

ENGLAND AND WALES / JUDGMENT

R v IGG

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[2026] EWCA Crim Royal Courts of Justice Strand London WC2A 2LL Thursday 12 March 2026
Before: LORD JUSTICE POPPLEWELL MR JUSTICE SWEETING HER HONOUR JUDGE
MORELAND REX v IGG

Computer Aided Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR DAVID AUBREY KC appeared on behalf of the Appellant MS JANE OSBORNE KC appeared on behalf of the Crown

J U D G M E N T (Approved) LORD JUSTICE POPPLEWELL:

1. On the evening of 12 April 2020, the appellant, then aged 23, violently shook her 4½ month-old daughter ('L'), who went floppy and died as a result six days later. At the time, which was during the first Covid pandemic lockdown, she was living with her partner and later co-defendant, and two children; that is to say, L and her 21-month-old brother. She was a few months pregnant with a third child, all from different fathers, none of whom were the co-

defendant. In the Crown Court an anonymity order was made pursuant to section 45 of the Youth Justice and Criminal Evidence Act 1999 protecting the identity of the son and of the young daughter subsequently born to the appellant until they reach the age of 18. We confirm that that anonymity order continues to apply to these appeal proceedings. In order to protect their identity it is necessary to anonymise the name of the appellant.

2. The appellant was tried together with the co-defendant in the Crown Court at Bristol before Mr Justice Saini and a jury. They each faced a charge of manslaughter, and in the alternative, a charge of causing or allowing the death of a child contrary to s.5 of the Domestic Violence, Crime and Victims Act 2004. The Appellant was convicted of manslaughter. The prosecution did not pursue the manslaughter charge against the co- defendant, who was therefore acquitted on the judge's direction of that charge. The jury acquitted him of the s.5 offence. The Judge found, when sentencing, that the shaking had occurred at bathtime when the 21-month-old brother was present and the co-defendant was elsewhere in the house.
3. The Judge sentenced the appellant to 15 years' imprisonment. She appeals against that sentence with leave of the single judge. Sentencing
4. There was a pre-sentence report, which revealed that the appellant continued to deny her guilt. In interview she had accused the co-defendant, with whom her relationship had at times been fractured and violent, of killing L. Her cross-examination and closing speech at trial had sought to put the blame on him. The author of the pre-sentence report suggested that a psychological report be sought and the Judge ordered one, which was provided by a chartered forensic and clinical psychologist, Ms Josling.
5. Ms Josling diagnosed the appellant as having autistic spectrum disorder and ADHD, the combination of which was referred to as AuDHD; and having further vulnerabilities as a result of low self-esteem following bullying in her teenage years. The scores in the tests were generally at or just below the cut-off score which indicated the need for further diagnostic testing. Ms Josling said that three earlier diagnoses by other psychologists, whose reports she had seen and taken into account, had each misdiagnosed the appellant. Each of those reports had rejected a diagnosis of autism disorder or ADHD but had found variously mild personality difficulty or personality disorder of borderline pattern, or traits of borderline personality disorder.
6. On behalf of the appellant, Mr Aubrey KC relied in particular on the fact that Ms Josling had had the opportunity to spend some 18½ hours in interviewing the appellant and had applied 17 different psychological tests. He submitted that she was an experienced professional psychologist and he relied in particular on the following pages in her report. First, at paragraph 6.1 she said: "I found [the appellant] to be open in interview regarding the assessment questions; she was attentive, reflective and thought about her answers, making efforts to be as truthful as possible which was very helpful." Then the particular conclusions which were expressed at paras 8.3 and 8.4 of the report in the following terms: "8.3. In my considered opinion [the appellant] would have had a high degree of connection between her

neurodivergent conditions, co-morbid mental health and personality problems and the offending behaviour as these were undiagnosed at the time (except for dyslexia) and would have been causing her problems in managing her symptoms day to day with the demands of 2 young children and little consistent family or other support in managing the children's needs in particular as well as being pregnant for the third time in fairly quick succession. ...

8.4. ... I believe that she would have found adapting to unexpected situations, departing from her routines and time frames and responding to situations of stress, difficult. Her high level of ADHD symptoms, both Inattention/Distractibility and Hyperactivity/Impulsivity, creates a 'push and pull' of emotional dysregulation with her AuDHD that she has to manage in adulthood. Both of these problems in isolation would affect her ability to make cogent and reasonable decisions and affect the level of culpability she holds for those decisions; taken together, this is all the more apparent in her behavioural and relationships history of impulsive decision-making, not always having boundaries or keeping to rules and of being misunderstood by others. Managing these undiagnosed neurodivergent issues ... without treatment or support as well as the fallout from the historical bullying of very low self-esteem and feeling that she doesn't fit in or is well liked would have caused her stress. Regarding executive function; research evidence has shown that the neurodivergent brain has a frontal lobe developmental delay compared to neurotypical individuals of some 5 years as an average. This means that [the appellant] lacks the ability to make reasoned decisions that are not impulsive; she is much more likely to act on emotion and irrationality rather than consider the consequences of her actions in the short, medium and longer-term. [The appellant] would have had poor problem-solving skills, poor decision-making and poor judgement at the time of offending due to this reduced executive syndrome immaturity and disinhibited frontal lobe function which would have been added to by cocaine use." 7. In his full and carefully measured sentencing remarks the Judge made clear that he had regard to the relevant sentencing Guideline on Unlawful Act Manslaughter and had given specific consideration to the Guideline on sentencing offenders with mental disorders, development disorders or neurological impairments, given what was said in the psychology report; and he said he had also considered the Guideline on sentencing children and young adults in relation to developmental maturity. 8. In reciting the facts he recorded that L's father had not been a feature in her life and that he had been unaware that L was his child until after L's birth. During her pregnancy with L, the appellant had told the co-defendant that the baby was his. The co-defendant became aware after L's birth that L was not his child, despite the appellant's attempts to mislead him by creating a fake paternity test. She had been a loving mother to L although she had a chaotic lifestyle which included regular cocaine use, by both her and the co-defendant, and a volatile relationship between them. There were before the judge letters from healthcare visitors which attested to the fact that L had been thriving during her brief life. However, the post-mortem examination of L's brain revealed features which established that L had been shaken once or more in the weeks or few months before her death and the Judge found that it was the appellant who was responsible for that earlier shaking.

9. As to the appellant's upbringing the Judge said this: "Although you suffered bullying at school and felt you did not belong and were the victim of an abusive relationship with a partner earlier in your life, the evidence at trial suggested to me that you come from a loving family. You had a highly supportive mother and father. In their eyes you could do nothing wrong. But sadly, you also manipulated them on occasions. You were also close to your grandmother who became seriously ill during the trial. The evidence was that your family, particularly your father, was a real source of both emotional and financial support to you and your young family. I say this because there is little in your personal background which helps me understand why you committed the act which led to L's death or inflicted the earlier shaking injuries suffered by L. I say that having read with care the psychology report. Unlike many defendants who come before the courts, you had a loving family environment."
10. And then after referring to the psychologist's report the Judge said: "However, I am not persuaded that anything in the report can explain your violence to L. Why you shook L will only be known to you."
11. Applying the Guideline for Unlawful Act Manslaughter the Judge determined that it was category B, which has a starting point of 12 years and a range of 8 to 16 years because the appellant was or ought to have been aware of the obviously high risk of death or really serious harm. He went on: "In coming to this conclusion in relation to your culpability, I have paid particular regard to what the psychologist's report says about your emotional and mental health at the time and the potential relevance of your neurodiversity. Reference is made to a number of previously undiagnosed conditions. Mr Aubrey, King's Counsel, placed particular reliance on these matters in arguing that I should not find that you were aware that there was a high risk of death or grievous bodily harm to L. He says your acts were reckless and emphasised what was said in the report about your ability to make decisions in the neurodivergent context. I do not accept that, having considered the report in some detail. It does not change my conclusions on culpability. I have also had the opportunity to see you give evidence and I approach what you said to the psychologist and her conclusions with some caution, given that you still deny killing L. The report is based in part on an account of events which the jury have rejected. As I will describe in a few moments, the report remains relevant, however, in relation to mitigation."
12. The Judge then identified five aggravating features which he treated as warranting an uplift to the top of the range to reflect the appellant's culpability. He identified, first, the history of violence towards L as evidenced by the pathological evidence showing a historic brain injury caused by a similar but less serious shaking episode. Second, he identified the significant physical suffering to L, which was established by the medical evidence, suffering both at the time and in the further six days before she died. Third, the Judge identified the particular vulnerability of L as a baby. Fourth, he identified that the killing took place in front of the 2-year-old brother; although the Judge said that this did not have significant weight as an aggravating factor because he may not have appreciated what she was doing. Fifth, the Judge identified that the appellant had sought to blame the co-defendant for the

death.

13. He then said this: "I turn then to the factors which reduce seriousness and mitigation. Mr Aubrey, King's Counsel, has made powerful submissions on your behalf. I have taken into account the points he made. I note that you were otherwise a loving mother and although your personal lifestyle was somewhat chaotic, the healthcare professionals who visited you from time to time in your various homes had no concerns about the safety or wellbeing of L and her older brother. You have no previous convictions. This was not a premeditated offence, and you were relatively young and emotionally developing. You were also, I accept, immature at the time of the offending and were facing the isolation from family during the pandemic. Mr Aubrey, King's Counsel, also relied on the delay of five years in these proceedings, but I accept from Miss Osborne's, King's Counsel, submission that the delays were in large part caused by the Family Court proceedings and the need for specialist medical evidence in relation to the cause of L's death. I accept [that] the delay will have had an impact on your mental health. I have also taken into account in your favour the personal challenges and mental health aspects referred to in the psychology report as mitigation. A custodial sentence of any length is going to be particularly tough for you."
14. Thereafter he announced his decision that the sentence would be one of 15 years' imprisonment, having said that it was not a mathematical exercise and that he had stood back and balanced all the matters drawn to his attention by counsel on each side.

Submissions

15. Mr Aubrey in his written submissions and his oral submissions to us today, for which we are grateful, does not challenge the Judge's decision that the offence fell within the category range he identified. Nor does he challenge the Judge's assessment that the aggravating features would take culpability to the top of the range. His submissions were focused on an overall submission that the Judge failed to give sufficient weight to a number of the mitigating features both individually and cumulatively, and that a reduction of 1 year for all those features was manifestly insufficient so as to render a sentence of 15 years manifestly excessive.
16. He argued first that the Judge had failed to have sufficient regard to the contents of Ms Josling's report as diminishing the Appellant's culpability. The Judge had also failed to have sufficient regard to the appellant's young age, 23, and to her immaturity as diminishing her culpability. In that respect he reminded us of the Guideline provision, that in respect of offenders aged between 18 and 25, "Age and/or lack of maturity can affect ... the offender's responsibility for the offence which ... may justify a reduction in the sentence ... The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater). In particular, young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to evaluate the consequences of their actions, limit impulsivity and limit risk taking."

17. Further, Mr Aubrey submitted the Judge had failed to have sufficient regard to the evidence of how the appellant had been observed to care for her children. That evidence, he emphasised, came from highly experienced health professionals, and included evidence that L had been thriving and that there were no concerns about her safety and wellbeing or that of her brother.
18. Mr Aubrey also submitted that the Judge had failed to have adequate regard to the personal circumstances of the appellant, which he described as the stresses and pressures to which she was subject at the time, it being a difficult time for everyone during the first Covid lockdown but especially for the appellant, isolated as she was, effectively on her own with two young children because there was very little support for her from her partner. He emphasised again in this context the impact of her emotional and mental health conditions and the aspects of the report which we have read, which contained evidence which had a bearing on her ability to deal with the stresses which she was facing, the circumstances with which she was confronted and the connection between her condition and her ability to cope with those factors.
19. Mr Aubrey also submitted that the Judge ought to have had greater regard to the extensive delay between the date of the offence and the date of sentence. The Family Court proceedings had concluded in 2022. A further three years had elapsed, and whilst he recognised that that further delay was because there had to be a trial in respect of the allegation, that had led to delays which led to the trial only taking place in 2025, and there ought to have been taken into account in any event the fact that that significant period had elapsed before sentence and the inevitable impact which that had on the appellant.
20. Mr Aubrey further submitted that the Judge ought to have had greater regard to the effect that a substantial custodial sentence would have on the appellant. In this context he referred again to her youth and immaturity, neurodiversity, personal circumstances and the delay, and he emphasised the passage in Ms Josling's report which said: "I consider that the impact of a custodial sentence will weigh more heavily on [the appellant] than someone without her neurodivergent conditions and co-morbid mental health and personality issues."
21. On behalf of the Crown, Ms Osborne KC provided a helpful full written Respondent's Notice and appeared at court today, although we did not feel it necessary to call upon her to make oral submissions. In the written submissions she emphasised that the Judge had the benefit of hearing the accounts given by the appellant to hospital workers and police officers both in the immediate aftermath of L's collapse and during the course of the investigation that followed. He also had the benefit of seeing the appellant answer questions at trial over the course of a number of days. She submitted that he was very well placed to assess the kind of person that she was, taking into account that her evidence was given to the court almost five years later. There was clear evidence that the appellant was capable of being manipulative including the production of the fake paternity test to try to convince the co-defendant that he was the father of L when he was not and when the appellant knew that he was not.

22. As to the appellant's age and immaturity, the Judge said he had taken this into account and specifically referenced having had regard to the Guideline. Ms Osborne submitted that in the context of this case, those factors warranted only limited reduction because this was offending behaviour against the appellant's own young daughter, and there was never any suggestion that she was unable to appreciate that a baby should not be shaken; in fact the contrary was true as she admitted in evidence. As to the effect of her age on her sentence, this carried no weight because she was 28 by the date of sentence.
23. Ms Osborne submitted that as to her neurodiversity the Judge was entitled to reject the suggestion in the psychology report that it diminished her culpability for the offending. She reminded us of the passages in the overarching guidelines on sentencing offenders with mental disorders which state that culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour [para 10]; that in some cases the impairment may mean that culpability is significantly reduced, but that in other cases it may have no relevance to culpability [para 11]; and that the guideline stresses that the sentencer, in possession of all the relevant information, will be in the best position to make the assessment of culpability and to make their own decision; the court is not bound to follow the expert opinion [para 13].
24. She relied on the passage in paragraph 15 of the Guideline which suggests that the following questions may assist the sentencer (with relevance to this case): "At the time of the offence did the offender's impairment or disorder impair their ability to exercise appropriate judgment, to make rational choices or to understand the nature and consequences of their actions?" [para 15]. She submitted that the judge was well placed to be able to answer that question in the negative.
25. She emphasised that the report prepared by Ms Josling provided diagnoses of autism and ADHD based on a series of assessments but that many of the results of these assessments were at best borderline. In asserting that there was a high degree of connection between the Appellant's neurodiversity and the offending in para 8.3 of the report, Ms Josling did not explain why she thought there was such a degree of connection; nor could she, Ms Osborne submitted, because the appellant was continuing to deny that she had inflicted the injuries on L. In the context of a report in which the appellant continued to deny having done anything to L that night that would have caused her injuries, it would have been very difficult for the sentencing judge to form the view that the appellant's diagnosis did impair her ability to act properly in relation to her own child and not shake them violently, particularly when there was no evidence to suggest, for example, that L was crying uncontrollably for an extended period of time or that she had struggled with L. As the Judge quite properly said, nothing in the report could explain her actions towards her daughter on that day. In those circumstances, Ms Osborne submitted, he was entitled to conclude that the report did not justify a conclusion that her neurodiversity diminished her culpability or that her age or immaturity did so.

26. As to the evidence of the appellant's previous care for both her children, Ms Osborne submitted that it had to be considered in the context of other evidence which demonstrated not only a chaotic lifestyle involving taking cocaine together with the co- defendant, but also an ability to conceal the less attractive parts of her lifestyle from those who were obliged to check up on the welfare of the children. She referenced here the fake paternity test. She submitted that, importantly, any benefit which the appellant might derive from the reports by the care workers was undermined by her having shaken L on a previous occasion.
27. As to her personal circumstances, Ms Osborne referred to the overarching guideline for sentencing young people, identifying that it will often be the case that young people before the court have "deprived homes, poor parental employment records, low educational attainment, early experience of offending by family members, experience of abuse/neglect, negative influences from peer associates and the misuse of drugs and/or alcohol". Ms Osborne submitted that none of this was true of the appellant, who as the Judge found had a very supportive family network and upbringing, a family network which included mostly those who lived geographically close to her at the time. Although the isolating effects of Covid were being felt by everyone, it is clear that the appellant was speaking to her parents every day (she had reported as much to the medical professionals) and was also speaking to other family members regularly.
28. As to the delay, Ms Osborne submitted that the Judge was right not to treat it as affording any mitigation. The family proceedings had to take precedence, particularly in this case where there was an older child who was in need of immediate protection and at the time of the commission of the offence the appellant was pregnant with a third child and due to give birth in October 2020, whose interests also had to be considered. The crux of all the delay in this case, she submitted, was because the appellant maintained her denial and sought to blame the co-defendant for L's injuries. The contested nature of the proceedings, both in the family courts and in the criminal courts, necessitated the instruction of multiple specialist experts which inevitably took a significant period of time.
29. As to the impact of the various matters relied on by the appellant in serving a custodial sentence, she emphasised that the Judge said he had taken all these into account. Ms Osborne submitted that reliance on the impact of these on a person serving a custodial sentence carries more weight when one is considering a short sentence which could, bearing in mind the impact, be avoided entirely, whereas when serving a sentence of the length involved in this case, the judge could properly discount that as providing any legitimate reason to further reduce the appropriate sentence. She submitted that the impact of the sentence should be the same. Conclusions

30. With one exception, we accept the submissions made by Ms Osborne on behalf of the Crown. The exception is that it is appropriate to reduce a sentence of imprisonment if the personal circumstances of the offender would render custody more onerous for them than it would be for the prison population more generally; and that applies just as much to a longer sentence as to a shorter one. Nevertheless, it has to be borne in mind that a large section of the prison population unfortunately suffers from neurodiversity to some degree.
31. The Judge was well placed to determine whether this appellant's age, immaturity or neurodiversity was such as to reduce her culpability for the offending and to conclude that it did not, despite the assertion to the contrary of the psychologist Ms Josling. There was very little real mitigation in the care workers' accounts of her previous treatment of L given the matters relied on by Ms Osborne and in particular that there was an earlier incident of baby shaking by the appellant. Such mitigation as exists is, therefore, really focused on the effect which a prison sentence would have on the appellant, which is of some but limited significance.
32. As the Judge correctly observed, weighing aggravating and mitigating factors is not an exact science and different sentencing judges might properly reach a conclusion at different points within a range. Where the sentencing judge has had the benefit of observing the offender at a trial which investigates the offending and the background circumstances of the offender themselves, the judge is very well placed to make the evaluative judgment as to the weight to be given to the different competing features of the case and the different factors which have been addressed by Mr Aubrey. It is clear that in this case the Judge availed himself of that advantage by considering carefully all the relevant features. The matters which Mr Aubrey emphasises were all identified by the Judge and were expressly taken into account by him.
33. In our view and standing back, it cannot be said that this sentence was outside the appropriate range for the circumstances of the offence committed and those of the offender.
34. Accordingly we dismiss the appeal. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk

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