

Judgment 1/2007

**Wayne Phillip Le Sauvage – Royal Court (Criminal
File 2006/13) – 8th January 2007**

Murder – plea of not guilty on ground of diminished responsibility – conviction on second count of manslaughter – sentencing principles to be applied – sentence of 7 years imprisonment, to be followed by 3 years on Extended Sentence Licence – Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 8th day of January, 2007 before John Russell Finch, Esquire, Lieutenant Bailiff; present: David Charles Lowe, OBE, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson and Keith Bichard, OBE, Esquires, Michael Henry De La Mare and Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie and David Osmond Le Conte, Esquire, Jurats.

2006 No.13

In the action of the LAW OFFICERS OF THE CROWN against WAYNE PHILLIP LE SAUVAGE to see the said Law Officers present an Indictment containing two counts, a copy of which Indictment was annexed to the summons served upon the said accused and has been delivered to Advocate P.T.R. Ferbrache, Counsel for the said accused;

And the said Law Officers claim costs.

WHEREAS on the 15th day of June, 2006 the accused appeared before a Lieutenant Bailiff alone on an Indictment containing one Count (“the Original Indictment”) and pleaded Not Guilty to that Count and the Court ADJOURNED the matter for the accused to stand trial thereon;

AND WHEREAS on the 17th day of November, 2006 the accused again appeared before a Lieutenant Bailiff alone on an Indictment containing two Counts (“the revised Indictment”) and pleaded Not Guilty on the grounds of diminished responsibility to the first Count and Guilty to the second Count, and the Court recorded a verdict of Guilty to the second Count and confirmed that no evidence would be offered in respect of the first Count;

THE COURT this day having heard Advocate G.D. McKerrell for the Crown and Advocate P.T.R. Ferbrache for the accused thereon and having considered a Social Enquiry Report prepared by David Speers, Probation Officer and a Psychiatric Court Report prepared by Dr. Alison Kelly, SENTENCED the accused to seven years’ imprisonment, such sentence to reckon from the 7th day of January, 2006;

AND THE COURT ORDERED under The Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004 that the accused be made the subject of an Extended Sentence Licence for a period of three years from the date of his release;

AND THE COURT CONFIRMED that upon release, should the accused fail to comply with the attached conditions in the Extended Sentence Licence, or be convicted of a further imprisonable offence, the Court sentencing him, or the Parole Review Committee, can revoke the licence, in which case he could be returned to custody for the remainder of the sentence.

Conditions of Extended Sentence Licence

1. To be well behaved and, not to commit any offence and not to do anything which could undermine the purposes of his supervision, which are to protect the public, prevent him from re-offending and help him to re-settle successfully into the community.
2. To keep in touch with his supervising officer in accordance with any instructions he may be given.
3. If required, to receive visits from his supervising officer at his home.
4. Permanently to reside at an address approved by his supervising officer and notify him or her in advance of any proposed change of address or any proposed stay (even for one night) away from that approved address.
5. Undertake only such work (including voluntary work) approved by his supervising officer and notify him or her in advance of any proposed change.
6. Not to travel outside Guernsey without prior permission of his supervising officer.
7. To attend all appointments arranged for him by the Mental Health Service and co-operate fully with any care or treatment they recommend.

S M SIMMONDS
Her Majesty's Deputy Greffier

ORIGINAL

Indictment

THE LAW OFFICERS OF THE CROWN

V

WAYNE PHILLIP LE SAUVAGE

Before the Bailiff and Jurats of the Royal Court of Guernsey, WAYNE PHILLIP LE SAUVAGE is charged with the following offence: -

STATEMENT OF OFFENCE

Murder

PARTICULARS OF OFFENCE

WAYNE PHILLIP LE SAUVAGE, on or about Thursday, the 5th day of January 2006 in the Island of Guernsey, murdered Elaine Le Sauvage.

REVISED

Indictment

THE LAW OFFICERS OF THE CROWN

V

WAYNE PHILLIP LE SAUVAGE

Before the Bailiff and Jurats of the Royal Court of Guernsey, WAYNE PHILLIP LE

SAUVAGE is charged with the following offences: -

STATEMENT OF OFFENCE

Murder

PARTICULARS OF OFFENCE

WAYNE PHILLIP LE SAUVAGE, on or about Thursday, the 5th day of January 2006 in the Island of Guernsey, murdered Elaine Le Sauvage.

STATEMENT OF OFFENCE

Manslaughter

PARTICULARS OF OFFENCE

WAYNE PHILLIP LE SAUVAGE, on or about Thursday, the 5th day of January 2006 in the Island of Guernsey, unlawfully killed Elaine Le Sauvage.

OFFICIAL TRANSCRIPT

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MONDAY 8TH JANUARY 2007

IN COURT ONE

Before

John Russell Finch, Esquire
Lieutenant Bailiff

LAW OFFICERS OF THE CROWN

- v -

WAYNE LE SAUVAGE

The Lieutenant Bailiff's Sentencing Remarks

THE LIEUTENANT BAILIFF: You are a local man aged 32 who has pleaded guilty to the manslaughter of your mother, Elaine Le Sauvage.

You pleaded not guilty to her murder. This plea has been accepted by the Prosecution on the basis of what is called diminished responsibility.

The penalty for murder is fixed by law as life imprisonment. The punishment for manslaughter is not fixed by law but there is a maximum of life imprisonment.

The plea to the lesser offence of manslaughter accepted by the Prosecution is a proper one based on comprehensive and detailed medical reports from specialist psychiatrists whom we note are both legally qualified.

Diminished responsibility reduces what would otherwise be murder to manslaughter. In summary, it means that you were suffering at the time of the killing from such an abnormality of mind that it

substantially impaired your mental responsibility for the act of killing.

You have been in custody since your arrest shortly after the offence- from 7th January 2006.

We note your criminal record which we regard as insignificant when compared with this offence.

We now have the difficult task of sentencing you, having heard a full and fair account of the case from Crown Advocate McKerrell and the mitigation advanced by your very experienced Counsel, Advocate P.T.R. Ferbrache. We have been assisted in our task by the materials put forward including the reports, letters and other items, to which we have afforded full consideration.

We consider that we are helped in our task by the English guideline case of *Chambers* (1983) which has been followed in England where there are a substantial number of cases involving diminished responsibility.

There are three types of situations introduced in *Chambers* - where a person is a danger to the public an indefinite order for detention should be made. Where there is only a minimal degree of responsibility then a custodial sentence is not indicated. There is a third category of cases where the Accused's responsibility is not minimal. In such cases the Court should pass a determinate sentence of imprisonment, the length of which will depend on two factors; the Court's assessment of the degree of the Accused's responsibility, and its view as to the period of time, if any, in which the Accused will continue to be a danger to the public.

It is the third situation which applies in today's case. We state at once that the indications show that you do not present a danger to the public. We note the Probation Report's conclusion that this offence was "*victim specific*" and "*it is difficult to envisage a scenario in which you would act in such a manner in future.*" However, future co-operation in mental health treatment is essential.

We also consider that the words of Lord Taylor, Lord Chief Justice, in *Stubbs (1994)* are worthy of careful consideration. It has to be remembered that diminished responsibility does not mean, and this has been said before in this Court, totally extinguished responsibility. It is not a defence which necessarily involves that there is no blame, no culpability deserving of punishment, and indeed of custody of the person who has committed the offence.

With all this in mind we now consider the individual circumstances of this case. The various English cases are noted but it should be stressed that circumstances vary greatly and each case has to be dealt with on its own particular facts. The Guernsey Court whilst treating the English cases with proper respect has to reach its own assessment of the proper level of sentencing in accordance with its general approach to serious crime.

There is plain evidence that you and your brother were subjected to considerable and inexcusable abuse from the Deceased from when you were small. This comes not only from you but from your brother and your sister who, herself, did not suffer this.

After killing your mother in a horrific manner- we have noted she died as the result of asphyxiation due to strangulation and had suffered multiple bruises and lacerations consistent with repeated, forcible, application of the face on a hard surface- you deliberately set about trying to conceal what you had done in the way we have heard.

We know what was said by the Lord Chief Justice, Lord Bingham, in *Sexton (2000)* albeit the facts were different. His, the Accused's, responsibility, was impaired but not absent. The taking of human life even in such circumstances is a terrible thing and cause for punishment. The extent of punishment must, however, reflect all of the circumstances. Your residual culpability, your blameworthiness, is hardly negligible, punishment is merited.

We approach our task in this case in the light of the circumstances we have set out and the general helpful observations of the English Court of Appeal in *Taylor (1994)*.

Sentencing in this type of case is always amongst the most difficult of the Court's tasks. An assessment has to be made of the Accused's real responsibility for the killing and a balance then struck between on the one hand the need to punish him, the degree of culpability he is found to bear, so as to reflect society's condemnation of the taking of life and on the other hand, the mitigating circumstances implicit in the Jury's verdict, or, as in the present case, the Prosecution's acceptance of your plea of guilty to manslaughter.

Will you stand, please, Mr. Le Sauvage.

Doing what we can to strike that balance in all the individual circumstances of this serious case, we sentence you to 7 years imprisonment with effect from 7th January 2006. The Court considers that the usual period of supervision if any after sentence would not be adequate for the purpose of preventing the commission of further offences and securing your rehabilitation. Consequently, the Court is imposing an extended period of imprisonment. This has two elements, the custodial term, which I have just set out, followed by an extension period after your release throughout which you will be subject to an extended sentence licence.

You have heard the custodial term of the sentence of 7 years imprisonment, the extension period will be for 3 years. If upon release you fail to comply with the conditions in the extended sentence licence or are convicted of a further imprisonable offence, the Court sentencing you or the Parole Review Committee can revoke the licence in which case you could be returned to custody for the remainder of the sentence.

What this means is the custodial sentence is 7 years and you have an extended period of supervision of 3 years after that offence.

The conditions of that licence are to be well behaved, not to commit any offence and not to do anything which could undermine the purposes of your supervision, which is to protect the public, prevent you from re-offending and help you to resettle successfully in the community. To keep in touch with your Supervising Officer in accordance with any instructions that may be given. You are required to receive visits from the Supervising Officer at your home.

Permanently to reside at an address approved by the Supervising Officer and notify them in advance of any proposed change of address or any proposed stay even for one night away from that approved address. To undertake only such work, including voluntary work, approved by the Supervisor and notify them in advance of any proposed change. Not to travel outside of Guernsey without prior permission of the Supervising Officer, and, finally, as suggested by the Probation Officer, to attend all appointments arranged for you with the Mental Health Service and co-operate fully with any care or treatment they recommend.

So in summary, Mr. Le Sauvage, 7 years imprisonment from the date of your arrest and thereafter when you are released, 3 years compulsory supervision.

You may go with the Officers now, please.

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill
Friday 22nd June 2007