

## R v Varley and McGowan-Fazakerley

### Sentencing Remarks

1. Preston Davey was 13 months old when he was murdered by you, Jamie Varley, on 27 July 2023. Over the previous four months you and John McGowan Fazakerley had been responsible for his care as his prospective adopted parents.
2. Three days ago, following a trial which had lasted for over six weeks, you were both convicted unanimously by the jury on an indictment containing 28 counts all of which related, in different ways and on different occasions, to your unremitting abuse or neglect of Preston during the period over which he had been entrusted to your care.
3. It now falls to this court to sentence you for the offences of which you were convicted.
4. I will start by outlining a brief history of the circumstances leading up to Preston's death linking up relevant events to the various counts on the indictment.
5. I will then proceed to pass sentence upon each of you in turn explaining as I do the reasons for the sentences passed and the relevant guidance to which I have had regard.
6. You had lived together as a couple since 2019.

7. In December 2021, you were registered as prospective adoptive parents. On 9 March 2023, following an adoption training and assessment process, the local authority Adoption Panel approved your adoption of Preston Davey.
8. Preston had been born on 16 June 2022 and was promptly placed into the care of experienced registered foster parents, both of whom have read out statements to the court this morning telling of the impact which Preston's death has had upon them. Statements have also been made by Preston's biological mother and father. The impact of Preston's death on every one of them has been devastating.
9. To all intents and purposes, Preston was noted to be a healthy baby at the time he was entrusted to your care at your home in Blackpool where he spent his first night on 31 March 2023. You, Varley, were primarily responsible for the daytime care of Preston. You, McGowan-Fazakerley, were away at work most weekdays but present in the home and taking active responsibility for Preston's care during the evenings, early mornings and at weekends.
10. Unfortunately, Preston proved to be restless at nights and for the following few weeks he was waking up frequently. Otherwise he was described as a dream to care for.
11. You, Varley, soon began to complain to friends and work colleagues that you and McGowan-Fazakerley were losing sleep and it was having an impact upon your relationship. I am sure that

your growing and selfish resentment towards Preston played at least some part in your motivation for treating him so badly in the weeks which followed.

12. I do not doubt that your professional background as a teacher together with your charm and easy manner did much to reassure the social workers and health professionals that all was well when it clearly was not.
13. It was on 17 April 2023 when you, Varley, took the first of many indecent images of Preston both moving and still. These images form the subject matter of counts 15 to 29 inclusive of the indictment. They betray an unhealthy and sustained interest in his private parts their content becomes increasingly sinister as the weeks go by. I will not descend into unnecessary detail concerning what most of these images portrayed.
14. On the evening of 19 April you, Varley, took two photographs of Preston in the bath with bruises to his forehead. This was the first of many images of Preston taken over the next few weeks revealing bruises to a number of different locations on his body. Even accounting for the inevitable tendency for babies learning to crawl to sustain bumps and bruises there can be no doubt from the number and anatomical location of some of the bruises that these were caused by physical abuse at your hands. In this regard, it is to be noted that, at post mortem, bruising was found to Preston's head, both arms, both legs, chest and back.

15. It is against the background of what is portrayed in the films and images and the injuries sustained in life that the jury were sure that you, McGowan-Fazakerley, are guilty of allowing the death of a child under count 5 of the indictment and child cruelty under count 8 of the indictment and that you, Varley, are guilty of child cruelty of both a physical and psychological nature under counts 6 and 7 of the indictment.
16. On 25 May 2023 Preston was admitted to hospital where he had a seizure. Preston's condition was, at the time, attributed to a chest infection but two bruises to his forehead were also noted at the hospital which gave rise to safeguarding concerns which were reported to the police. The matter was taken no further when all concerned were satisfied with the explanation which you both gave to the hospital clinicians that Preston had started crawling and the bruises were caused because he was accidentally bumping his head.
17. On 15 June 2023, you, McGowan-Fazakerley, had been delayed getting home from work and you, Varley, resented this and took out your frustrations on Preston. Your actions including playing loud and percussive music at shortly after 9pm, despite which Preston is seen to fall asleep, only to be woken up by you exclaiming "Boo". You took a video of this chilling and deliberate act of sleep deprivation and sent it to McGowan-Fazakerley who must have formed a very clear picture of what you were capable of doing to Preston both then and subsequently.

18. A further video, taken about an hour later, shows Preston looking very unwell indeed and you report back by text to McGowan-Fazakerley that he has had a seizure. I am sure, Varley, that his seizure was caused by your abuse
19. About a week later you, McGowan-Fazakerley, took a video of you, Varley, holding Preston by the arms and repeatedly twisting him in a way so obviously and excessively rough and vigorous as to amount to clear abuse.
20. On 30 June, Preston was vomiting and a rash which had developed earlier got worse. You both took him to hospital. Again, the staff nurse noticed bruising to Preston's forehead. You allayed her fears by showing a video of Preston pulling a toybox on top of him. But that video could not have caused these bruises because it had been taken 12 days earlier.
21. On 6 July 2023, you, Varley, took Preston to hospital with an injury to his left arm. It turned out to be a probable avulsion fracture of the left elbow resulting in a fragment of bone becoming detached. You gave a number of varying accounts of how this could have happened accidentally but the nature of the injury was consistent with the non-accidental application of force. You, Varley, were convicted by the jury of inflicting grievous bodily harm under count 10 in respect of his injury.
22. I am sure, Varley, that, while Preston still had his arm in a cast from the fracture to his elbow, you told a friend, who gave evidence at your trial, that you were having harmful thoughts

towards Preston relating to possible drowning or suffocation. It was to prove to be a terrible omen. You went on to say that you were not going to act upon these thoughts and she believed you.

23. 23 July 2023 was four days before Preston's death. It was a Sunday when you were both at home. You, Varley, took a total of seven images of Preston in his cot over a period of just over three minutes starting at about 2.10pm. In these images, Preston is seen to be draped over the bars of his cot with his neck in a position in direct contact with the horizontal component running directly over the vertical bars. You do not need any medical training to realise that this was an alarmingly dangerous position for any baby to be placed in. You, McGowan-Fazakerley, witnessed this. Rather than laying Preston down to rest you proceeded jointly to sexually assault him while he was in that position. Just over two minutes later, you, Varley, took a final haunting image of Preston whose head is now raised so as to be facing in a direction at right angles to the vertical bars of the cot. His mouth is now seen to be conspicuously full of fluid which the jury were sure was not, as you claimed, to be only dribble. By this time, his lips were turning blue through lack of oxygen. This provides the basis for your convictions of sexual assault under count 12 of the indictment and child cruelty under count 13.

24. At about 4.30pm on the same afternoon, you, Varley, took a picture of Preston's buttocks parted by your open fingers to reveal Preston's anus which appears to be gaping abnormally. This

image is both indecent and evidence of recent abuse involving assault by penetration which is reflected in count 11 of the indictment.

25. On the following day at about 7.40 am, you, McGowan-Fazakerley, had left for work. You, Varley, set up your phone to record Preston in the bath where you left him alone for nearly a quarter of an hour. The deeply disturbing video shows Preston floundering about and losing his balance in the bath without intervention. No-one, let alone an adoptive parent and teacher, could possibly witness what is depicted in this footage without realising the obvious cruelty and danger to Preston which it entailed. This formed the basis of count 14 on the indictment.

26. 27 July 2023 was the day of Preston's murder. That afternoon you, Varley, were, again, at home alone with Preston. At about 4.45pm, Preston was having a seizure. You videoed it. I am sure that it was caused by your further abuse. Preston's lips are again blue. He must have stopped breathing for probably 45 seconds before the video had started and he takes no breaths in the first 15 seconds thereafter. He was plainly in need of urgent medical attention. I am sure that the reason you did not seek it was out of fear of discovery of what you had done. Your cruel neglect forms the basis of the charge of cruelty under count 4 of the indictment.

27. Your abuse that afternoon was evidenced by later findings relating to injuries to Preston's anus, rectum and bladder found

post mortem. They were not causative of his death but, taken together, proved that these were serious penetrative injuries which formed the basis of count 3. I am sure they were inflicted for your sexual gratification.

28. You, Varley, said that Preston had made what appeared to be a full recovery from this seizure when you put him in the bath and left him there momentarily only to discover upon your return that he had fallen over from his bath seat and was partially submerged in the water.

29. All this was a lie. No evidence of drowning was found at post mortem and the pathologist who performed it reached the conclusion that Preston's death had been caused by the acute obstruction of his upper airways either by smothering or, more likely the insertion of a penis or an object of similar shape being thrust into his mouth. Significant bruising was found at the back of his throat. In the context of all the other evidence in the case, I am sure that it was it was your penis or other hard object deployed for your sexual gratification which caused the fatal injury. You were the only person with Preston that afternoon. It was you who did this. You murdered him. This forms the basis of your conviction on count 1.

30. Almost immediately after your return home at 6.15, McGowan-Fazakerley, you and Varley raced Preston to hospital but it was too late to save him. He was in cardiac arrest and pronounced dead at 7.20pm that evening.

31. You both persisted in protesting your innocence during the course of your police interviews.
32. I now turn to the task of passing sentence on both of you.
33. As is now widely known, judges do not exercise a broad and free-ranging discretion when passing sentence but must apply the provisions laid down by Parliament and operate within the parameters laid down by the Sentencing Council in their various Guidelines. It is therefore necessary for me to explain not only what sentences I am about to pass but also the basis upon which I pass them.
34. Turning firstly to you, Varley.
35. There is only one sentence for murder. It is life imprisonment. However, I am also required to determine any minimum term (if there is to be one) which you must serve before becoming eligible for parole. The relevant criteria are set out in schedule 21 of the Sentencing Act 2020 to which I will now turn.
36. Paragraph 2(2)(a) of the Schedule provides that where the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high the appropriate starting point for an adult offender is a whole life order.
37. Paragraph 2(2)(b) provides that cases that would normally fall within sub-paragraph (1)(a) include—
  - (b) the murder of a child if involving...sexual or sadistic motivation...”

38. I am sure for the reasons I have already given that your motivation fell within the parameters of this sub-paragraph.
39. The following principles apply.
40. A whole life order may be imposed only if the court considers that the seriousness of the offence was such that it should not make a minimum term order.
41. Where a whole life order is called for, the case will not be on the borderline. The facts of the case, considered as a whole, must leave the court in no doubt that the offender must be kept in prison for the rest of his life.
42. If the case includes one or more of the factors set out in paragraph 2(2) of the Schedule, it is *likely* to be a case that calls for a whole life order.
43. A whole life order is a sentence of last resort for cases of the most extreme gravity, which is reserved for the few exceptionally serious cases where the judge is satisfied that the element of just punishment requires the imposition of a whole life order.
44. In a borderline case, if the judge is in any doubt as to whether this standard is reached, a minimum term order is likely to be the appropriate disposal. Each case will depend critically on its particular facts. The sentencing judge must undertake a careful analysis of all the relevant facts as justice cannot be done by rote. In assessing whether the seriousness of the offence(s) warrants a whole life order, the court must have regard to the general principles set out in Schedule 21.

45. In your case, Varley, not only the circumstances of Preston's murder on 27 July 2023 fall to be taken into account but those of all of the offences leading up to it over the course of over three months the details relating to which I have already recounted.
46. The seriousness of your offending is exceptionally high even in the general context of the offence of murder and the appropriate starting point is a whole life order.
47. Having determined the appropriate starting point, I must consider the aggravating and mitigating factors.
48. The aggravating features in this case are:
- (i) Preston was *particularly* vulnerable because of his age. He was not just a child but a baby;
  - (ii) both mental and physical suffering was repeatedly inflicted on him before his death;
  - (iii) the gross abuse of a position of trust namely that of prospective adopted parent.
49. Your not guilty pleas are not an aggravating feature but pleas of guilty would have been relevant when determining whether the seriousness of the case is exceptionally high. This a factor which you are not, therefore, able to advance or rely upon in your favour.
50. In mitigation, I accept that you did not intend to kill Preston despite the fact that it was almost inevitable that your assault on Preston would cause him really serious injury and that that was, indeed, your intent.

51. As for premeditation, I cannot rule out the possibility that your attacks on Preston were not premeditated from the moment of adoption. They did, however, fall into a pattern of repeated and persistent abuse which very significantly dilutes the force of any argument relating to premeditation.

52. You are also of good character although I am bound to conclude that your character was one of the factors which led to earlier suspicions of your abuse being overlooked by professionals. As the Sentencing Council Guideline on Sexual Offences states:

*“The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.”*

53. Balancing out these aggravating and mitigating features, I am satisfied that the starting point of a whole life order is also the finishing point. This is a case of the most extreme gravity. You will stay in prison for the rest of your life. You will never be eligible for parole

54. I turn now to counts 3 and 11 of assault by penetration of a child under 13

55. The approach I must take is set out in the Sentencing Guideline the application of which first involves assessing the level of harm and culpability.

56. Preston was particularly vulnerable due to his extreme youth. This, in turn, rendered it anatomically certain on the facts of this case that the acts of penetration would be dangerous on each occasion. These factors placed your offending into category one harm.
57. With respect to culpability, the following factors were present:
- (i) There was a gross abuse of trust;
  - (ii) You had previously been violent to Preston;
  - (iii) You recorded a sexual image of the damage done on your mobile phone.
58. It follows that your offending falls into the category A culpability.
59. By the application of the Guideline, the appropriate starting point is 16 years' custody within a category range 13 - 19 years.
60. It is a potentially mitigating feature that you have no previous convictions but, in your case, I have already identified the relevant caveats concerning the weight to be given to this factor.
61. Bearing in mind the combination of several factors reflecting on your high culpability and the fact that two separate offences are involved I move to a sentence of 19 years imprisonment.
62. No purpose would be served by making a detailed assessment of dangerousness bearing in mind that you will be

serving a whole life sentence. In any event, I would conclude that the length of the determinative sentence imposed would have been such as to render the imposition of an extended term unnecessary.

63. I observe the principle of totality by imposing these sentences concurrently to all of the others which I have and will pass.

64. I turn now to counts 4, 6, 7, 13 and 14 all of which relate to cruelty to a person under 16.

65. In this case, I am satisfied that you subjected Preston to prolonged and multiple incidents of serious cruelty, including serious neglect together with your gratuitous degradation of him and sadistic behaviour. This combination puts your offending in culpability A.

66. I am also satisfied that your cruelty exposed him to a high likelihood of serious psychological, developmental, or emotional harm. This places the level of harm within category 2.

67. The appropriate starting point is 6 years' custody within a category range 4 - 8 years' custody.

68. I move to the top of the category range to 8 years custody to reflect the number of occasions of offending but order that they should be served concurrently to each other and to the sentences passed on all other counts.

69. I now turn to count ten inflicting grievous bodily harm.

70. This is a high culpability case because Preston was obviously vulnerable due to his age and circumstances
71. The harm caused fell into Category 3.
72. The appropriate starting point is 2 years' custody within a category range 1 - 3 years' custody.
73. The aggravating features are that:  
The offence was committed in a domestic abuse context;  
It was against a background of a history of violence or abuse towards Preston;  
It involved an abuse of power and/or a position of trust.
74. You are of good character.
75. Balancing these factors, I move to the top of the range at 3 years custody which sentence will, to reflect the principle of totality, run concurrently to your sentences on all the other counts
76. I now turn to counts 15 to 29 on the indictment relating to indecent images.
77. These are by no means trivial offences but the taking of some of these images has already been relied upon to aggravate some of the convictions listed above. Taking into account the principle of totality against the imposition of a whole life sentence I would impose no extra penalty in respect of these offences.
78. Your total sentence is therefore a whole life order.
79. I now turn to you Mr McGowan-Fazakerey.
80. Count 5 relates to Allowing the death of a child.

81. Your culpability is very high. There were prolonged and multiple incidents of serious cruelty, including serious neglect of Preston combined with a failure on your part to take any steps to protect him from offences in which the above factors are present.
82. The level of harm is death.
83. Accordingly, the appropriate starting point would be 14 years' custody within a category range 12 - 18 years' custody.
84. You have no previous convictions.
85. To reflect totality, I will take this as the lead offence against you in respect of count 8 relating to cruelty to a person under 16. This results in a move to the top end of the category range to 18 years imprisonment.
86. I now turn to count 8 relating to cruelty to a person under 16.
87. This is a high culpability case involving prolonged and multiple incidents of serious cruelty, including serious neglect and gratuitous degradation of Preston with sadistic behaviour
88. Your offending gave rise to a high likelihood of serious psychological, developmental, and/or emotional harm to Preston which places in it category 2.
89. The appropriate starting point is 6 years' custody within a category range 4 - 8 years' custody.
90. You have no previous convictions.
91. To reflect the prolonged period over which your offending took place, I move to the top of the category range to 8 years. To

reflect totality, this will be served concurrently to your sentence on the other counts.

92. I turn next to count 12 relating to the sexual assault of a child under 13. I will take this as the lead offence against you in respect of count 8 relating to cruelty to a person under 16.

93. In your case, the offending falls within category 2 harm because Preston was particularly vulnerable due to his extreme youth and personal circumstances

94. Your culpability is in category A because:

- You acted together with Varley to commit the offence
- This was an abuse of trust

95. The appropriate starting point is therefore 4 years' custody within a category range 3 - 7 years' custody.

96. Your good character is a very modestly mitigating factor.

97. To reflect the number of culpability factors and the fact that I have subsumed within the sentence for this offence that which reflects the element of cruelty falling within count 13, I move to the top of the range and impose a sentence of 7 years custody. Your egregious behaviour on this day in particular calls for a consecutive sentence to be imposed on this count.

98. Finally, I turn to the charge of child cruelty under count 13.

99. This is a high culpability case involving the gratuitous degradation of Preston.

100. Your offending gave rise to a high likelihood of serious psychological, developmental, and/or emotional harm to Preston which places in it category 2.
101. The appropriate starting point is 6 years' custody within a category range 4 - 8 years' custody.
102. You have no previous convictions.
103. I consider that the starting point of 6 years should also be the end point in your case. To reflect the principle of totality I order that this sentence should run concurrently to the sentences passed on the other counts.
104. The total sentence in your case is, therefore, one of 25 years. You will serve at least two-thirds of that sentence in custody before you are released on licence. If you commit any offences during this period or fail to observe the terms of your licence you are liable to be returned to prison to serve out the rest of your term. You will have credit for the period of 370 days you have already spent in custody
105. I have considered the statutory dangerousness provisions and, although I find you dangerous, the length of the custodial term and the licence period which follows provide adequate protection to the public. I therefore do not impose a life sentence or an extended sentence.