



JUDICIARY OF
ENGLAND AND WALES

IN WINCHESTER CROWN COURT

R v A, B, C, D and E

Sentencing Remarks of Mr Justice Foskett

11 August 2011

A and B, you have been convicted by the jury of conspiracy to kill the person who, in your case, A, is your father and, in your case, B, your grandfather.

He was 89 at the time of the material events in November last year and despite his own developing dementia and the more advanced dementia of his wife, they were both living together, in their own home and living an independent existence. You, A, had been paid by the County Council for looking after them for 18 months or so before the events of November last year and had undertaken a good deal of the arrangements for their care before that. They looked upon you and relied upon you for many aspects of their care and, just as important, they trusted you.

It is right to say that you did a great deal for them and your care did win praise from a representative of the Alzheimer's Society. That makes your active participation in a plan to kill your father even more inexplicable than might have been the case in other circumstances.

Inexplicable it may be, but despicable it was. Despicable because your father looked upon you for support and trusted you, yet what you were planning, and indeed tried to carry out, involved taking advantage of the trust he placed in you. On the night when at least the

beginnings of a serious attempt on his life took place, you played a central role in luring him to where the attack took place. You knew that he would come if, as was explained to him, you had fallen. But it was fake fall and he was duped into coming out of his house to help you.

It enabled you, B, to begin your attack upon him. To say that that attack, upon a defenceless old man, was cowardly is hardly an adequate description. The attack was from behind, in the dark, and the first blow you struck, even on your own account, was hard enough to knock him to the floor. The evidence in the case, including what the victim himself told those who attended shortly afterwards, points strongly to several more punches and kicks and every time he tried to get up, you, A, saying to him repeatedly that he was just falling.

Frankly, A, it is impossible to find words to describe what you did that evening. “Utterly contemptible” was an expression used by your very experienced counsel ... to describe even what you have admitted doing, let alone what the jury has in fact found that you did. I would simply add the words “and inhuman” to [his] expression.

Mercifully, the plan was aborted and your father survived. Only those of you present know what happened and so many lies have been told in this case it is very difficult, if not impossible, to determine the precise sequence of events that evening. However, the preponderance of the evidence seems to suggest that you, A, suddenly came to your senses, appreciated the horror of what was happening to the man who had been so generous to you over the years and you effectively called a halt to the attack upon him. That is about the only true point in mitigation there is for you, but it is not an insignificant factor. Without that change of heart on your part, the chances are that the conspiracy would have achieved its goal. However, from the moment that you did intervene in that way you knew that you were

going to have to face the consequences of being found out, both for yourself and for the rest of your family. The lies started then and have not stopped since.

However, it was not simply the events of that evening that formed part of the conspiracy in this case. Having listened myself to the evidence during the last 5 or 6 weeks, it is clear beyond doubt that both of you were behind the sabotage of the car that your parents, A, used on a regular basis and might well have used on 10 November last year. I have no doubt that you, B, actually carried out the cutting of the fuel line and the placing of the metal object across the spark plugs: you had enough expertise from your previous experience with cars to do that. But you needed technical detail about a Vauxhall Corsa before you did it. With, I am quite satisfied, the knowing assistance of your mother, you carried out various internet searches that morning specifically designed to find out the wiring diagram and the location of the spark plugs in precisely the type of Vauxhall Corsa car that your grandfather drove. The discovery of what had been done to the car was made very shortly after you and your mother left your grandparents' home that day having taken some petrol over there at the request of your grandfather. I use the word "mercifully" again, but mercifully your grandfather's attempt to start the car was unsuccessful. Had it triggered the spark that your actions intended, the consequences would have been horrendous beyond imagination. He called the AA and what had happened was identified. Fortunately, when the AA man attempted to start the car nothing untoward happened, though it could easily have done so. What you did constituted a reckless disregard for the lives of others let alone a concerted attempt upon the life of your grandfather.

Following advice from the AA your grandfather alerted the police the following day. Had he done so more quickly, it is possible that a forensic investigation would have been carried out

which might have led to you. However, because of the rain and the delay, that did not occur. You took an overdose in the early hours of the following morning. On the basis of the evidence I have heard in this case, that overdose was, I am sure, far more to do with your concerns about this incident and being found out than it has to do with the problems in your relationship with C.

It was this quite unspeakable action that demonstrates beyond doubt the serious intention of both of you to bring about the death of your father and grandfather respectively. Of itself, this action is about as near as one can get to attempted murder as you can imagine. There is no essential difference between doing what you did to the car and shooting at someone with a loaded gun and missing.

For completeness, I should say that I have no doubt either, based on the evidence that was given during the trial, that both of you were behind the attempt to frighten these two elderly people significantly on 5 November. The evidence was circumstantial but, when viewed in the light of everything else that you both plainly did, the inference is overwhelming that you both had a hand to play in this even though the precise role that each of you played is impossible to determine on the evidence.

All this started with what I am prepared to accept were probably relatively innocent conversations during the half term holiday that you both, together with other members of your family and C, took a few weeks before these events.

I have no doubt that there were financial difficulties. You, B, had a debt of £4000 arising from your drug use and another debt in relation to your car. Your position, A, is less easy to

determine. You had an overdraft and you were without a job. The evidence points clearly to your repeated checking online of your bank statements and the inference to be drawn is that you were worried about it. I have no doubt that you were incurring considerable expense in going to and from your parents' home and there is evidence from a number of sources in the case that you were getting increasingly frustrated and angry that your father did not seem to appreciate the cost of doing this and was not reimbursing you adequately. The most charitable conclusion that can be drawn is that you were being pushed by many worries, including financial worries, in the direction of plotting your father's death.

However, matters like that could not possibly justify hatching a plot to kill your father to hasten receipt of your inheritance, but the only conclusion that can be drawn is that that is precisely what happened. I have little doubt that added impetus to such a plan was given by B's position and by B himself. Nonetheless, the blame that you have sought to place upon him simply does not wash: whatever he might have done in furtherance of this conspiracy, you too played an active part - you were looking up ways in which your father might be killed. You conducted internet searches for poisonous mushrooms and toadstools (on the day of the final incident, including a search relating to the Death Cap mushroom) that, had the plan been implemented, you would have put in a shepherd's pie for your parents to eat. You were also looking up dangerous drugs on the internet.

All this will defy belief in the minds of any right-thinking person.

I must turn to the question of the appropriate sentences. Whatever else might be said about what you did, A, I do not think that you come within the definition of "dangerous" within the Criminal Justice Act 2003. The target of the conspiracy from your point of view was your

father and the inheritance you might gain in the event of his death followed, in due course, by that of your mother. Dreadful though all that was, I do not think it puts you in the category of someone who represents a significant threat to society at large. The danger was to them in their circumstances at the time. I do not see any basis for saying that you represent a risk in other circumstances. That means that any sentence of imprisonment I impose upon you needs only to be a determinate term.

In your case, B, the position is different, in my judgment. Either directly or indirectly, you played a part in trying to frighten your grandparents on 5 November, you took all the technical steps to sabotage the car on 10 November having undertaken the necessary preliminary research in advance and then took the lead in the attack upon your grandfather on 15 November. Whilst the motive was undoubtedly for effective financial gain, I am not at all confident that this kind of pattern of activity would not be repeated and directed at someone else, or some other people, unless significant steps have been taken to change your attitude to life. I am alive to the fact that you have already taken steps to put your life on a better course and I applaud the efforts you have made so far. I recognise also the difficult childhood that you have had and the strength of the support you have received from your paternal grandparents and aunt for whose letter I express my appreciation. But it is in the public interest to know that, faced with the kind of pressures and temptations to which you were subject last year, you would not be tempted to do such dreadful things again.

You have requested specifically that I proceed to sentence in your case without a Pre-Sentence Report and you were entitled to do so. However, having listened to this case from start to finish, knowing as I do what you undoubtedly did, I think it highly likely that had a

Pre-Sentence Report been prepared with that information to hand, the author would have concluded that you met the test of dangerousness within the meaning of the 2003 Act.

Whether that be correct or not, I am quite satisfied that the incidents on 5, 10 and 15 November are sufficient of themselves to demonstrate a significant risk to members of the public of serious harm occasioned by the commission of other specified offences. There are other factors also, including the temper about which others have spoken, which confirm this assessment.

To that extent, I am satisfied that you are “dangerous” within the terms of the 2003 Act. In your case I intend to pass a sentence of detention for public protection. I will explain the basis of that in a moment.

No comparable case has been drawn to my attention and so this represents something of a unique sentencing exercise. Had you both achieved the objective of the conspiracy, you would both have been convicted of murder and since the objective of the killing would have been in the expectation of financial gain as a result of death, the starting point for the minimum term that you would both have served before even being considered for release on parole would have been 30 years. You were probably both within a few minutes, perhaps a few seconds, of facing that starting point.

However, you did not achieve that objective and, as I have already said, you, A, are entitled to credit for putting an end, albeit at the last moment, to what was happening on 15 November. As a result a human life was spared, at least on that day. But the combined effect of the sabotage to the car, in particular, and the group assault on 15 November is such that this was

not just a conspiracy to kill, but one within which serious attempts to achieve the objective took place.

My attention has been drawn to the Definitive Guidelines of the Sentencing Guidelines Council for Attempted Murder which is, perhaps, the best guidance obtainable on the length of any custodial sentence to be imposed.

I did not have any clear and up to date evidence on how serious the psychological harm has been upon the victim, but I am aware that he and his wife are now living in residential care whereas, until the events of last November, they had been living independently. The injuries sustained are clear from the medical material in the trial, but fortunately it does not look as though there were long term serious physical consequences notwithstanding the dreadful appearance of the injuries in the photographs made available in the trial. If looked upon as a case of attempted murder, this case would come somewhere within the top or middle level of Level 2 of the ranges indicated in the Sentencing Guidelines Council Guidelines.

The specific aggravating features so far as you are concerned, A, is the vulnerability of your father, the suffering inflicted on him, the abuse of the trust he imposed in you and, by no means least, your willingness to countenance the involvement in what took place of your two young daughters and B's girlfriend with the latter of whom you had a clear bond of affection and for whom you were acting as in effect her mother.

Leaving aside the specific guidelines to which I have referred, I am also mindful of the need for a clear and unequivocal message to be sent out that anyone found guilty of this kind of quite despicable offence will face a lengthy term in custody. The vulnerable elderly require

the protection of the courts and the best protection the courts can give is by imposing deterrent sentences.

But for two factors, I would have been considering a sentence in your case, A, of in excess of 20 years for what you did.

However, you are entitled to some credit for putting a stop to the violence on 15 November and, whilst you are of mature years, I need to have some regard to the sentence I am to impose on your son to ensure that there is not an obviously unfair disparity. Although not possessed of your maturity, he played a very active role in the conspiracy and, if anything, did more in its practical pursuit than you did. Nonetheless, statute requires me to impose upon him the least sentence possible in the circumstances having regard to his age and the fact that this will be his first custodial sentence.

The combination of those two factors mean that in your case, A, the sentence will be one of 17 years imprisonment. You will serve half of that term less any time spent on remand, and you will be released thereafter on licence subject to the possibility of recall for the remainder of the length of the sentence. I will direct that the psychological report of [Dr X] is made available to the prison authorities if it has not yet been made available to them.

I have already told you, B, that I am proposing a sentence of detention for public protection in your case. I am required to impose a minimum term before you can be considered for release and that involves deciding what term in custody I would have imposed had the sentence been a determinate one and then halving that sentence.

The aggravating features in your case are similar to that of your mother, though those aspects of breach of trust and the involvement of the others younger than you are somewhat less significant in your case.

Given your age and those matters, the sentence I would have regarded as appropriate would have been one of 15 years. The minimum term I impose, therefore, is one of 7 and a half years less the 265 days already spent in custody. It is only after that period has expired that you will be considered for release and whether and when you are released will depend on the assessment made of your progress in custody.

The sentence is, therefore, one of detention in a Young Offender's Institution for public protection with the minimum term I have specified. I impose upon you a nominal one day's detention in a Young Offender's Institution, to be treated as having been served by your attendance at court today, for the offences on the other indictment.