusual and very bizarre and probably not correct.

- [26] The Defence had placed evidence before the jury that this was a very vulnerable baby for a number of reasons and also that the injuries sustained would more likely have been caused by the baby being dropped as suggested by the defendant. Those particular arguments were not accepted by Dr Stoodley and Dr Jayamohan.
- [27] The defendant has a number of previous criminal convictions. These total some 19 of which 12 could be said to be road traffic related but in addition he has a conviction for criminal damage, possession of Class 'B' drugs and 3 convictions for disorderly behaviour. These cover the period from May 1999 until July 2009.
- [28] I have read and considered a pre-sentence report compiled on the defendant. That sets out his background in some detail. It appears that after leaving school he had generally been in employment but he says he left employment to assist "Y" in looking after their children.
- [29] These offences occurred in December 2008 and therefore I have to consider the sentencing framework put in place by the Criminal Justice (NI) Order 2008. Both the offences of which he has been convicted are specified violent offences and the child neglect charge is also a serious offence. Article 15 of the Order deals with the assessment of dangerousness - in other words "whether there is a significant risk to members of the public of serious harm occasioned by the defendant of further such offences". That assessment is carried out by the court and the English Court of Appeal in Lang set out how that should be done. Their approach was approved by our Court of Appeal in R -v-EB. Some days prior to this assessment I had indicated to Counsel that the court might depart from the assessment in the pre-sentence report which was that the defendant was "dangerous".
- [30] Evidence in relation to the assessment was given by the author of the pre-sentence report, Denise Stewart, and on behalf of the defence by Dr Philip Pollock, a forensic clinical psychologist. I have now come to the conclusion that the defendant's risk profile does not fulfil the statutory test. I have come to this conclusion after careful consideration of the relevant reports, the defendant's criminal record which contains no convictions for personal violence and because of the nature of the current offence which occurred in a private domestic setting. The defendant had told Social Workers that he shook "X" in the context of resuscitating him although this view would be at variance with other prosecution evidence which suggests that he might have acted out of

frustration. The defendant may well be a risk towards children in his sole care but not a significant risk to members of the public as required by the legislation.

[31] Determinate sentences under Article 8 of the Order only relate to offences committed after 1 April 2009 and therefore the sentencing framework set out in the Criminal Justice (NI) Order 1996 applies to this case.

[32] The maximum sentence in relation to the grievous bodily harm charge is one of 7 years. The maximum sentence in England and Wales is 5 years. I have been referred to the case of R v Jason Brown {2001} 2 Cr App R (S) 14 which has a very similar factual matrix. Further I have considered what our own Court of Appeal said in R v Orr [1990] NI 287 when the then Lord Chief Justice, Lord Hutton said there “..... is the need for the courts to protect little children and to deter those parents and others who might cause them serious physical injury”.

[33] There are a number of aggravating factors in this matter namely:

- The catastrophic injuries sustained by “X”;
- The fact that he was totally defenceless being only 4½ months old;
- Trust was abused in that the defendant was “X’s” sole carer at the time;
- The assault charge is aggravated by the fact that medical attention was not sought and little if any information was ever given to the medical staff treating “X” although there was ample opportunity;
- His criminal record although there is nothing in relation to personal violence;
- His apparent lack of remorse. It has been very difficult to gauge whether the defendant is genuinely remorseful or more concerned about his own position.

[34] The jury found you guilty of causing grievous bodily harm to your son and of cruelty, in other words you assaulted him and although he must have been in distress or at the very least not acting as he would normally you did not obtain medical assistance. I should make it clear that there has never been any suggestion that your delay in seeking medical assistance caused further injury or altered the outcome for “X” but there is no doubt that as a human being and as your son it was your duty to seek help for him at that time and in that regard you failed him.

[35] In relation to the Section 20 – the grievous bodily harm charge which is count 3 there will be a sentence of 5 years imprisonment. In relation to

the cruelty charge - count 2 - there will be a sentence of 2 years imprisonment. These sentences will be concurrent one with the other.

- [36] I have to consider whether I should make the sentence of 5 years a custody probation Order. I have given this matter careful thought and in particular given consideration to the pre-sentence report. It is stated that he [the defendant] requires assistance to address various matters including his own dysfunctional upbringing, his negative experience of parenting, his loss of control, his emotional detachment, his limited level of responsibility and victim empathy. It is clear that these matters can be dealt with during a period of supervision within the community. Accordingly the defendant will serve 4 years in custody and on his release will serve a further 12 months in the community on probation. There will be an additional requirement attached to that period of probation namely "that the defendant shall present himself in accordance with the instructions given by the Probation Officer to attend PBNi Psychology Services for assessment and treatment".
- [37] Do you consent to the imposition of a custody/probation Order on those terms? - yes/no. If you had not consented I would have imposed a sentence of 5 years' imprisonment.
- [38] As a result of your conviction on these two charges I am also imposing a Disqualification Order under the Protection of Children and Vulnerable Adults (NI) Order 2003 which has the effect of disqualifying you indefinitely from working with children.
- [39] I am also obliged by virtue of the provisions in paragraph 25 of Schedule I to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform you that the Independent Barring Board will include you in the barred list concerned for children by virtue of your conviction for child neglect.