

No: 200504126/A6

Neutral Citation Number: [2005] EWCA Crim 2313
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Friday, 16th September 2005

B E F O R E:

LORD JUSTICE SCOTT BAKER

MR JUSTICE DAVIS

MR JUSTICE DAVID CLARKE

R E G I N A

-v-

LISA ANNE JENNIFER MERRITT

Computer Aided Transcript of the Stenograph Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

MISS J A EVANS appeared on behalf of the APPELLANT

J U D G M E N T
(As approved by the Court)

Crown copyright©

1. MR JUSTICE DAVIS: On 17th May 2005 at the Crown Court at Winchester, the appellant, who is a woman of 33 years of age, pleaded guilty to a count of perverting the course of justice and on 29th July 2005 she was sentenced to a term of imprisonment of ten months.
2. Against that sentence she appeals by leave of the single judge.
3. The background facts, relatively shortly stated, are these. The appellant met her future husband in November 2000. They became engaged in March 2001 and married in November of that year. The relationship was a volatile and stormy one and apparently involved some degree of violence on both sides, the husband receiving a caution for assault on the appellant on 20th July 2003. Eventually there was a separation in August 2004 with the appellant remaining in the marital home in Farnborough and her husband moving to Woking.
4. On 31st January 2005 the appellant telephoned the police, but then abandoned the call. Officers were concerned about the abandoned call and attended at her home address. The appellant was in drink and was evidently very upset. Initially she would not allow the officers access to the property, but eventually the officers gained entry through the rear. She spoke to the appellant. She then told them that her husband had been in the house earlier and had frightened her. At that stage she gave no more information than that.
5. The appellant then said that she would like to speak to the female police inspector on her own. When she did so, she stated that her husband had masturbated in her presence and then forced her to have penetrative sex; that is to say, that he had raped her. On hearing this the inspector made enquiries as to the availability of a sexual offences officer to attend the scene and also called a Detective Sergeant Owen. Arrangements were made for the inspector to go back to the police station and speak to the Detective Sergeant.
6. It was decided that the appellant should be taken to the victim interview suite and that was arranged. However, the appellant refused to leave the home, refused to allow the officers to take any of the bedding, where she alleged the assault had taken place, or allow medical examination. She said that she did not want to leave her dog and said that she would reconsider in the morning. The following morning officers duly attended at her home and a statement was taken from her, in which she said she did not wish to proceed with the matter, although she did continue to maintain that the incident had taken place.
7. Meanwhile, given the serious nature of the allegation the previous evening, officers had been sent to her husband's home and he was arrested. He co-operated and a number of items from him were seized before he was taken to the police station. He was detained in custody for nine hours, interviewed with regard to the allegation made by the appellant and also had a number of intimate samples taken from him. He maintained that he was in a public house at the time of the alleged offence. He also stated that he had received a number of messages from her that evening in which she had abused and

threatened him. It was established that he had indeed been in a public house at the time and that one of the messages he received from her that evening was that she would see him caught and that he would be put in prison for 18 years.

8. Mr Merritt was released on bail for three weeks before the decision was taken that no further action would be taken against him.
9. The appellant was then arrested and interviewed on 23rd February. In that interview she accepted that she had made a false allegation against her husband and gave as a reason the fact that he had assaulted her physically twice at that time and that she wanted to get revenge on him. At the end of the interview she said she felt utterly foolish and that she just wanted to say that she was sorry.
10. Before the Recorder who was passing sentence there was a pre-sentence report which recommended a non-custodial disposal. That report assessed the appellant as posing a very low risk of reoffending, although it did also state that the appellant had little awareness of the consequences of her actions and that her remorse focused almost exclusively upon the distress that she herself had been caused. However, a more recent prison report, which this Court has seen, states that the appellant's conduct in prison seems to be exemplary and also states that she now shows a far greater awareness of the seriousness of what she had done and the consequences for her victim.
11. A psychological report, which was before the Recorder, indicated that the appellant had a significant number of problems, apart from her then dependency on alcohol, and also a pre-disposition to behave very impulsively.
12. In the course of his sentencing remarks the Recorder said this:

"I quite accept that you are now remorseful about what you have done, you feel foolish and sorry, and the best evidence of that is your guilty plea.

What you sought to do, however, was to use the criminal justice system in your own matrimonial difficulties. Such an offence, whatever the background to it, is so serious that a custodial sentence must be passed, because the seriousness -- to quote your counsel -- must be brought home to you and must be brought home to others."
13. On behalf of the appellant Miss Evans today submits that a custodial sentence was wrong in principle. Alternatively, she submits that a sentence of ten months' imprisonment was manifestly excessive. She relies, in particular, on the following points. She draws attention to the early admissions and to the plea and the expressions of remorse. She also draws attention to the psychological and personal state of the appellant at a time, moreover, when she was in a damaging relationship. She further places reliance on the pre-sentence report and the recent prison report. Further still she says that the offence had not been premeditated to any significant extent. She emphasises that the appellant did not seek to maintain the false allegation for any very long extended period and made no witness statement and fabricated no other evidence

to support what she had initially alleged. Further, and in consequence, Miss Evans stresses the husband had not been charged and he had not had to face any trial or any adverse publicity; although Miss Evans necessarily acknowledges that he was in consequence of the allegation detained in custody for nine hours and subjected to intensive questioning and intrusive medical examination and thereafter was on bail for three weeks whilst the police continued to investigate the allegations.

14. Miss Evans referred us to three authorities in this context. The first was the case of Goodwin (1989) 11 Cr App R(S) 194. There a 20 year old woman pleaded guilty to making a false allegation of rape. Her sentence was on appeal reduced from three years' detention to 18 months. The man in question in that case had been arrested and detained for 14 days in custody in consequence of the allegation. The appellant in that case only abandoned her story because the police continued their enquiries which showed that the man must be innocent. In the course of giving the judgment of the Court Lord Lane CJ said this:

"On the other hand this was, on any view, a wicked thing to do. The appellant only abandoned the false story because the police had continued their enquiries. As everyone knows it is an easy allegation to make and may be very difficult to refute. The possibilities are terrifying when one considers what might have happened had the police not been so persistent."

Then he went on to say this:

"The question is was a term of the length of three years' custody necessary? We think it was not. It is necessary to make people understand that this sort of lie will be met by severe punishment. But we have to balance against that the age of this young woman and the circumstances in which she saw fit to tell these lies."

15. Miss Evans submits with some force that, apart from the age of the appellant in Goodwin, that was a worse case on its facts than the present case, since there the woman maintained her story for much longer and the unfortunate man was detained in custody for 14 days in consequence.
16. In Kyriakou (1990) 12 Cr App R(S) 603 a false allegation of rape had been made. There was a plea and a sentence of 12 months' imprisonment was reduced to one of six months' imprisonment on appeal. The man in question in that case had been arrested and apparently charged and detained in custody for 12 days before the appellant of her own accord admitted that the complaint was false. In the course of delivering the judgment of the Court Watkins LJ said this:

"The court must, when it is faced with circumstances such as this where a man is falsely accused of rape and therefore wrongly imprisoned, make it absolutely plain as can be that anyone who resorts to conduct of that kind will be severely punished. A loss of liberty is an inevitable consequence."

The sentence in that particular case was reduced, in effect because of the particular personal circumstances of the individual appellant.

17. In Gregson (1993) 14 Cr App R(S) 85, to which Miss Evans also made reference, a sentence of nine months' imprisonment on a woman who had pleaded guilty to making a false allegation of rape was reduced on appeal to one of four months' imprisonment. In that case the man had been detained in consequence of the allegation for some 20 hours. The appellant the following day, after the alleged rape, made a detailed witness statement seeking to implicate the man. But in the light of police questioning she eventually, and some five hours later, admitted that it was not true and then made a retraction statement. The Court in Gregson emphasised that in contrast with Goodwin and Kyriakou the complainant was withdrawing the allegation relatively quickly after it had first been made and in that particular case the man was only detained for just over 20 hours. In those circumstances, the Court decided that the sentence of nine months' imprisonment was longer than necessary and reduced it, as we have said, to one of four months' imprisonment.
18. As is made clear in Goodwin and Kyriakou the effect of offending of this kind is that a custodial sentence will almost inevitably follow: precisely for the reasons given by Lord Lane and Watkins LJ.
19. In our view, the complaint that the judge in the present case erred in principle in imposing a custodial sentence is not well founded. The judge was, in the circumstances of this case, not only fully justified in imposing a custodial sentence, but in our view he was required to do so.
20. But was a sentence of ten months' imprisonment too long? In our view, having regard both to the authorities and to the facts of this particular case, it was. We cannot agree at all with Miss Evans that this was simply an act of stupidity and weakness. It was an act of wickedness. It is true that even though the appellant refused to make a witness statement implicating the unfortunate victim, she nevertheless continued to maintain that the incident had taken place. In consequence the police enquiries continued and the matter was hanging over the head of Mr Merritt and he was on bail for three weeks. On the other hand, he was never charged and was not detained in custody for longer than nine hours: although, of course, even that period must have been extremely unpleasant for him. Further, although there must have been some element of preplanning on the part of the appellant, as is borne out by the telephone calls which she made to her husband that evening, the matter does seem to have arisen at a time when the appellant was in a state of mental and personal turmoil. Further, there are the aspects of personal mitigation to which we have alluded, as well, of course, and the plea of guilty.
21. In all the circumstances, we think that a sentence of ten months' imprisonment was longer than was necessary and was too long. We think that the justice of this case can be met by a shorter sentence. We quash the sentence of imprisonment of ten months and substitute for it a sentence of four months' imprisonment, which, in the judgment of this Court, is the appropriate sentence on the circumstances of this particular case. To that extent this appeal is allowed.